

NORTH CAROLINA REGISTER

VOLUME 29 • ISSUE 19 • Pages 2219 - 2336

April 1, 2015

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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 2015 – December 2015

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
29:13	01/02/15	12/08/14	01/17/15	03/03/15	03/20/15	05/01/15	05/2016	09/29/15
29:14	01/15/15	12/19/14	01/30/15	03/16/15	03/20/15	05/01/15	05/2016	10/12/15
29:15	02/02/15	01/09/15	02/17/15	04/06/15	04/20/15	06/01/15	05/2016	10/30/15
29:16	02/16/15	01/26/15	03/03/15	04/17/15	04/20/15	06/01/15	05/2016	11/13/15
29:17	03/02/15	02/09/15	03/17/15	05/01/15	05/20/15	07/01/15	05/2016	11/27/15
29:18	03/16/15	02/23/15	03/31/15	05/15/15	05/20/15	07/01/15	05/2016	12/11/15
29:19	04/01/15	03/11/15	04/16/15	06/01/15	06/22/15	08/01/15	05/2016	12/27/15
29:20	04/15/15	03/24/15	04/30/15	06/15/15	06/22/15	08/01/15	05/2016	01/10/16
29:21	05/01/15	04/10/15	05/16/15	06/30/15	07/20/15	09/01/15	05/2016	01/26/16
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30:11	12/01/15	11/05/15	12/16/15	02/01/16	02/22/16	04/01/16	05/2016	08/27/16
30:12	12/15/15	11/20/15	12/30/15	02/15/16	02/22/16	04/01/16	05/2016	09/10/16

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.



State of North Carolina

PAT McCRORY

GOVERNOR

February 25, 2015

Executive Order No. 70

DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1.

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to a winter storm. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the entire State of North Carolina.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

Section 5.

I further direct Secretary Perry or his designee, to seek assistance from agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State of North Carolina in responding to this emergency.

Section 6.

I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this declaration.

Section 7.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 8.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

Section 9.

This declaration is effective immediately and shall remain in effect until rescinded.

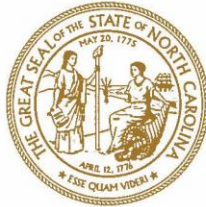
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of February in the year of our Lord two thousand and fifteen, and of the Independence of the United States of America the two hundred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


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY

GOVERNOR

February 25, 2015

EXECUTIVE ORDER No. 71

**TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE
RESTORATION OF UTILITY SERVICES AND TRANSPORTING ESSENTIALS**

WHEREAS, due to the approach of a winter storm, vehicles bearing equipment and supplies for utility restoration and debris removal, carrying essentials such as food and medicine, transporting livestock and poultry and feed for livestock and poultry need to be moved on the highways of North Carolina; and

WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in North Carolina due to the likely impact of the winter storm; and

WHEREAS, the prompt restoration of utility services and uninterrupted supply of electricity, gasoline and other essentials in commerce to citizens of North Carolina is essential to their safety and well-being; and

WHEREAS, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118, and 20-119. I have further found that citizens in this state may suffer imminent widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

WHEREAS, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic loss of livestock or poultry, the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock and poultry and feed for livestock and poultry; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Parts 390-399 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential

fuels, food, water, medical supplies, debris removal, feed for livestock and poultry, transporting livestock and poultry and for vehicles used in the restoration of utility services.

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

Section 1.

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118, and 20-119. This order also waives certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials, and for equipment for any debris removal. The Department of Public Safety shall suspend weighing pursuant to N.C.G.S. § 20-118.1 vehicles used to transport livestock and poultry and carrying livestock and poultry feed in the emergency area.

Section 3.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

Section 4.

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 5.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 6.

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, carrying feed for livestock and poultry, or transporting livestock and poultry in the State of North Carolina.

Section 9.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 10.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

Section 11.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY

GOVERNOR

February 27, 2015

EXECUTIVE ORDER No. 72

NOTICE OF TERMINATION OF EXECUTIVE ORDERS

WHEREAS, Executive Order No. 70, issued on February 25, 2015, declared a state of emergency in the State of North Carolina due to a major winter storm; and

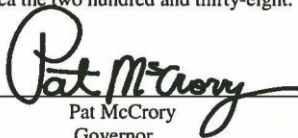
WHEREAS, Executive Order No. 71, issued on February 25, 2015, waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials in commerce, and with the concurrence of the Council of State temporarily suspended size and weight restrictions on vehicles used for utility restoration and carrying essentials on the interstate and intrastate highways due to anticipated damage and impacts from the winter storm. In addition, the order also directed the Department of Public Safety to suspend weighing those vehicles used to transport livestock and poultry and feed for livestock and poultry.

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

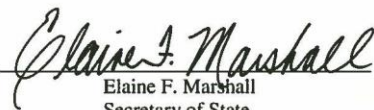
Pursuant to N.C.G.S. § 166A-19.20(c) the state of emergency that was declared by Executive Order No. 70 is hereby terminated on February 27, 2015 at 12:00 p.m.

Executive Order No. 71 is hereby terminated at 11:59 p.m. on March 2, 2015.

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


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



Note from the Codifier: Rules Pending Legislative Session beginning January 2015

Rules entered into NC Administrative Code effective March 17, 2015

Pursuant to S.L. 2014-4, Part II, s. 2.(c)(2), notwithstanding G.S. 150B-21.3(b1) and any rule of either house of the General Assembly, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 become effective on the earlier of the following: If the Rules Review Commission approves all rules adopted pursuant to Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of (i) the 31st calendar day after the date the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically disapproves a rule has not been introduced in either house of the General Assembly by that date; (ii) if a bill that specifically disapproves a rule is introduced in either house of the General Assembly within 30 calendar days of the date that the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the 61st day after the date that the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if by that date a bill that specifically disapproves the rule has not been ratified; or (iii) the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule.

A legislative bill was introduced to disapprove these rules within the first 30 calendar days and an unfavorable action was not taken on the bill; therefore, the rules went into effect on the 61st calendar day (March 17, 2015).

	RRC Approved
Environmental Management Commission	
15A NCAC 02H .1030	01/15/2015
Mining and Energy Commission	
15A NCAC 05D .0101	12/17/2014
15A NCAC 05D .0103	12/17/2014
15A NCAC 05D .0104	12/17/2014
15A NCAC 05D .0105	12/17/2014
15A NCAC 05D .0106	12/17/2014
15A NCAC 05D .0107	12/17/2014
15A NCAC 05D .0108	12/17/2014
15A NCAC 05D .0109	12/17/2014
15A NCAC 05D .0110	12/17/2014
15A NCAC 05D .0111	12/17/2014
15A NCAC 05H .0101	12/17/2014
15A NCAC 05H .0102	12/17/2014
15A NCAC 05H .0201	12/17/2014
15A NCAC 05H .0202	12/17/2014
15A NCAC 05H .0203	12/17/2014
15A NCAC 05H .0301	12/17/2014
15A NCAC 05H .0401	12/17/2014
15A NCAC 05H .0402	12/17/2014
15A NCAC 05H .0501	12/17/2014
15A NCAC 05H .0502	12/17/2014
15A NCAC 05H .0503	12/17/2014
15A NCAC 05H .0504	12/17/2014
15A NCAC 05H .0601	12/17/2014
15A NCAC 05H .0602	12/17/2014
15A NCAC 05H .0603	12/17/2014
15A NCAC 05H .0701	12/17/2014
15A NCAC 05H .0702	12/17/2014
15A NCAC 05H .0703	12/17/2014
15A NCAC 05H .0704	01/15/2015
15A NCAC 05H .0705	12/17/2014
15A NCAC 05H .0706	12/17/2014
15A NCAC 05H .0707	12/17/2014
15A NCAC 05H .0708	12/17/2014
15A NCAC 05H .0709	12/17/2014

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15A NCAC 05H .0808	12/17/2014
15A NCAC 05H .0901	12/17/2014
15A NCAC 05H .1001	12/17/2014
15A NCAC 05H .1002	12/17/2014
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15A NCAC 05H .1206	12/17/2014
15A NCAC 05H .1301	12/17/2014
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15A NCAC 05H .1303	12/17/2014
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15A NCAC 05H .1404	01/15/2015
15A NCAC 05H .1405	01/15/2015
15A NCAC 05H .1406	01/15/2015
15A NCAC 05H .1407	01/15/2015
15A NCAC 05H .1501	12/17/2014
15A NCAC 05H .1502	12/17/2014
15A NCAC 05H .1503	12/17/2014
15A NCAC 05H .1504	12/17/2014
15A NCAC 05H .1601	12/17/2014
15A NCAC 05H .1602	12/17/2014
15A NCAC 05H .1603	01/15/2015
15A NCAC 05H .1604	12/17/2014
15A NCAC 05H .1605	12/17/2014
15A NCAC 05H .1606	12/17/2014
15A NCAC 05H .1607	12/17/2014
15A NCAC 05H .1608	12/17/2014
15A NCAC 05H .1609	12/17/2014
15A NCAC 05H .1610	12/17/2014
15A NCAC 05H .1611	12/17/2014
15A NCAC 05H .1612	12/17/2014
15A NCAC 05H .1613	01/15/2015

15A NCAC 05H .1614	12/17/2014
15A NCAC 05H .1615	12/17/2014
15A NCAC 05H .1616	12/17/2014
15A NCAC 05H .1617	12/17/2014
15A NCAC 05H .1618	12/17/2014
15A NCAC 05H .1619	12/17/2014
15A NCAC 05H .1620	12/17/2014
15A NCAC 05H .1621	12/17/2014
15A NCAC 05H .1622	12/17/2014
15A NCAC 05H .1623	12/17/2014
15A NCAC 05H .1624	12/17/2014
15A NCAC 05H .1701	12/17/2014
15A NCAC 05H .1702	12/17/2014
15A NCAC 05H .1703	12/17/2014
15A NCAC 05H .1801	12/17/2014
15A NCAC 05H .1802	12/17/2014
15A NCAC 05H .1803	12/17/2014
15A NCAC 05H .1804	01/15/2015
15A NCAC 05H .1805	12/17/2014
15A NCAC 05H .1806	12/17/2014
15A NCAC 05H .1807	12/17/2014
15A NCAC 05H .1901	12/17/2014
15A NCAC 05H .1902	01/15/2015
15A NCAC 05H .1903	01/15/2015
15A NCAC 05H .1904	12/17/2014
15A NCAC 05H .1905	12/17/2014
15A NCAC 05H .1906	12/17/2014
15A NCAC 05H .2001	12/17/2014
15A NCAC 05H .2002	12/17/2014
15A NCAC 05H .2003	01/15/2015
15A NCAC 05H .2004	12/17/2014
15A NCAC 05H .2005	12/17/2014
15A NCAC 05H .2006	12/17/2014
15A NCAC 05H .2007	12/17/2014
15A NCAC 05H .2101	12/17/2014
15A NCAC 05H .2102	12/17/2014
15A NCAC 05H .2103	12/17/2014
15A NCAC 05H .2201	12/17/2014

Rules subject to review pursuant to G.S. 150B-21.3 by the General Assembly in the session beginning in January 2015 have completed 30 legislative days.

Pursuant to G.S. 150B-21.3, if a bill that specifically disapproves a rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. A rule that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

Rules entered into NC Administrative Code effective March 19, 2015

A legislative bill was not introduced to disapprove these rules within the first 30 legislative days; therefore, the rules went into effect on the 31st legislative day (March 19, 2015).

Public Safety, Department of
14B NCAC 07A .0116

RRC Approved

09/18/2014

Environmental Management Commission
15A NCAC 02D .1903

N/A

IN ADDITION

15A NCAC 02T .0113	12/17/2014
15A NCAC 02T .1001	12/17/2014
15A NCAC 02T .1501	12/17/2014
15A NCAC 02U .0113	12/17/2014

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 Board of Agriculture intends to amend the rules cited as 02 NCAC 52C .0701.

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

Proposed Effective Date: August 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 rule by submitting a request in writing no later than April 16, 2015 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

Reason for Proposed Action: *The changes to 02 NCAC 52C .0701 updates the intrastate requirements for cervidae to comply with the USDA Chronic Wasting Disease Program Standards.*

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, email tina.hlabse@ncagr.gov

Comment period ends: June 1, 2015

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)
☐ Approved by OSBM
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 52 - VETERINARY

**SUBCHAPTER 52C - CONTROL OF LIVESTOCK
DISEASES: MISCELLANEOUS PROVISIONS**

SECTION .0700 – MISCELLANEOUS REQUIREMENTS

**02 NCAC 52C .0701 INTRASTATE
REQUIREMENTS: CERVIDAE**

- (a) Cervidae that originate from herds containing cervidae only may be sold within North Carolina, if they test negative for tuberculosis within 60 days of change of ownership.
- (b) Cervidae that are commingled with domestic livestock may be sold within North Carolina provided that domestic cattle are tested annually, and all cervidae and bovidae other than domestic cattle and bison are tested negative for tuberculosis within 60 days prior to moving intrastate.
- (c) Cervidae owners shall maintain records showing:
- (1) date and source of new additions to the herd;
 - (2) date of deaths of cervidae and copy of laboratory report on cause of death; and
 - (3) date of sale or other disposition of any animal from a herd containing cervidae and the name and address of person who received the animal.

These records shall be maintained by the cervidae owner for a period of five years and shall be made available for inspection and copying by an employee of the Veterinary Division.

(d) All captive cervidae of any species ~~six~~ 12 months of age or older that die of any cause must be tested for Chronic Wasting Disease. The animal's head shall be submitted to a USDA-approved laboratory for testing. A copy of the laboratory report shall be sent to the State Veterinarian.

(e) Cervidae owners must comply with the "Uniform Methods & Rules: Tuberculosis Eradication in Cervidae," U.S. Department of Agriculture, which is hereby adopted by reference, including subsequent editions and amendments. A copy of this document may be obtained from the Veterinary Division at no charge.

Authority G.S. 106-317; 106-400.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules 12 NCAC 09B .0106, .0111, .0114, .0117, .0203, .0302, .0501; 09F .0104; 09G .0204 and .0308.

Link to agency website pursuant to G.S. 150B-19.1(c):
http://www.ncdoj.gov/getdoc/6af2d632-26e7-454d-b79f-a41d0c96b923/Proposed-Rule-Amendments_8-20-15.aspx

Proposed Effective Date: November 1, 2015

Public Hearing:

Date: August 20, 2015

Time: 10:30 a.m.

Location: 321 Chapanoke Rd, Raleigh, NC 27603

Reason for Proposed Action:

12 NCAC 09B .0106, .0111, .0114, .0117, .0203, .0302, .0501; 09G .0204 and .0308 – *The Criminal Justice Education and Training Standards Commission proposed amendments to these rules in order to allow a college or university degree to satisfy educational requirements for the purpose of certification and admission of trainees.*

12 NCAC 09F .0104 – *The Commission proposes the revisions to this rule in order to stipulate the requirements for Concealed Carry Handgun instructors who have been inactive for a period of two years or more.*

Comments may be submitted to: Trevor Allen, P.O. Drawer 149, Raleigh, NC 27602, phone (919) 779-8205, fax (919) 779-8210, email tjallen@ncdoj.gov

Comment period ends: August 20, 2015

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)**
- ☐ **Approved by OSBM**

☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B – STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0100 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS

(a) Each applicant for employment as a criminal justice officer shall furnish to the employing agency documentary evidence that the applicant has met the educational requirements for the criminal justice field of expected employment.

(b) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school which meets the approval guidelines of either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or comparable out-of-state agency. Documentary evidence of college or university graduation, at an Associate's Degree or higher, consists of diplomas or transcripts from colleges or universities accredited as such by the Department of Education of the state in which the institution is located, an accredited body recognized by either the U.S. Department of Education or Council for Higher Education Accreditation, or the state university of the state in which the institution is located. The Director of the Standards Division shall determine whether other types of documentation will be permitted in specific cases. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.

(c) Documentary evidence of having passed the General Educational Development Test shall be satisfied by a certified copy of GED test results or GED certificate. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09B .0111 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law enforcement officer employed by an agency in North Carolina shall:

- (1) not have committed or been convicted of:
 - (a) a felony;
 - (b) a crime for which the punishment could have been imprisonment for more than two years;
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment;

- (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction;
- (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; or
- (f) an offense that, proscribed by 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition;
- (2) be a high ~~school~~ school, college, or university graduate or have passed the General Educational Development Test indicating high school equivalency; and
- (3) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the agency-approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency.

Note: Although not presently required, the Commission recommends that, on the date of employment or within 24 months thereafter, every candidate for employment as a law enforcement officer have completed no less than six semester units or nine quarter units of educational credit at an institution recognized by the United States Department of Education and the Council for Higher Education Accreditation.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09B .0114 MINIMUM STANDARDS FOR LOCAL CONFINEMENT PERSONNEL

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every officer, supervisor or administrator employed by a local confinement facility in North Carolina shall:

- (1) not have committed or been convicted of:
 - (a) a felony; or
 - (b) a crime for which the punishment could have been imprisonment for more than two years; or
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed

if the last conviction occurred more than two years prior to the date of application for employment;

- (2) be a high ~~school~~ school, college, or university graduate or have passed the General Educational Development Test indicating high school equivalency.

Note: Although not presently required by these Rules, the Commission recommends that, on the date of employment or within 24 months thereafter, every candidate for employment as an officer, supervisor or administrator have completed no less than six semester units or nine quarter units of educational credit at an accredited institution of higher education.

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09B .0117 MINIMUM STANDARDS FOR JUVENILE JUSTICE OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every juvenile justice officer employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

- (1) not have committed or been convicted of:
 - (a) a felony;
 - (b) a crime for which the punishment could have been imprisonment for more than two years;
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment;
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; and
- (2) be a high ~~school~~ school, college, or university graduate or have passed the General Equivalency Development Test indicating high school equivalency.

Authority G.S. 17C-2; 17C-6; 17C-10.

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0203 ADMISSION OF TRAINEES

- (a) The school director shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal

justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to Basic Law Enforcement Training, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014 <http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold general certification or who have held general certification within 12 months prior to the date of enrollment.
- (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned

through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;
- (4) four or more crimes or unlawful acts defined as "Class B Misdemeanors," regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors," except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or

similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing, specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

Authority G.S. 17C-6; 17C-10.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) General Instructor Certification issued after December 31, 1984 shall be limited to those topics that are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Section, entitled "Specific Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the Commission. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high ~~school~~ school, college or university graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and
 - (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system.
- (2) Present evidence showing completion of a Commission-certified instructor training

program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

- (3) Pass the comprehensive written examination administered by the Commission, as required in Rule .0413(d) of this Subchapter.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses shall possess general instructor certification.

Authority G.S. 17C-6.

SECTION .0500 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOL DIRECTORS

12 NCAC 09B .0501 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a Commission-certified criminal justice training course shall be and continuously remain certified by the Commission as a school director.

(b) To qualify for initial certification as a criminal justice school director, an applicant shall:

- (1) Attend and successfully complete a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission (if certified after July 1, 2004); and
- (2) Present documentary evidence showing that the applicant:
 - (A) is a high ~~school~~ school, college, or university graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required five years experience must

- have been while actively participating in criminal justice training as a Commission-certified instructor; or
- (B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required four years experience must have been while directly participating in criminal justice training as a Commission-certified instructor; or
- (C) has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;

- (3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member shall be required.
- (4) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently certified, or which may be seeking certification, by the Commission to make presentation of certified training programs and for whom the applicant will be the designated school director.

(c) To qualify for certification as a school director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:

- (1) Document that he/she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning; and
- (2) Present evidence showing successful completion of a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission; and
- (3) Be currently certified as a criminal justice instructor by the Commission; and
- (4) Document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

Authority G.S. 17C-6.

SUBCHAPTER 09F - CONCEALED HANDGUN TRAINING

SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM

12 NCAC 09F .0104 INSTRUCTOR QUALIFICATIONS

(a) Instructors shall meet the following qualifications for approval to deliver the "Concealed Carry Handgun Training" course:

- (1) the instructor shall hold one of the following certifications:
 - (a) "Specific Instructor Certification-Firearms" issued by the Commission;
 - (b) Private Protective Services Firearms Trainer Certification; or
 - (c) "Firearms Instructor Certification" in Personal Protection, Basic Pistol, or Police Firearms issued by the National Rifle Association;
- (2) the instructor shall hold a certificate issued by the North Carolina Justice Academy showing ~~successful~~ completion of the course on "Laws Governing Concealed Handgun and Use of Deadly Force"; ~~Force~~; and
- (3) the instructor shall be eligible to receive or possess a firearm under Federal and North Carolina State Law; ~~and Law.~~

(b) If the instructor fails to file with the Commission a course outline and proof of firearm's instructor certification as specified in Subparagraph (a)(1) of this Rule for two consecutive years, he or she must repeat the course on "Laws Governing Concealed Handgun and Use of Deadly Force" conducted by the North Carolina Justice Academy, provide to the Commission proof of a current firearms instructor certification, and maintain eligibility to possess a firearm as specified in Paragraph (a) of this Rule prior to instructing a concealed carry handgun course.

~~(b)(c)~~ The instructor shall notify the Criminal Justice Standards Division of all court orders, domestic violence orders of protection, and criminal offenses for which the instructor is charged which would prohibit the instructor from being eligible to receive or possess a firearm under Federal and North Carolina State Law. The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case is being handled, the date of arrest, court order, domestic violence order of protection or criminal charge. The notification required under this Paragraph must be received by the Criminal Justice Standards Division within 10 days of the date of the court order, domestic violence order of protection, arrest or criminal charge.

Authority G.S. 14-415.12.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0200 - MINIMUM STANDARDS FOR CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0204 EDUCATION

(a) Every person employed as a correctional officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a high ~~school-school,~~ college, or university graduate or have passed the General Educational Development "GED" Test indicating high school equivalency.

(b) Every person employed as a probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a graduate of a regionally accredited college or university and have attained at least the baccalaureate degree.

(c) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.

- (1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the requirements of the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, a comparable out-of-state agency, or is a regionally accredited college or university. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.
- (2) Documentary evidence of completion of the General Educational Development "GED" Test shall be satisfied by a certified copy of GED test results showing successful completion. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

Authority G.S. 17C-6; 17C-10

**SECTION .0300 - CERTIFICATION OF
CORRECTIONAL OFFICERS, PROBATION/PAROLE
OFFICERS, AND INSTRUCTORS**

**12 NCAC 09G .0308 GENERAL INSTRUCTOR
CERTIFICATION**

(a) General Instructor Certification after December 31, 1984 shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in 12 NCAC 09G .0310, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in corrections and proficiency in the instructional process to the satisfaction of the Commission by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:

- (A) is a high ~~school-school,~~ college or university graduate or has passed the General Education Development Test (GED) indicating high school equivalency; and
- (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field related to the criminal justice system.

- (2) Present evidence showing successful completion of a Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as specified in 12 NCAC 09B .0413(d), of this Chapter, within 60 days of completion of the Commission-certified instructor training program.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant achieved a passing score on the comprehensive written examination administered by the Commission for the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course.

Authority G.S. 17C-6.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0304 and repeal the rule cited as 15A NCAC 07K .0213.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccoastalmanagement.net/web/cm/proposed-rules>

Proposed Effective Date: August 1, 2015

Public Hearings:

Date: April 28, 2015

Time: 5:00 p.m.

Location: Currituck County, Corolla Public Library, 1123 Ocean Trail, Corolla, NC 27927

Date: April 30, 2015

Time: 1:15 p.m.

Location: Dare County Administration Building, Board of Commissioners Meeting Room, 954 Marshall C. Collins Drive, Manteo, NC 27954

Date: May 11, 2015

Time: 5:00 p.m.

Location: Carteret County, NC Division of Coastal Management, 400 Commerce Ave, Morehead City, NC 28557

Date: May 12, 2015

Time: 3:00 p.m.

Location: Brunswick County, Oak Island Town Hall, 4601 E. Oak Island Drive, Oak Island, NC 28465

Date: May 12, 2015

Time: 7:00 p.m.

Location: New Hanover County, New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403

Date: May 14, 2015

Time: 3:00 p.m.

Location: Pender County, Surf City Town Hall, 214 N. New River Drive, Surf City, NC 28445

Date: May 14, 2015

Time: 5:00 p.m.

Location: Onslow County, Onslow County Public Library, 1330 Highway 210, Sneads Ferry, NC 28460

Date: May 19, 2015

Time: 1:00 p.m.

Location: Ocracoke, Ocracoke Volunteer Fire Department, 822 Irvin Garrish Hwy, Ocracoke, NC 27960

Reason for Proposed Action: Rules 15A NCAC 07H .0304 outlines the subcategories of Areas of Environmental Concern (AEC) within the broader Ocean Hazard AEC Rule 15 NCAC 07K .0213 is an exemption for single family residences constructed in the High Hazard Flood AEC. The proposed rule change repeals the High Hazard Flood AEC and the corresponding exemption from Coastal Area Management Act permitting requirements. The Coastal Resources Commission (CRC) is proposing to repeal the High Hazard Flood AEC, which is identified as the Velocity Zones on Flood Insurance Rate maps administered by the national Flood Insurance Program (NFIP). Changes to the NFIP and to the NC Building Code parallel the CRC requirements for construction in these areas. Since the CRC has required all residential and commercial structures within the Ocean Hazard AEC to comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards and local flood damage

prevention ordinances required by the NFIP, the CRC requirements are no longer necessary.

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

Comment period ends: June 1, 2015

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)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 07 - COASTAL MANAGEMENT

CHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there

has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>; and

- (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

~~(2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.~~

~~(3)(2)~~ Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are

hereby designated as Inlet Hazard Areas except for:

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

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.

~~(4)(3)~~ Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-item (1)(a) of this Rule.
- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.

SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED

FROM THE CAMA MAJOR DEVELOPMENT PERMIT
REQUIREMENT

15A NCAC 07K .0213 SINGLE FAMILY RESIDENCES
EXEMPTED FROM THE CAMA PERMIT
REQUIREMENTS WITHIN THE HIGH HAZARD
FLOOD AREA OF ENVIRONMENTAL CONCERN

~~(a) All single family residences, including associated infrastructure, accessory structures or structural additions to an existing single family structure, constructed within the High Hazard Flood Area of Environmental Concern are exempt from the CAMA permit requirements provided that the development is consistent with all other applicable CAMA permit standards and local land use plans and/or rules in effect at the time the exemption is granted including the following conditions and limitations:~~

- ~~(1) The development shall not be located within the Ocean Erodible or Inlet Hazard Areas of Environmental Concern.~~
- ~~(2) Any building shall be on pilings and comply with the North Carolina Building Code and the local flood damage prevention ordinance as required by the National Flood Insurance Program.~~
- ~~(3) The development does not require any permission, licensing, approval, certification or authorization, licensing or approval from any state or federal agency.~~

~~(b) Prior to commencing any work under this exemption, the Department of Environment and Natural Resources (DENR) representative or local CAMA permitting officer must be notified of the proposed activity to allow on site review. Notification shall be given in person or in writing. Notification must include:~~

- ~~(1) the name, address and telephone number of the landowner and the location of the work, including the county, nearest community and water body closest to the development;~~
- ~~(2) the dimensions of the proposed house, driveway, landscaping or other accessory developments proposed on the property; and~~
- ~~(3) a signed AEC hazard notice indicating the property owner is aware of the special risks and conditions associated with development in this area. The DENR representative or local CAMA permitting officer shall provide the applicable notice form to the landowner.~~

~~(c) The applicant for a permit exemption must submit with the request a check or money order payable to the Department of Environment and Natural Resources (DENR) or local permitting authority in the sum of fifty dollars (\$50.00).~~

Authority G.S. 113A-103(5)(a); 113A-113(b)(6); 113A-118(d)(2); 113A-119.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0333.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncwildlife.org/ProposedRegulations.aspx>

Proposed Effective Date: September 1, 2015

Public Hearing:

Date: May 7, 2015

Time: 7:00 p.m.

Location: Cooks Memorial Presbyterian Church, 3413 Mount Holly-Huntersville Road, Charlotte, NC 28216

Reason for Proposed Action: The proposed permanent amendments to 15A NCAC 10F .0333 will replace the proposed temporary amendments to this Rule to be reviewed by the Rules Review Commission on April 16, 2015. Lake Wylie Marine Commission made formal application to the Wildlife Resources Commission requesting no-wake zone on Lake Wylie west of Sadler Island. Law Enforcement assessed and made numerous site visits. Based on the safety issues observed, officers recommended pursuing rule-making, with modifications, for the original request (Sadler Island west) and an additional no-wake zone (Sadler Island east). During Certain times of the year, over 100 kayaks can be in the water at a time on the stretch of the Lake Wylie west of Sadler Island, and the width is too narrow for a motorboat going at a high rate of speed to be able to safely navigate around such a high concentration of kayakers. Furthermore, a motorboat gas pump is planned for this stretch of the lake.

Comments may be submitted to: Kate Pipkin, 1701 Mail Service center, Raleigh, NC 27699-1722

Comment period ends: June 1, 2015

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)

- ☒ **Approved by OSBM**
☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule applies to the following waters of Lake Wylie in Mecklenburg and Gaston Counties:

- (1) McDowell Park – The waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County, including the entrances to the coves on either side of Copperhead Island;
- (2) Gaston County Wildlife Club Cove – The waters of the cove at the Gaston County Wildlife Club on South Point Peninsula in Gaston County;
- (3) Buster Boyd Bridge - The areas 250 feet to the north and 150 feet to the south of the Buster Boyd Bridge;
- (4) Highway 27 Bridge – The area beginning 50 yards north of the NC 27 Bridge and extending 50 yards south of the southernmost of two railroad trestles immediately downstream from the NC 27 Bridge;
- (5) Brown's Cove – The area beginning at the most narrow point of the entrance to Brown's Cove and extending 250 feet in both directions;
- (6) Paradise Point Cove – The waters of the Paradise Point Cove between Paradise Circle and Lakeshore Drive as delineated by appropriate markers;
- (7) Withers Cove - The area 50 feet on either side of Withers Bridge; ~~and~~
- (8) Sadler Island west- beginning at a line formed from a point on the western shore of Lake Wylie at 35.27481N, 81.0138W to a point on the eastern shore at 35.27423N, 81.01111W extending south on the Lake to a line formed from a point on the western shore of Lake Wylie at 35.2708N, 81.01525W to a point on the western side of Sadler Island at 35.27056N, 81.01393W.
- (9) Sadler Island east- beginning at a line formed from a point on the western shore of Lake Wylie at 35.27481N, 81.0138W to a point on the eastern shore at 35.27423N, 81.01111W extending south on the Lake to a line formed from a point on the eastern side of Sadler Island at 35.2663N, 81.0143W to a point on the

eastern shore of Lake Wylie at 35.26501N, 81.01374W.

~~(8)~~(10) other bridges – the areas that are within 50 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in this Paragraph.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-launching ramp, dock, pier, marina, boat storage structure or boat service area.

(c) Speed Limit Near All Other Bridges. No person shall operate a vessel at greater than no-wake speed within 50 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in Paragraph (a) of this Rule.

(d) Speed Limit in Marked Swimming or Mooring Areas. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked mooring area or marked swimming area.

(e) Placement and Maintenance of Markers. The Lake Wylie Marine Commission is designated a suitable agency for placement and maintenance of markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 19 – BOARD OF ELECTROLYSIS EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Electrolysis Examiners intends to amend the rules cited as 21 NCAC 19 .0201-.0204, .0407, .0409, .0501, .0602, .0608, .0622, .0701, and .0702.

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

Proposed Effective Date: *August 1, 2015*

Public Hearing:

Date: *April 26, 2015*

Time: *9:30 a.m.-1:30 p.m.*

Location: *Trinity Oaks, Special Events Room A, 728 Klumac Road, Salisbury, NC 28144, I-85 off J. Alexander at Exit 75, contact (704) 287-4715*

Reason for Proposed Action: *Amendments are needed to clarify provisions in statute with respect to applications for licensure, school and instructor certifications, fee increases, continuing education, agreements with Supervisory Physicians, and codification of existing board policies.*

Comments may be submitted to: *Susan Magas, 2 Centerview Drive, Suite 60, Greensboro, NC 27407, phone (336) 856-1010, email ncbeexam@att.net*

Comment period ends: *June 1, 2015*

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)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required by G.S. 150B-21.4**

SECTION .0200 – APPLICATION PROCEDURES

21 NCAC 19 .0201 FEES

- (a) The following fees are payable to the Board for licensure as an electrologist:
 - (1) Application for licensure \$125.00
 - (2) Initial licensure \$125.00
 - (3) Renewal of licensure \$125.00
- (b) The following fees are payable to the Board for licensure as a laser hair practitioner:
 - (1) Application for licensure \$125.00
 - (2) Initial licensure \$125.00
 - (3) Renewal of licensure ~~\$125.00~~ \$150.00
- (c) The following fees are payable to the Board for certification as an instructor:
 - (1) Application for Electrology instructor \$150.00
 - (2) Renewal of Electrology instructor \$125.00
 - (3) Application for laser hair practitioner instructor \$150.00
 - (4) Renewal of laser hair practitioner instructor \$125.00
- (d) The following fees are payable to the Board for certification as a Board approved school:
 - (1) IN STATE SCHOOL
 - (A) Application for certification as an Electrology school \$250.00
 - (B) Renewal of certification as an Electrology school \$150.00
 - (C) Application for certification as a laser, light source, or pulse light treatment school \$250.00
 - (D) Renewal of certification for a laser, light source, or pulse light treatment school \$150.00
 - (2) OUT-OF-STATE SCHOOL
 - (A) Application for certification as an Electrology school ~~\$350.00~~ \$400.00
 - (B) Initial certification as an Electrology school ~~\$ 75.00~~ \$100.00
 - (C) Renewal of certification for an Electrology school \$100.00
 - (D) Application for certification as a laser, light source, or pulse light treatment school \$350.00
 - (E) Initial certification as a laser, light source, or pulse light treatment school \$ 75.00
 - (F) Renewal of certification for a laser, light source, or pulse light treatment school \$100.00
- (e) The following other fees are payable to the Board:
 - (1) Electrologist Examination or reexamination \$125.00
 - (2) Office inspection or re-inspection ~~\$100.00~~
 - (A) Electrologist – per licensee, for each office site \$100.00
 - (B) Laser Hair Practitioner – per licensee, for each office site \$100.00
 - (3) License by reciprocity \$125.00
 - (4) Late renewal charge \$ 50.00
 - (5) Reinstatement of expired license \$250.00
 - (6) Reinstatement of instructor certification \$250.00

(6) (7)	Reactivation of license	\$150.00
(8)	<u>Reactivation of instructor certification</u>	<u>\$150.00</u>
(7) (9)	Duplicate license	\$ 25.00

(f) All fees shall be paid by check or money order, made payable to "The North Carolina Board of Electrolysis Examiners."

(g) Renewal fees required for Subparagraphs (a)(3), (b)(3), (c)(2) and (c)(4) of this Rule are waived for licensees while assigned to active military duty.

Authority G.S. 88A-9.

21 NCAC 19 .0202 APPLICATION FOR LICENSURE

(a) All applicants for licensure as an electrologist shall submit an application on the form provided by the Board, accompanied by proof of being 21 years of age, a passport acceptable photograph taken within the past two years, the required application fee, any information required by Paragraphs (b), (c) and (d) of this Rule, and certification of completion from each ~~electrology~~ Electrology and laser institution attended with verification of the number of hours completed in theory and clinical training.

(b) All applications for licensure under G.S. 88A-11(2) must be accompanied by:

- (1) the address of the licensing agency in the other state or jurisdiction;
- (2) any information such as a license number needed to identify the applicant in correspondence with that agency; and
- (3) a statement authorizing that agency to certify to the Board that the applicant is currently licensed or certified by the other state or jurisdiction and is in good standing, to inform the Board whether there are any pending complaints about the applicant, and to provide the Board with a copy of the licensing requirements in that state or jurisdiction.

(c) Proof of age shall be shown by certified copy of a birth certificate. If the applicant cannot obtain a certified copy of the birth certificate, the applicant shall attach an explanation as to why no birth certificate is obtainable and shall submit other proof of age. Other proof of age includes passports, current life insurance policies held for at least one year showing date of birth, entries in family bibles, medical or school records showing date of birth, and marriage licenses showing age.

(d) Applicants from states that do not license electrologists or applicants from states that require less than 600 hours of certified education shall submit proof of practice as required by G.S. 88A-11(2) supported by tax records or a copy of a privilege license that will document previous practice of electrolysis prior to date of application.

(e) All new electrologist applicants must take and pass both a written and a practical examination except for applicants meeting the requirements of G.S. 88A-11(2).

(f) In addition to maintaining an active electrologist license from the Board, a laser hair practitioner shall submit:

- (1) ~~a certification of 30 hours of proof of~~ completion of a minimum 30-hour laser, light source, or pulsed light treatment certification course approved by the Board that encompasses

the laser or light device being used by the laser hair practitioner.

- (2) a "Supervisory Agreement" between the laser hair practitioner and a "Supervising Physician" licensed with the North Carolina Medical Board as defined under G.S. Article 1 Chapter 90. The Agreement will include an acknowledgement by the parties that current guidance from the North Carolina Medical Board with respect to laser hair removal and laser surgery by non-physicians will be observed and monitored.

The elements of this agreement shall contain:

- (A) the supervising physician's name and address;
- (B) an attestation that the supervisor is licensed to practice medicine in North Carolina and plans to maintain licensure during the time frame of the agreement;
- (C) an attestation that the supervising physician is knowledgeable in the use of the specifically listed devices;
- (D) an attestation that the supervising physician ensures the laser hair practitioner has training to safely and effectively perform laser hair reduction with the listed devices;
- (E) an attestation that the supervising physician will provide personal and responsible direction to the laser hair practitioner; ~~and~~
- ~~(F)~~ (G) an attestation that the supervising physician will be readily available and able to respond quickly to patient emergencies and questions by those performing the procedures; and
- ~~(F)(G)~~ a list of devices, makes, and models being used by the laser hair practitioner;

(g) A copy of the "Supervisory Agreement" form shall be filed with the Board and a copy shall be available in the office of the "Supervising Physician" and the laser hair practitioner for inspection.

(h) The Board shall reject an incomplete or partial application.

Authority G.S. 88A-6; 88A-9; 88A-10; 88A-11(1); 88A-11(2); 88A-11.1; 88A-21.

21 NCAC 19 .0203 APPLICATION FOR RENEWAL, REINSTATEMENT, OR REACTIVATION OF ELECTROLYSIS LICENSE

(a) Unless the applicant's license expired more than 90 days prior to the filing of an application for renewal, each applicant for license renewal pursuant to G.S. 88A-12 shall pay the required renewal fee, including the late renewal charge if applicable, and shall provide proof of compliance with 21 NCAC 19 .0701(a).

(b) An electrologist whose license has been expired for more than 90 days but less than five years ~~shall~~ may apply for reinstatement by ~~sending the Board a written request for reinstatement,~~ submitting a Board-approved reinstatement application, paying the reinstatement fee, and providing proof of competence pursuant to 21 NCAC 19 .0701(c).

(c) An electrologist who has been on the inactive list for less than five years ~~who and~~ desires to be returned to active status shall ~~send the Board a written request for return to the active list, submit a~~ Board-approved reactivation application, pay the ~~renewal~~ reactivation fee, and provide proof of competence pursuant to 21 NCAC 19 .0701(b).

(d) Proof of compliance with 21 NCAC 19 .0701 may be provided ~~either:~~

- (1) ~~by affidavit of the applicant listing the programs or courses taken, the entity that offered the program or course, the CEUs obtained, and the date and location of the program or course; or~~
- (2) ~~by copies of a certificate of completion issued by the entity that offered the program or course, identifying the course and showing the date, location, and number of hours taken by the applicant. The Board may request confirmation of the number of hours from the entity that offered the program or course and will not give credit for hours that the entity does not confirm as hours actually taken by the applicant.~~

(e) ~~Applicants for renewal of a school certification shall pay the required renewal fee and update the information submitted when the school initially applied. This update shall include any information required of new applicants that was not required when the school was initially certified.~~

(e) Electrolysis Instructor Certification

- (1) Renewal of Electrolysis Instructor Certification: Unless the applicant's instructor certification expired more than 90 days prior to the filing of an application for renewal, each applicant for instructor certification renewal pursuant to G.S. 88A-18 may apply for renewal by:
 - (A) submitting a Board- approved renewal form,
 - (B) paying the renewal fee,
 - (C) providing proof of current electrolysis licensure,
 - (D) providing proof of competence as described in 21 NCAC 19 .0701(b)(1).
- (2) Reactivation of Electrolysis Instructor Certification: An Instructor whose certification

has been expired for more than 90 days but less than 3 years may apply for reactivation of the expired certification by:

- (A) submitting a Board approved Reactivation form,
- (B) paying the reactivation fee, and
- (C) providing proof of competence as described in 21 NCAC 19 .0701(b)(2)

(3) Reinstatement of Electrolysis Instructor Certification: An Instructor whose certification has been expired for three years or more may apply for reinstatement of the certification by:

- (A) taking and passing the instructor's examination before the certification can be reinstated,
- (B) submitting a Board approved Reinstatement form,
- (C) paying the reinstatement fee, and
- (D) providing proof of competence pursuant to 21 NCAC 19 .0701(b)(3).

Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

21 NCAC 19 .0204 APPLICATION FOR RENEWAL, REINSTATEMENT, OR REACTIVATION OF LASER HAIR PRACTITIONER LICENSE

(a) Unless the applicant's laser hair practitioner license expired more than 90 days prior to the filing of an application for renewal, each applicant for license renewal pursuant to G.S. 88A-12 shall pay the required renewal fee, including the late renewal charge if applicable, and shall provide proof of compliance with 21 NCAC 19 .0701(a).

~~(e)(b)~~ A laser hair practitioner who has been on the inactive list for less than five years who desires to be returned to active status ~~shall send the Board a written request for return to the active list,~~ shall apply for reactivation by submitting a Board-approved reactivation application ~~pay the~~ paying the renewal reactivation fee, and ~~provide~~ providing proof of competence pursuant to 21 NCAC 19 .0701(b).

~~(b)(c)~~ A laser hair practitioner whose license has been expired for more than 90 days but less than five years shall ~~apply~~ for reinstatement by ~~sending the Board a written request for reinstatement~~ submitting a Board-approved reinstatement application, paying the reinstatement fee, and providing proof of competence pursuant to 21 NCAC 19 .0701(c) .

(d) Proof of compliance with 21 NCAC 19 .0701 may be provided ~~either:~~

- (1) ~~by affidavit of the applicant listing the programs or courses taken, the entity that offered the program or course, the CEUs obtained, and the date and location of the program or course; or~~
- (2) by copies of a certificate of completion issued by the entity that offered the program or course, identifying the course and showing the date, location, and number of hours taken by the applicant. The Board may request confirmation of the number of hours from the entity that

offered the program or course and will not give credit for hours that the entity does not confirm as hours actually taken by the applicant.

(e) Laser Hair Removal Instructor Certification

- (1) Renewal of Laser Hair Removal Instructor Certification: Unless the applicant's instructor certification expired more than 90 days prior to the filing of an application for renewal, each applicant for instructor certification renewal pursuant to G.S. 88A-18. Laser Hair Removal Instructors may apply for renewal by:
 - (A) submitting a Board- approved renewal form,
 - (B) paying the renewal fee,
 - (C) providing proof of current laser hair removal practitioner licensure,
 - (D) providing proof of competence described in 21 NCAC 19 .0701(b)(1).
- (2) Reactivation of Laser Hair Removal Instructor Certification: An Instructor whose certification has been expired for less than 3 years but more than 90 days may apply for reactivation of the expired certification by:
 - (A) submitting a Board approved reactivation form,
 - (B) paying the reactivation fee, and
 - (C) providing proof of competence as described in 21 NCAC 19 .0701(b)(2)
- (3) Reinstatement of Laser Hair Removal Instructor Certification: An Instructor whose certification has been expired for three years or more may apply for reinstatement of the certification by:
 - (A) taking and passing the instructor's examination before the certification can be reinstated,
 - (B) submitting a Board approved reinstatement form,
 - (C) paying the reinstatement fee, and
 - (D) providing proof of competence pursuant to 21 NCAC 19 .0701(b)(3).

Authority G.S. 88A-6; 88A-12; 88A-13; 88A-14; 88A-18.

21 NCAC 19 .0407 CLEANING, STERILIZATION, AND SAFETY PRECAUTIONS FOR INSTRUMENTS AND OTHER TREATMENT-RELATED ITEMS

(a) Each office of each electrologist and laser hair practitioner shall be inspected by the board or its agent:

- (1) prior to initial licensure;
- (2) each time an office is relocated;
- (3) annually after a license is issued; and
- (4) at any other time the Board deems necessary to ensure safety of the public.

~~(a)~~(b) Electrologists shall observe the following safety precautions for the cleaning and sterilization of instruments:

- (1) Coordinate necessary sterilized instruments and supplies needed for each treatment in a manner

whereby adherence to aseptic technique is maintained;

(2) Wear gloves when handling soiled instruments; and

(3) Avoid puncture injury from instruments.

~~(b)~~(c) As used in this Section, instruments and other items include:

- (1) Needles that are:
 - (A) single-use, pre-sterilized, and disposable;
 - (B) stored in a manner that will maintain sterile conditions of contents;
 - (C) not recapped, bent, or otherwise manipulated by hand prior to disposal;
 - (D) placed in a puncture-resistant sharps container after use, when opened or found damaged, when contaminated before use, or when not used before pre-printed expiration date; and
 - (E) disposed of in accordance with state and local regulations when the sharps container is no more than three quarters full;
- (2) Forceps, phoresis rollers and epilator tips that are:
 - (A) disinfected before initial use and after use on the client;
 - (B) disinfected after a 24-hour period when packaging is opened and instruments are unused or when packaging is contaminated before use, for example, dropped or placed on a surface not protected by barriers;
 - (C) accumulated after use and before cleaning and sterilization in a covered holding container by submersion in a solution of a protein-dissolving enzyme detergent and water, following manufacturer's instruction for dilution, then rinsed and drained; and
 - (D) cleaned and sterilized in accordance with the standards in Paragraphs (c) and (d) of this Rule.

~~(e)~~(d) Electrologists shall observe the following standards for cleaning:

- ~~(A)~~(1) Place items and other instruments in the basket of a covered ultrasonic cleaning unit containing a fresh solution of a protein-dissolving enzyme detergent and water;
- ~~(B)~~(2) Follow manufacturer's instructions for dilution and ultrasonic running times;
- ~~(C)~~(3) Remove basket from ultrasonic unit rinse under running water and drain;
- ~~(D)~~(4) Drain and air dry items on a clean, disposable, absorbent, non-shedding cloth in an area protected from exposure to contaminants with a

hot-air dryer or by placement into a drying cabinet;

~~(E)~~(5) Package forceps, rollers and heat-stable tips individually or in small multiples in woven or non-woven wraps, paper or film pouches, or rigid container systems for the sterilization process;

~~(F)~~(6) Place packaged instruments and items in an autoclave or dry-heat sterilizer with a chemical indicator;

~~(G)~~(7) If dry-heat sterilizers are used, subject the heat-sensitive tips to an intermediate-level disinfectant, after which the tips are rinsed and dried; and

~~(H)~~(8) Store instruments and items in a clean dry, covered container, drawer or closed cabinet after the cleaning process.

~~(d)~~(e) Electrologists shall observe the following standards for sterilization:

(1) The required minimum time and temperature relationship for sterilization methods shall be:

(A) for the dry heat method, the minimum time-temperature relationship required to be attained is 340° F (170° C) for one hour or 320° F (160° C) for two hours; and

(B) for the autoclave (steam under pressure) method, the minimum time-temperature-pressure relationship required to be attained is 15 to 20 minutes at 121°C (250°F) and 15 psi (pounds per square inch) for unpackaged instruments and items and 30 minutes at 121° C (250° F) and 15 psi (pounds per square inch) for packaged instruments and items; and

(C) Temperature and exposure requirements in (B) and (C) relate to the time of exposure after attainment of the required temperature and do not include a penetration of heat-up lag time, drying time, or cool-down time;

(2) Sterilizers shall have visible physical indicator gauges, for example, thermometers, timers, on the devices, which shall be monitored during the sterilization cycle,

(3) The interior of the sterilization devices shall be cleaned according to the manufacturer's instructions;

(4) Packaging for sterilization shall:

(A) accommodate size, shape and number of instruments to be sterilized;

(B) be able to withstand the physical conditions of the selected sterilization process;

(C) allow enough space between items in each package for the sterilization of all surfaces to occur; and

(D) chemical indicators shall be visible on the outside of each package sterilized which indicates the instruments and items have been exposed to a sterilization process, but it does not guarantee sterility;

(5) Manufacturer's recommendations shall be followed for aseptic removal of contents in the sterilized packages;

(6) Biological monitors shall be used no less than once a month for each sterilization device according to manufacturer's instruction in order that proper mechanical function of the sterilizer be maintained; and

(7) Recorded laboratory reports from the biological monitors filed in a permanent sterility assurance file.

~~(e)~~(f) Safety precautions shall be observed for other treatment related items as follows:

(1) Indifferent electrodes, epilator cords, and eye shields shall be cleaned, dried and subjected to intermediate-level disinfection before initial use and after each treatment and replaced when showing signs of wear and tear;

(2) Ultrasonic cleaning units and all other containers and their removable parts shall be used during soaking and cleaning procedures, cleaned, dried daily, and used and maintained according to manufacturer's instructions; and

(3) Environmental surfaces directly related to treatment shall be cleaned and subjected to low-level disinfection daily and whenever visibly contaminated.

Authority G.S. 88A-16.

21 NCAC 19 .0409 CLIENT EVALUATION

As an evaluation for each client, the electrologist and laser hair practioner shall:

(1) Prepare a Health History Assessment File which contains:

(a) date, name, address, contact information, date of birth, and names of family physician, gynecological physician, and dermatologist;

(b) areas of face and body to be treated;

(c) hirsute family history;

(d) current and previous methods of hair removal;

(e) current and previous medications;

(f) current and previous physical examination dates and results;

(g) skin irregularities; and

(h) date and signature of client.

(2) Update and evaluate the client's health status on an ongoing basis to determine if the client should be referred to a physician.

- (3) Examine the client's skin for signs of infection or rashes prior to each treatment and delay treatment if actual or potential signs or symptoms of infection are present.
- (4) Refer the client to a physician when evaluation of health history or skin examination indicates.
- (5) Instruct the client on post-treatment care to promote healing of the treated skin site.

Authority G.S. 88A-16.

SECTION .0500 – PHYSICIAN/LASER HAIR PRACTITIONER GUIDELINES

21 NCAC 19 .0501 SUPERVISING PHYSICIAN

(a) Supervisory Agreement

- ~~(a)(1)~~ A laser hair practitioner shall not operate any laser equipment without a signed "Supervisory Agreement" in accordance with 21 NCAC 19 .0202 in place and on file with the Board.
- ~~(b)(2)~~ Before commencing ~~practice~~ practice, a laser hair practitioner must submit to the Board the name of the supervising physician, business address, business phone number, North Carolina Medical Board medical license number and a copy of the signed "Supervisory Agreement".
- ~~(3)~~ The elements of the Supervisory Agreement shall contain the provisions outlined in the North Carolina Medical Board Position Statement on Laser Surgery relating to Laser hair and Tattoo Removal, which is hereby incorporated by reference including subsequent amendments and additions.
- ~~(e)(4)~~ A laser hair practitioner shall notify the Board within 30 days of the termination of the "Supervisory Agreement" with the supervising physician.

(b) Supervision by Physician - The elements of physician supervision of laser hair removal practitioners shall contain the provisions outlined in the North Carolina Medical Board Position Statement on Physician Supervision of Other Licensed Health Care Practitioners, which is hereby incorporated by reference including subsequent amendments and additions.

Authority G.S. 88A-11.1.

21 NCAC 19 .0602 APPLICATION FOR AND RENEWAL OF SCHOOL CERTIFICATION

(a) Each person applying for a school certification shall submit to the Board the information required by G.S. 88A-19 and:

- (1) A copy of the student contract required by Rule .0605 of this Section; and
- (2) A copy of the form for student authorization to receive electrolysis treatment required by Rule .0605 of this Section.

(b) Applicants for renewal of a school certification shall pay the required renewal fee and update the information submitted when

the school initially applied. This update shall include any information required of new applicants that was not required when the school was initially certified.

(c) Pursuant to G.S. 88A-20, school certifications that are not renewed within 90 days after the expiration date will be automatically forfeited. Reactivation and/or reinstatement of an expired school certificate are not allowed under the governing statute. Upon forfeiture, a school may reapply for certification by submitting a new Board approved application and paying the required application fee.

Authority G.S. 88A-6; 88A-19; 88A-20.

21 NCAC 19 .0608 SCHOOL EQUIPMENT

(a) Every electrolysis school certified by the Board shall provide and maintain at least the following equipment:

- (1) one high frequency or thermolysis (short wave) machine;
- (2) one galvanic/thermolysis (blend) machine;
- (3) stainless steel, insulated, and disposable epilation probes (or needles) of sizes 002, 003, 004, and 005;
- (4) at least one circuline type lamp, halogen lamp, or other type of magnifying lamp per treatment table;
- (5) two treatment tables and chairs for clients and adjustable chairs or stools for students;
- (6) a cabinet for towels and utilities for each table;
- (7) a covered trash container for each table;
- (8) covered containers for all lotions, soaps, cotton balls, tissues and other supplies and sterilizing solutions;
- (9) six dozen epilation forceps (or tweezers);
- (10) one plastic puncture resistant container (for used sharps) for each table;
- (11) one autoclave sterilizer, dry heat sterilizer and ultrasonic cleaner; and
- (12) audio-visual teaching materials, and equipment; and equipment.
- ~~(13) one multi needle epilator.~~

(b) Only Federal Communication Commission (FCC) approved types of epilators and laser equipment registered by the federal Food and Drug Administration (FDA) shall be used by each school in training students.

(c) All epilators, laser equipment, autoclaves and dry heat sterilizers shall be state-of-the-art and shall be monitored monthly to ascertain effectiveness. Any changes from the list of equipment provided to the Board pursuant to G.S. 88A-19(a)(3) shall be reported to the Board.

Authority G.S. 88A-6; 88A-19; 88A-19.1; 88A-20.

21 NCAC 19 .0622 CERTIFICATION OF SCHOOLS IN OTHER STATES OR JURISDICTIONS

(a) The Board shall certify a school in another state or jurisdiction for purposes of G.S. 88A-10 provided that:

- (1) The school applies for certification, submits the information required by G.S. 88A-19(a)(1)

through ~~(6), (7)~~, and meets the requirements of and remains in compliance with all other applicable provisions of this Section; 21 NCAC 19 .0602, .0606, .0607, .0608, and .0609;

- (2) If the school is in a state or jurisdiction that approves electrolysis schools, the school is approved by the proper agency for that state or jurisdiction; ~~and~~
- (3) The Electrology school has a curriculum of at least 600 ~~hours~~, hours; and
- (4) The Laser Hair Removal school has a laser, light source, or pulsed-light curriculum of at least 30 hours.

(b) The Board shall revoke the certification of a school in another state or jurisdiction upon a proof that the school in a jurisdiction that licenses electrologists has lost its approval in that state.

(c) The school must agree to teach North Carolina's sanitation standards to any student who states to the school an intention of taking North Carolina's licensing examination.

Authority G.S. 88A-6; 88A-9; 88A-19; 88A-21.

SECTION .0700 - CONTINUING EDUCATION

21 NCAC 19 .0701 CONTINUING EDUCATION REQUIREMENTS, LICENSE RENEWAL, REINSTATEMENT AND REACTIVATION

(a) Requirements for practitioners:

- ~~(a)(1)~~ Each electrologist and laser practitioner licensed in this State shall complete at least one CEU ~~each per~~ renewal period as a requirement for renewal of the ~~electrologist's~~ electrology license and at least one CEU per renewal period as a requirement for renewal of the laser hair practitioner license. Seventy-five percent of the continuing education hours acquired must be in topics specific to the modality of the license being renewed. Over any two renewal periods, the Board will give credit for no more than one-half CEU in the area of business management.
- ~~(b)(2)~~ An electrologist or laser hair practitioner who has been placed on the inactive list by the Board for less than five years and desires to return to active status, ~~may~~ shall present evidence of completion of one CEU within the 12 months preceding the reactivation application for return to active status in satisfaction of the competency requirement of G.S. 88A-14. ~~88A-14 before the Board will return the electrologist or laser hair practitioner to active status.~~
- ~~(c)(3)~~ An electrologist or laser hair practitioner whose license has been expired for 90 days or more but less than five years ~~may~~ shall present evidence of completion of one CEU for each renewal period or part of a renewal period that has elapsed since the electrologist's or laser hair practitioner's license was last current in

satisfaction of the competency requirement of G.S. 88A-12. At least one of the CEUs offered in satisfaction of a competency requirement must be completed within the 12 months immediately preceding the application for reinstatement.

- ~~(d)(4)~~ Not more than one CEU may be carried over per renewal period.
- (5) No more than 10 hours (one CEU) of home study may be credited for continuing education in each renewal period. "Home study" is defined as an educational activity undertaken by an individual, generally completed by correspondence with little to no supervision, and with a certification of completion awarded at the end of the course.
- (6) Continuing education hours obtained through home study may not be carried over to a subsequent renewal period.
- ~~(e)(7)~~ In the initial year of licensure, new licensees tested after the sixth month of the calendar year shall not be required to obtain CEUs until the following renewal year.

(b) Requirements for instructors:

- (1) An instructor must complete one additional CEU annually in order to renew an electrolysis instructor certification. The course or program must comply with Rule .0702(a)(2) of this Section. Home study courses will not be considered sufficient to meet this requirement.
- (2) An instructor whose certification has been placed on the inactive list for more than 90 days and less than 3 years shall present evidence of completion of one CEU within the 12 months immediately preceding the application for reactivation of certification.
- (3) An instructor whose certification has been expired for more than 90 days, but less than 3 years shall present evidence of completion of one CEU for each renewal period or part of a renewal period that has elapsed since the instructor's license was last current. At least one of the CEUs offered in satisfaction of a competency requirement must be completed within the 12 months immediately preceding the application for reinstatement of certification.

Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

21 NCAC 19 .0702 BOARD APPROVAL OF COURSES

(a) The Board shall approve a program or course if it is:

- (1) In any subject required by 21 NCAC 19 .0601;
- (2) Offered by one of the following entities:
 - (A) a college or university authorized to grant degrees in this State;

- (B) a ~~state or~~ national professional electrolysis or laser association;
- (C) a school or Continuing Education (CE) provider certified by the Board;
- (D) American Society of Laser Medicine (ASLM);
- (E) American Academy of Dermatology (AAD); or
- (F) an entity providing a program of Certified Medical Education (CME).

(b) The entity offering the program or course shall provide the Board with the information listed in Paragraph (c) of this Rule and shall certify to the Board the names of all electrologists licensed by the Board who attended the program or course and their actual hours of attendance.

(c) The Board shall not approve a program or course without the following information:

- (1) Title, location, and date of the course;
- (2) Sponsoring entity;
- (3) Course objective and content;
- (4) Hours of study; and
- (5) Name, education, and background of each instructor.

(d) An electrologist or laser hair practitioner seeking credit for a program or course offered by an entity not listed in Paragraph (a) of this Rule may request that the Board approve the course by submitting in writing, at least two months in advance of the course registration date, the information listed in Paragraph (c) of this Rule on an application form provided by the Board.

(e) The Board shall approve a program or course if requested pursuant to Paragraph (d) of this Rule on a finding that it offers an educational experience designed to enhance the practice of electrolysis or laser hair reduction as required by G.S. 88A-13. In determining whether or not to make this finding, the Board shall consider the program or course in light of the criteria set forth in The Continuing Education Unit Criteria and Guidelines, current edition, as adopted by the International Association for Continuing Education and Training (IACET) in conjunction with the American Standards National Institute (ANSI) and incorporated herein by reference including subsequent amendments or editions. The presence of all criteria or the absence of individual criteria shall not be conclusive. Copies of The Continuing Education Unit Criteria and Guidelines, current edition, may be obtained at [http:// www.IACET.org](http://www.IACET.org).

(f) The Board shall notify the electrologist by mail of the Board's findings and decision. A change in subject matter, length, or instructor of a course requires reapproval by the Board. The entity offering the program or course shall either provide to the electrologist or provide directly to the Board certification of the electrologist's actual hours of attendance after the program or course is completed.

Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

CHAPTER 37 – BOARD OF NURSING HOME ADMINISTRATORS

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Examiners for Nursing Home Administrators intends to readopt without substantive changes the rules cited as 21 NCAC 37D .0202, .0303, .0402, .0404, .0602, .0703; 37E .0101, .0102; 37F .0102; 37G .0102, .0201, .0401; and 37H .0102.

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

Proposed Effective Date: August 1, 2015

Public Hearing:

Date: June 17, 2015

Time: 10:30 a.m.

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

Reason for Proposed Action: We are readopting the Rules without any changes from the Periodic Review.

Comments may be submitted to: Jane A. Baker, 3733 National Drive, Suite 110, Raleigh, NC 27612, phone (919) 571-4164, fax (919) 571-4166, email ncbenha@mindspring.com.

Comment period ends: June 17, 2015

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)
- ☐ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

CHAPTER 68 – SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Substance Abuse Professional Practice Board intends to adopt the rules cited as 21 NCAC 68 .0227, .0228, and amend the rule cited as 21 NCAC 68 .0101.

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

Proposed Effective Date: August 1, 2015

Public Hearing:

Date: May 6, 2015

Time: 10:00 a.m.

Location: 1046 Washington Street, Raleigh, NC 27605

Reason for Proposed Action: Recent legislation requires Board to award credential by endorsement based on military service and status as a military spouse and clarify terms.

Comments may be submitted to: Mr. Barden Culbreth, Executive Director, NCSAPPB, P.O. Box 10126, Raleigh, NC 27605, email barden@recanc.com

Comment period ends: June 1, 2015

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)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SECTION .0100 - GENERAL

21 NCAC 68 .0101 DEFINITIONS

As used in the General Statutes or this Chapter, the following terms have the following meaning: ~~mean:~~

- (1) "Applicant" means a person who submits documentation seeking Board status for ~~registration or certification.~~ registration, certification, or licensure.
- (2) "Application packet" means a set of instructions and forms required by the Board for registration.
- (3) "Approved supervisor" means a person who ~~watches-monitors~~ and directs the activities of a substance abuse professional in the role of an applicant supervisor or a practice supervisor as set out in G.S. 90-113.31A. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation of approved supervisor pursuant to Rule .0211 of this Chapter by completing its academic, ~~didactic~~ didactic, and experiential requirements.
- (4) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems, and needs for the development of a treatment or service plan for a substance use disorder.
- (5) "Clinical application" means the utilization of practice dimensions that include clinical evaluation, treatment planning, referral, service coordination, counseling, education for the individual client, family or community, and documentation; as well as the assumption of professional and ethical responsibilities in the form of clinical supervision as set for the Item (7) of this Rule in a clinical setting for a minimum of 300 hours.
- (6) "Clinical setting" means a location where the primary purpose is the delivery of behavioral health care to clients, patients, and consumers.
- ~~(5)(7)~~ "Clinical supervision" means clinical oversight required for all credentials with a minimum of 50 percent clinical supervision that shall accrue in person and face-to-face while in the same room-room, whereas the balance of this requirement may be fulfilled electronically via video, face-to-face, if performed in real time.
- ~~(6)(8)~~ "Clinical supervision specific education" means training that covers the aspects of clinical supervision of a substance abuse professional or any of the 12-core functions-Twelve Core Functions in their clinical application.
- ~~(7)(9)~~ "Client" means an individual who is in receipt of substance abuse counseling.
- ~~(8)(10)~~ "Complainant" means a person who has filed a complaint pursuant to these Rules.

- (9)(11) "Consultation" means a meeting for discussion, decision-making, and planning with other service providers for the purpose of providing substance abuse services.
- (10)(12) "Crisis" means a ~~decisive~~ radical change of status event in the course of treatment related to alcohol or drug use that threatens to compromise or destroy the rehabilitation effort.
- (11)(13) "Deemed status group" means those persons who are credentialed as clinical addictions specialists because of their membership in a deemed status ~~discipline~~ as defined in G.S. 90-113.31A(15).
- (12)(14) "Education" means a service that is designed to inform and teach various groups including clients, families, schools, businesses, churches, industries, civic, and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (13)(15) ~~"Full-time"~~ "Full-time" means 2,000 hours per year.
- (14)(16) "General professional skill building" means education provided to enhance the general skills of a substance abuse professional.
- (15)(17) "Hearing panel" means members of a committee designated by the chairperson of the committee to conduct an informal hearing to determine ~~that whether~~ the applicant meets the standards required to be maintained for or awarded a credential.
- (16)(18) "Impairment" means a mental illness, substance abuse or chemical dependency, physical illness, or aging problem.
- (17)(19) "Letter of reference" means a letter that recommends a person for certification.
- (18)(20) "Membership in good standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- (19)(21) "Passing score" means the score set by and provided by the entity administering the exam.
- (20)(22) "Person served" means an individual who is not a client but is in receipt of substance abuse prevention counseling.
- (21)(23) "Personal service" means the ~~actual~~ delivery of a document into the hands of the person to whom it is addressed.
- (22)(24) "President" means the President of the Board.
- (23)(25) "Prevention consultation" means a service provided to other mental health, human service, and community ~~planning/development~~ planning, development organizations organization or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for ~~prevention~~ prevention of alcohol and drug abuse.
- (24)(26) "Prevention performance domains" means areas of professional activities to include:
- (a) planning and evaluations;
 - (b) education and skill development;
 - (c) community organization;
 - (d) public and organizational policy; and
 - (e) professional growth and responsibility.
- (25)(27) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual in utilizing the support systems and community resources ~~available~~ available to transfer services.
- (26)(28) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- (27)(29) "Reinstatement" means an action where the Board restores ~~certification or registration~~ registration, certification, or licensure to an applicant after the applicant completes the requirements imposed by the Board.
- (28)(30) "Relapse" means a return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's return to the pattern of substance abuse or a re-appearance or exacerbation of physical, psychological, or emotional symptoms of impairment.
- (29)(31) "Renewal" means an action by the Board granting a substance abuse professional a consecutive ~~certification or registration~~ registration, certification, or licensure based upon the completion of requirements for renewal as prescribed by statute and the rules of the Board.
- (30)(32) "Revival" means an action by the Board granting a substance abuse professional a ~~certification or registration~~ registration, certification, or licensure following a lapse of ~~certification or registration~~ certification, or licensure wherein the professional must also meet the requirements for renewal.
- (31)(33) "Reprimand" means a written warning from the Board to a person making application for certification by the Board or certified by the Board.
- (32)(34) "Respondent" means a person who is making application for ~~certification~~ registration, certification, or licensure by the Board or is ~~certified~~ registered, certified, or licensed by the Board against whom a complaint has been filed.

~~(33)~~(35) "Sexual activity" or "sexual contact" means:

- (a) Contact between the penis and the vulva or the penis and the anus;
- (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; ~~or~~
- (c) The penetration, however slight, of the anal or genital opening of another by a hand, finger, or any object with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any ~~person~~ person;
- (d) Vaginal intercourse, cunnilingus, fellatio, or anal intercourse, if initiated, agreed to, or not resisted by the substance abuse professional; or
- (e) Kissing or the intentional touching of the other's lips, genital area, groin, inner thigh, buttocks, breasts, or any other body parts, as well as the clothing covering any of these body parts for the purpose of sexual stimulation or gratification of either the substance abuse professional or the client if initiated or agreed to or not resisted by the substance abuse professional.

~~(34)~~(36) "Substance abuse counseling experience " means approved supervised experience that may be full-time, part-time, paid or voluntary, and ~~must~~ shall include all of the ~~12 core functions~~ Twelve Core Functions (Rule .0204 of this Chapter) as documented by a job description and ~~supervisors~~ supervisor's evaluation.

~~(35)~~(37) "Substance abuse prevention consultant experience" means approved supervised experience that may be full-time, part-time, paid or voluntary, and ~~must~~ shall include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.

~~(36)~~(38) "Substance abuse specific" means education focused upon alcohol and other drugs and the substance abusing population and is provided for a substance abuse professional by one whose education and experience is in the field of alcohol and other drugs.

~~(37)~~(39) "Supervised practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.

~~(38)~~(40) "Supervisor of record" means the substance abuse professional primarily responsible for providing applicant or practice supervision to a supervisee.

~~(39)~~(41) "Suspension" means a loss of ~~certification~~ registration, certification, or licensure by a substance abuse professional or the privilege of

making application for ~~certification, registration, certification, or licensure by an applicant for one of these credentials.~~

Authority G.S. 90-113.30; 90-113.31A; 90-113.31B; 90-113.33; 90-113.40; 90-113.41; 90-113.41A.

SECTION .0200 – CERTIFICATION

21 NCAC 68 .0227 CREDENTIAL BY ENDORSEMENT OR RECIPROCITY BASED ON MILITARY SERVICE

(a) An applicant for a substance abuse credential by endorsement or reciprocity based on military service shall have his or her training honored automatically pursuant to the standards of the IC and RC/AODA, Inc. The applicant shall apply for a credential by using the Board's credentialing software platform, Learning Builder, and submit to the Board:

- (1) an application form provided by the Board as found at its web site at; www.ncsappb.org and shall be found accompanying the reciprocity information on the web site;
- (2) the application fee required by rule applicable to the specific credential as set forth in this Chapter;
- (3) written evidence demonstrating that the applicant has been awarded a military occupational specialty as a substance abuse professional and that the applicant has engaged in practice as a substance abuse professional for at least 1,500 clinical hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of any act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required must be received by the Board office as completed pursuant to Learning Builder.

(c) All applicants shall submit to the Board a LIVESCAN of the applicant's fingerprints as described on the Board's web site: www.ncsappb.org.

Authority G.S. 90-113.31A(14); 90-113.31B; 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1.

21 NCAC 68 .0228 SUBSTANCE ABUSE CREDENTIAL BY ENDORSEMENT OR RECIPROCITY BASED ON STATUS AS MILITARY SPOUSE

(a) An applicant for a substance abuse credential by endorsement or reciprocity based on the applicant's status as a military spouse shall have his or her training honored automatically pursuant to the standards of the IC and RC/AODA, Inc. The applicant shall apply for a credential by using the Board's credentialing software platform, Learning Builder, and submit to the Board:

- (1) an application form provided by the Board as found at its web site at: <http://www.ncsappb.org> and shall be found accompanying the reciprocity information on the web site;
 - (2) the application fee required by rule applicable to the specific credential as set forth in this Chapter;
 - (3) written evidence demonstrating that the applicant is married to an active member of the U.S. military and that such applicant:
 - (A) holds a current substance abuse credential from another jurisdiction whose standards for the credential are substantially equivalent to or greater than those required for the credential described in G.S. 90, Article 5C, this Chapter, and is the subject of the application; and
 - (B) has engaged in practice as a substance abuse professional demonstrating the
- scope of practice as defined by G.S. 90-113.31B for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of an act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.
- (b) All information required must be received by the Board office via Learning Builder.
- (c) All applicants shall submit to the Board a LIVESCAN of the applicant's fingerprints as described on the Board's web site: www.ncsappb.org.
- Authority G.S. 90-113.31A(14); 90-113.31B; 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1*

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on February 19, 2015.

**REGISTER CITATION TO THE
NOTICE OF TEXT****COMMERCE, DEPARTMENT OF - CREDIT UNION DIVISION**

<u>Fields of Membership</u>	04	NCAC	06C	.0203*	29:07 NCR
<u>Loans to Credit Union Officials</u>	04	NCAC	06C	.0205*	29:07:NCR
<u>General Provisions</u>	04	NCAC	06C	.0301*	29:07 NCR
<u>Procedures</u>	04	NCAC	06C	.0302*	29:07 NCR
<u>Depreciation and Amortization</u>	04	NCAC	06C	.0303	29:07 NCR

INDUSTRIAL COMMISSION

<u>Fees for Medical Compensation</u>	04	NCAC	10J	.0101*	29:10 NCR
<u>Fees for Professional Services</u>	04	NCAC	10J	.0102*	29:10 NCR
<u>Fees for Professional Services</u>	04	NCAC	10J	.0102*	29:10 NCR
<u>Fees for Institutional Services</u>	04	NCAC	10J	.0103*	29:10 NCR

CHILD CARE COMMISSION

<u>Definitions</u>	10A	NCAC	09	.0102*	28:19 NCR
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Admission of Trainees</u>	12	NCAC	09B	.0203*	n/a G.S. 150B-21.5(a)(5)
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LABOR, DEPARTMENT OF

<u>Power Transmission and Distribution</u>	13	NCAC	07F	.0206	29:10 NCR
<u>Definitions</u>	13	NCAC	13	.0101*	29:10 NCR
<u>North Carolina Commission</u>	13	NCAC	13	.0203*	29:10 NCR
<u>Owner-User Inspection Agency</u>	13	NCAC	13	.0205*	29:10 NCR
<u>Shop Inspections and National Board R Stamp Qualification...</u>	13	NCAC	13	.0210*	29:10 NCR
<u>Certificate and Inspection Fees</u>	13	NCAC	13	.0213*	29:10 NCR
<u>Inspections Revealing Deficiencies</u>	13	NCAC	13	.0303*	29:10 NCR
<u>Maintenance and Periodic Inspections and Tests</u>	13	NCAC	15	.0307*	29:10 NCR

LANDSCAPE ARCHITECTS, BOARD OF

<u>Authority: Name and Location of the Board</u>	21	NCAC	26	.0101*	28:24 NCR
<u>Organization of the Board's Officers</u>	21	NCAC	26	.0103*	28:24 NCR
<u>Fees</u>	21	NCAC	26	.0105*	28:24 NCR
<u>Suspension of Authority to Expend Funds</u>	21	NCAC	26	.0106	28:24 NCR
<u>Definitions</u>	21	NCAC	26	.0107*	28:24 NCR

<u>Board Listing of Individuals and Firm Names</u>	21	NCAC	26	.0201*	28:24	NCR
<u>Examination and Licensure</u>	21	NCAC	26	.0301*	28:24	NCR
<u>Reciprocity License by Comity</u>	21	NCAC	26	.0303*	28:24	NCR
<u>Continuing Education as a Condition of Annual Renewal</u>	21	NCAC	26	.0307*	28:24	NCR
<u>Duties and Functions of Continuing Education Advisory</u>	21	NCAC	26	.0308*	28:24	NCR
<u>Exemptions</u>	21	NCAC	26	.0309*	28:24	NCR
<u>Reinstatement Criteria</u>	21	NCAC	26	.0310*	28:24	NCR
<u>Applications for Approval</u>	21	NCAC	26	.0311*	28:24	NCR
<u>Compliance</u>	21	NCAC	26	.0312*	28:24	NCR
<u>Individual Licenses</u>	21	NCAC	26	.0313*	28:24	NCR
<u>Corporate Practice of Landscape Architecture</u>	21	NCAC	26	.0314*	28:24	NCR
<u>Out-of-State Entities</u>	21	NCAC	26	.0315*	28:24	NCR
<u>Disciplinary Review</u>	21	NCAC	26	.0510*	28:24	NCR

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 06C .0203 FIELDS OF MEMBERSHIP

(a) Parity, for the purpose of this Section, allows the Administrator to approve fields of membership and permit state chartered credit unions the same latitude with regard to membership limitations and restrictions as is available to federally chartered credit unions, as set forth in 12 C.F.R. Part 701.1.

(b) New charters and expansion requests shall be reviewed and approved in conformity with credit unions organized under G.S. 54-109, Articles 14A to 14L.

(c) In allowing an expansion of the field of membership, any credit union shall be bound by membership limitations or restrictions contained in its charter or bylaws as amended and approved by the, Administrator, based on applicable rules and statutes.

History Note: Authority G.S. 54-109.1; 54-109.2(e); 54-109.3(3); 54-109.4; 54-109.11(3); 54-109.12; 54-109.21(25); 54-109.22; 54-109.26; 54-109.27; 54-109.28;
Eff. February 1, 1976;
Amended Eff. March 1, 1977;
Readopted Eff. April 4, 1978;
Amended Eff. March 1, 2015; November 1, 1990; October 1, 1983; April 1, 1979.

04 NCAC 06C .0205 LOANS TO CREDIT UNION OFFICIALS

(a) Officials. For purposes of this Rule, an "official" is a member of the Board of Directors, credit committee, or supervisory committee; the President, Chief Executive Officer, Chief Financial Officer, Comptroller, General Manager, Treasurer/Manager, or Executive Vice President; and Outside Attorneys and Outside Accountants of the credit union. For the purpose of this Paragraph, the following definitions apply:

- (1) "Outside Attorneys" means independent attorneys or law firms that are retained to provide 25 percent or more of the legal

- services for the credit union, based on the annual legal expense; and
- (2) "Outside Accountants" means independent accountants or accounting firms that are retained to provide accounting or audit services for the credit union.

(b) Loans to Officials. A loan or line of credit extended to an official as the borrower, direct obligor, endorser, cosigner, or guarantor with direct or indirect pecuniary interest in the loan shall be reviewed by the Board of Directors or a duly appointed committee thereof, as provided in Paragraph (c) of this Rule, at the next regular meeting following the date of such extension of credit, provided the following computation produces a total amount in excess of fifty thousand dollars (\$50,000) including limits of credit cards.

- (1) Add:
 - (A) the loan amount extended for the current loan;
 - (B) the outstanding balances of loans, including the used portion of an approved line of credit, extended to or endorsed, cosigned or guaranteed by the official; and
 - (C) the total unused portion of approved lines of credit extended to or endorsed, cosigned, or guaranteed by the official.
- (2) Subtract from the above total:
 - (A) the amount of shares pledged by the official on loans or lines of credit extended to, or endorsed, cosigned, or guaranteed by the official; and
 - (B) the amount of shares pledged by the official on the current loan or line of credit.

(c) Review of Loans to Officials by Duly Appointed Committee. The Board of Directors may appoint a committee to review and report on loans made to officials. All members of the committee shall be on the Board of Directors. The committee shall meet

before the regular monthly board meeting to review all officials' loans that have been approved since the previous meeting. The committee shall make a report to the board that shall consist of at least the official's loan number, his or her title or position, the amount of the loan, purpose of the loan, aggregate amount of indebtedness to the credit union, and a statement regarding compliance with loan policies. Each credit union's Board of Directors shall review this loan approval report on a monthly basis. This review shall be done at the regular monthly board meeting. In the event the board does not meet monthly, a procedure shall be established whereby a written report shall be sent to each director on a monthly basis.

(d) Non preferential treatment. The rates, terms, and conditions on a loan or line of credit made to or endorsed, co-signed, or guaranteed by:

- (1) an official;
- (2) an immediate family member of an official. For the purpose of this Rule, "immediate family member" means a spouse or other family member living in the same household; or
- (3) any individual having a common ownership, investments, or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members.

(e) Avoidance of conflicts. No official or any employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he or she is directly or indirectly interested.

(f) Indirect Benefits. It shall be unlawful for an official or employee to:

- (1) have any interest or to benefit in any manner in the proceeds of a loan or from the sale by the credit union of any real or personal property unless the official or employee has disclosed to the Board of Directors of the credit union the nature and extent of the benefit that may be received and the loan or sale, regardless of the amount of money involved, has been approved by a vote of at least two thirds of the directors of the credit union; or
- (2) have any interest direct or indirect, in the purchase at less than face value of any savings account or evidence of indebtedness issued by a credit union.

(g) Penalty. A violation of the provisions of this Rule shall be sufficient basis for removal of any official or employee by the Administrator, as set forth in G.S. 54-109.19.

History Note: Authority G.S. 54-109.12; 54-109.19; 54-109.39;
Eff. February 1, 1976;
Readopted Eff. April 4, 1978;
Amended Eff. March 1, 2015; August 1, 1998; October 1, 1983.

04 NCAC 06C .0301 GENERAL PROVISIONS

(a) Internal controls, accounting procedures, and operational standards adequate to safeguard the assets shall be established by all. Credit Unions.

(b) Credit Unions with ten million dollars (\$10,000,000) or more in assets shall follow generally accepted accounting principles (GAAP) for financial statement and report preparation. Credit Unions with less than ten million dollars (\$10,000,000) in assets may follow GAAP or use the procedures in the "Accounting Manual for Federal Credit Unions" posted on the National Credit Union Administration website.(www.ncua.gov).

(c) At least 60 days before a credit union converts its records from a manual to an Electronic Data Processing, (EDP) system through an outside servicer or changes EDP services, a copy of the proposed contract and a description of the data processing system shall be submitted to the Administrator for review and approval. If an in-house EDP system or the sponsoring company's EDP facilities are to be used, the Administrator shall be notified in writing of the proposed change before extensive planning and system programming begins. Contracts and agreements, for EDP systems shall conform with the following as a minimum:

- (1) The right of the Administrator or his or her representative to request and receive directly from the service center any reports, summaries, or information contained in or derived from the data in the possession of the service center relating to the credit union.
- (2) Terms of the contract, including dates for the beginning and end with disclosure of the charges to be incurred.
- (3) Notice of the termination of the servicing contract or agreement, consistent with industry standards.
- (4) The description of the equipment, services, reports, location of original documents and source data; method of transmittal of input information to the service center and applicable controls.
- (5) Maintenance agreement that is consistent with industry standards.
- (6) Availability of technically qualified personnel.
- (7) The due diligence and review by the Board of Directors or legal counsel.
- (8) Fidelity bond coverage for service center personnel and for losses due to system errors; and insurance coverage for losses from fire, disaster, or other causes resulting in an interruption of service.

(d) Requests for modification of the rules and regulations in regard to the general provisions shall be submitted in writing to the Administrator.

History Note: Authority G.S. 54-109.12; 54-109.16; 54-109.17(a),(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1977;
Readopted Eff. April 4, 1978;

Amended Eff. March 1, 2015.

04 NCAC 06C .0302 PROCEDURES

The basic internal controls, accounting procedures and operation standards for all credit unions are as follows:

- (1) An adequate general ledger and detailed cash journal shall be maintained for the control of all transactions of the Credit Union.
- (2) A record of all correcting and adjusting entries, with an explanation of each entry, shall be maintained.
- (3) For manual and computerized accounting systems, all receipts and disbursements shall be recorded and posted daily to cash journal and subsidiary accounts.
- (4) Deposits in the bank or credit union shall consist of an entire day's receipts as entered in the journal and cash record. If amounts are less than three hundred dollars (\$300.00), more than one day's total receipts may be combined in a single deposit provided that no funds are held more than three banking days.
- (5) Security shall be provided (cash drawer and lockbox) at a minimum for storage of funds.
- (6) Credit union funds shall be kept separate from all other funds.
- (7) Cash shall be balanced at the end of each working day, and a record made by each teller detailing coins, currency, checks, and other items counted as cash.
- (8) A "cash over and short" account shall be maintained in the expense ledger, with a record showing the name of each person responsible for each difference.
- (9) A pre-numbered receipt slip or other original record shall be made and preserved covering each payment received.
- (10) All bank or credit union accounts shall be reconciled at least monthly and such reconciliations preserved, as set forth in Rule .1002 of this Subchapter.
- (11) A duplicate of itemized bank or credit union deposit slips, or other comparable detailed item record, shall be preserved, as set forth in Rule .1002 of this Subchapter.
- (12) The exact status of all the credit union's funds, including investments and funds held by agents or attorneys shall be determinable at all times.
- (13) Checks shall be pre-numbered by the printer and not signed in blank in advance of issue. Facsimile signature plates shall be maintained in the credit union vault under dual control.
- (14) Disbursements shall be supported by invoices, vouchers, or other explanations of record, each showing the nature or purpose of each disbursement.
- (15) Dual control shall be maintained over all negotiable investment securities.
- (16) Members' accounts shall be posted and balanced not less frequently than monthly and supported by member trial balance or adding machine tapes, identified, dated, and preserved.
- (17) A trial balance of the general ledger shall be prepared within 15 working days from the close of business of the last day of each month and financial statements prepared therefrom.
- (18) Erasures and eradications for correction of errors in records are prohibited; corrections must be approved by an authorized person, that shall be approved by the Board of Directors.
- (19) Members' passbooks shall be held in the Credit Union office only if authorized by the Board of Directors.
- (20) A signed membership card file covering all accounts shall be maintained.
- (21) Payment of dividends or interest on accounts shall be accomplished by check or by credit to the individual account. A record in support of dividend or interest paid by check or credited to accounts shall be preserved.
- (22) A cross-index card record shall be maintained for each co-maker showing the date, name, and original amount of each note on which the individual appears as co-maker.
- (23) Minutes of meetings of the Board of Directors shall record all of its business transactions and be signed by the presiding officer and the secretary. Upon meeting as a Board of Directors, the secretary or designated member shall make a matter of record in the minutes of the meeting all written communications from the Division.
- (24) The supervisory committee shall have work papers to support its audit report. The reports and work papers shall be retained and made available for review by the state, as set forth in Rule .1002 of this Subchapter.
- (25) A report of actions taken by the credit committee or loan officers shall be prepared, signed, and preserved, as set forth in Rule .1002 of this Subchapter.
- (26) Minutes of each annual meeting of the members of the Credit Union shall record all business transacted.
- (27) All books and records of the Credit Union shall have protection from fire and other hazards at all times. Active books and records of the Credit Union should be located at the principal office at all times.
- (28) Dormant accounts shall be controlled to prevent improper withdrawal.
- (29) Annual vacations of at least five consecutive working days (during periods when proofs of subsidiary ledgers are being made) shall be

taken by each employee having access to cash and the general ledger. During the vacation, the employees shall remain continuously absent.

- (30) A record shall be maintained that shall at all times show the tax and insurance status of each piece of real estate securing the Credit Union's investment of funds in real estate mortgage loans.
- (31) All tax liabilities shall be determined and paid in accordance with the law.

History Note: Authority G.S. 54-109.11(4); 54-109.12; 54-109.16; 54-109.17;
Eff. February 1, 1976;
Readopted Eff. April 4, 1978;
Amended Eff. March 1, 2015; January 1, 1992; July 1, 1988;
December 1, 1979.

04 NCAC 06C .0303 DEPRECIATION AND AMORTIZATION SCHEDULES

History Note: Authority G.S. 54-109.12;
Eff. February 1, 1976;
Readopted Eff. April 4, 1978;
Repealed Eff. March 1, 2015.

04 NCAC 10J .0101 GENERAL PROVISIONS

(a) Pursuant to G.S. 97-26, the Commission adopts a Medical Fee Schedule composed of maximum amounts, reimbursement rates, and payment guidelines, as set out in the rules of this Subchapter. The amounts and reimbursement rates prescribed in the applicable published Medical Fee Schedule shall govern and apply according to G.S. 97-26(c).

(b) The Medical Fee Schedule is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at the offices of the Commission as set forth in 04 NCAC 10A .0101.

(c) Insurers and managed care organizations, or administrators on their behalf, may review and reimburse charges for all medical compensation, including medical, hospital, and dental fees, without submitting the charges to the Commission for review and approval.

(d) A provider of medical compensation shall submit its bill for services within 75 days of the rendition of the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the bill, the employer, carrier, or managed care organization or administrator on its behalf, shall pay the bill or send the provider written objections to the bill. If an employer, carrier, administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier, administrator, or managed care organization, shall pay the

uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Commission.

(e) When the 10 percent addition to the bill pursuant to G.S. 97-18(i) is uncontested, payment shall be made to the provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

(f) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide access to and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.

(g) The responsible employer, carrier, managed care organization, or administrator shall pay the bills of medical compensation providers to whom the employee has been referred by the treating physician authorized by the insurance carrier for the compensable injury or body part, unless it has requested that the physician obtain authorization for referrals or tests. Compliance with the request shall not unreasonably delay the treatment or service to be rendered to the employee.

(h) Employees are entitled to reimbursement for travel expenses when the travel is medically necessary and the mileage is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of any tolls paid. Employees are entitled to lodging and meal expenses, at the rate established for state employees by the North Carolina Director of Budget, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses. The current reimbursement rates referenced in this Paragraph are contained in the Form 25T, *Itemized Statement of Charges for Travel*, which shall be used to claim travel expenses.

(i) Any employer, carrier, or administrator denying a claim in which medical care has previously been authorized is responsible for all costs incurred prior to the date that notice of denial is provided to each health care provider to whom authorization has been previously given.

History Note: Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6; S.L. 2013-410;
Eff. January 1, 1990;
Amended Eff. April 1, 2015; July 1, 2014; January 1, 2013; June 1, 2000.

04 NCAC 10J .0102 FEES FOR PROFESSIONAL SERVICES

(a) The Commission's Medical Fee Schedule sets the maximum allowed amounts for professional medical services provided pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology ("CPT") codes adopted by the American Medical Association and Healthcare Common Procedure Coding Systems ("HCPCS") codes. A listing of the maximum allowable amount for each code is available in the Medical Fee Schedule on the

Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at the offices of the Commission as set forth in Rule 04 NCAC 10A .0101.

(b) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied by 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995 Medicare values multiplied by 2.05;
- (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied by 1.36;
- (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96; and
- (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

History Note: Authority G.S. 97-25; 97-26; 97-80(a); Eff. April 1, 2015.

04 NCAC 10J .0102 FEES FOR PROFESSIONAL SERVICES

(a) Except as otherwise provided in this Rule, maximum allowable amounts payable to health care providers for professional services shall be based on the current year's Medicare Part B Fee Schedule for North Carolina ("the Medicare base amount"), as published by the Centers for Medicare & Medicaid Services ("CMS") or its administrative contractor, including subsequent versions and editions. The Medicare Part B Fee Schedule for North Carolina can be found at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/index.html>.

(b) The schedule of maximum reimbursement rates for professional services is as follows:

- (1) evaluation & management services are 140 percent of the Medicare base amount;
- (2) physical medicine services are 140 percent of the Medicare base amount;
- (3) emergency medicine services are 169 percent of the Medicare base amount;
- (4) neurology services are 153 percent of the Medicare base amount;
- (5) pain management services are 163 percent of the Medicare base amount;
- (6) radiology services are 195 percent of the Medicare base amount;
- (7) major surgery services are 195 percent of the Medicare base amount; and
- (8) all other professional services are 150 percent of the Medicare base amount.

(c) The schedule of maximum reimbursement rates for anesthesia services is as follows:

- (1) when provided by an anesthesiologist, the allowable amount is three dollars and eighty-

eight cents (\$3.88) per minute up to and including 60 minutes, and two dollars and five cents (\$2.05) per minute beyond 60 minutes; and

- (2) when provided by a certified registered nurse anesthetist, the allowable amount is two dollars and fifty-five cents (\$2.55) per minute up to and including 60 minutes, and one dollar and fifty-five cents (\$1.55) per minute beyond 60 minutes.

(d) The maximum allowable amount for an assistant at surgery is 20 percent of the amount payable for the surgical procedure.

(e) Using the Medicare base amounts and maximum reimbursement rates in Paragraphs (a) through (d) of this Rule, the Commission shall publish annually an official Professional Fee Schedule Table listing allowable amounts for individual professional services in accordance with this fee schedule. The allowable amounts contained in the Professional Fee Schedule Table shall take effect January 1 of each year. The Professional Fee Schedule Table is available as set forth in Rule .0101(b) of this Section and in hardcopy at the offices of the Commission as set forth in Rule 04 NCAC 10A .0101.

(f) Maximum allowable amounts for durable medical equipment and supplies ("DME") provided in the context of professional services are 100 percent of those rates established for North Carolina in the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies ("DMEPOS") Fee Schedule published by CMS. The DMEPOS can be found at <http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html>. The Commission will publish annually on its website an official DME Fee Schedule Table listing allowable amounts for individual items and services in accordance with this fee schedule. The allowable amounts contained in the DME Fee Schedule Table will take effect January 1 of each year. The DME Fee Schedule Table is available as set forth in Rule .0101(b) of this Section and in hardcopy at the offices of the Commission as set forth in Rule 04 NCAC 10A .0101.

(g) Maximum allowable amounts for clinical laboratory services are 150 percent of those rates established for North Carolina in the Clinical Diagnostic Laboratory Fee Schedule published by CMS. The CMS Clinical Laboratory Fee Schedule can be found at <http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/clinlab.html>. The Commission will publish annually on its website an official Clinical Laboratory Fee Schedule Table listing allowable amounts for individual items and services in accordance with this fee schedule. The allowable amounts contained in the Clinical Laboratory Fee Schedule Table will take effect January 1 of each year. The Clinical Laboratory Fee Schedule Table is available as set forth in Rule .0101(b) of this Section and in hardcopy at the offices of the Commission as set forth in Rule 04 NCAC 10A .0101.

(h) The following licensed health care providers may provide professional services in workers' compensation cases subject to physician supervision and other scope of practice requirements and limitations under North Carolina law:

- (1) certified registered nurse anesthetists;
- (2) anesthesiologist assistants;

- (3) nurse practitioners;
- (4) physician assistants;
- (5) certified nurse midwives; and
- (6) clinical nurse specialists.

Services rendered by these providers are subject to the schedule of maximum fees for professional services as provided in this Rule.

History Note: Authority G.S. 97-25; 97-26; 97-80(a); S.L. 2013-410;
Eff. April 1, 2015;
Amended Eff. July 1, 2015.

04 NCAC 10J .0103 FEES FOR INSTITUTIONAL SERVICES

(a) Except where otherwise provided, maximum allowable amounts for inpatient and outpatient institutional services shall be based on the current federal fiscal year's facility-specific Medicare rate established for each institutional facility by the Centers for Medicare & Medicaid Services ("CMS"). "Facility-specific" rate means the all-inclusive amount eligible for payment by Medicare for a claim, excluding pass-through payments.

(b) The schedule of maximum reimbursement rates for hospital inpatient institutional services is as follows:

- (1) Beginning April 1, 2015, 190 percent of the hospital's Medicare facility-specific amount.
- (2) Beginning January 1, 2016, 180 percent of the hospital's Medicare facility-specific amount.
- (3) Beginning January 1, 2017, 160 percent of the hospital's Medicare facility-specific amount.

(c) The schedule of maximum reimbursement rates for hospital outpatient institutional services is as follows:

- (1) Beginning April 1, 2015, 220 percent of the hospital's Medicare facility-specific amount.
- (2) Beginning January 1, 2016, 210 percent of the hospital's Medicare facility-specific amount.
- (3) Beginning January 1, 2017, 200 percent of the hospital's Medicare facility-specific amount.

(d) Notwithstanding the Paragraphs (a) through (c) of this Rule, maximum allowable amounts for institutional services provided by critical access hospitals ("CAH"), as certified by CMS, are based on the Medicare inpatient per diem rates and outpatient claims payment amounts allowed by CMS for each CAH facility.

(e) The schedule of maximum reimbursement rates for inpatient institutional services provided by CAHs is as follows:

- (1) Beginning April 1, 2015, 200 percent of the hospital's Medicare CAH per diem amount.
- (2) Beginning January 1, 2016, 190 percent of the hospital's Medicare CAH per diem amount.
- (3) Beginning January 1, 2017, 170 percent of the hospital's Medicare CAH per diem amount.

(f) The schedule of maximum reimbursement rates for outpatient institutional services provided by CAHs is as follows:

- (1) Beginning April 1, 2015, 230 percent of the hospital's Medicare CAH claims payment amount.

- (2) Beginning January 1, 2016, 220 percent of the hospital's Medicare CAH claims payment amount.
- (3) Beginning January 1, 2017, 210 percent of the hospital's Medicare CAH claims payment amount.

(g) Notwithstanding Paragraphs (a) through (f) of this Rule, the maximum allowable amounts for institutional services provided by ambulatory surgical centers ("ASC") shall be based on the Medicare ASC reimbursement amount determined by applying the most recently adopted and effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective Payment System reimbursement formula and factors as published annually in the Federal Register ("the Medicare ASC facility-specific amount"). Reimbursement shall be based on the fully implemented payment amount in Addendum AA, Final ASC Covered Surgical Procedures for CY 2015, and Addendum BB, Final ASC Covered Ancillary Services Integral to Covered Surgical Procedures for 2015, as published in the Federal Register, or their successors.

(h) The schedule of maximum reimbursement rates for institutional services provided by ambulatory surgical centers is as follows:

- (1) Beginning April 1, 2015, 220 percent of the Medicare ASC facility-specific amount.
- (2) Beginning January 1, 2016, 210 percent of the Medicare ASC facility-specific amount.
- (3) Beginning January 1, 2017, 200 percent of the Medicare ASC facility-specific amount.

(i) If the facility-specific Medicare payment includes an outlier payment, the sum of the facility-specific reimbursement amount and the applicable outlier payment amount shall be multiplied by the applicable percentages set out in Paragraphs (b), (c), (e), (f), and (h) of this Rule.

(j) Charges for professional services provided at an institutional facility shall be paid pursuant to the applicable fee schedules in Rule .0102 of this Section.

(k) If the billed charges are less than the maximum allowable amount for a Diagnostic Related Grouping ("DRG") payment pursuant to the fee schedule provisions of this Rule, the insurer or managed care organization shall pay no more than the billed charges.

(l) For specialty facilities paid outside Medicare's inpatient and outpatient Prospective Payment System, the payment shall be determined using Medicare's payment methodology for those specialized facilities multiplied by the inpatient institutional acute care percentages set out in Paragraphs (b) and (c) of this Rule.

History Note: Authority G.S. 97-25; 97-26; 97-80(a); S.L. 2013-410;
Eff. April 1, 2015.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter means Division of Child Development and Early Education, Department of Health and Human Services located at 820 South Boylan Avenue, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes, or both, that are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2(a)(2)a. and used in Section .2700 of this Chapter includes the following employees who have contact with the children in a child care program:
 - (a) facility directors;
 - (b) administrative staff;
 - (c) teachers;
 - (d) teachers' aides;
 - (e) cooks;
 - (f) maintenance personnel; and
 - (g) drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Curriculum" means a curriculum that has been approved as set forth in these Rules by the NC Child Care Commission as comprehensive, evidenced-based, and with a reading component.
- (8) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (9) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.
- (10) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (11) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press,

New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale in February 2015 is twenty-two dollars and ninety-five cents (\$22.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours. For the purposes of this Rule, "regular business hours" for the Division means 8 a.m. to 5 p.m. during weekdays, excluding state holidays.

- (12) "Experience working with school-aged children" means working with school-age children as an administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.
- (13) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale in February 2015 is twenty-two dollars and ninety-five cents (\$22.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (14) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (15) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and in this Chapter, using space the Division has identified for each group.
- (16) "Health care professional" means:

- (a) a physician licensed in North Carolina;
 - (b) a nurse practitioner approved to practice in North Carolina; or
 - (c) a licensed physician assistant.
- (17) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (18) "If weather conditions permit" means:
- (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://www.idph.state.ia.us/hcci/commen/pdf/weatherwatch.pdf>, and is incorporated by reference and includes subsequent editions and amendments;
 - (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <https://xapps.ncdenr.org/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
 - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (19) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale in February 2015 is twenty-two dollars and ninety-five cents (\$22.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (20) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger. Information regarding trainer and training availability can be found on the Division's website at http://ncchildcare.nc.gov/providers/pv_itsidsproject.asp.
- (21) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (22) "Lockdown drill" means an emergency safety procedure in which occupants of the facility remain in a locked indoor space and is used when emergency personnel or law enforcement determine a dangerous person is in the vicinity.
- (23) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:
- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
 - (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.
- Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings. Information on the voluntary certification process can be found on the North Carolina Institute for Child Development Professionals website at <http://ncicdp.org/certification-licensure/eec-overview/>.
- (24) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent

- to the NC Early Childhood Credential Coursework. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.nc.gov/providers/credent.asp>
- (25) "Owner" means any person with a five percent or greater equity interest in a child care facility; however, stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 unless they are a child care provider.
- (26) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (27) "Part-time care" means a child care arrangement where children attend on a regular schedule but on less than a full-time basis.
- (28) "Passageway" means a hall or corridor.
- (29) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (30) "Preschooler" or "preschool-age child" means any child who does not fit the definition of school-age child in this Rule.
- (31) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale in February 2015 is twenty-two dollars and ninety-five cents (\$22.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (32) "School-age child" means any child who is attending or who has attended a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (33) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (34) "Section" means Division of Child Development and Early Education.

- (35) "Shelter-in-Place drill" means staying in place to take shelter rather than trying to evacuate. It involves selecting a small interior room, with no or few windows, used when emergency personnel or law enforcement determine there is an environmental or weather related threat.
- (36) "Substitute" means any person who assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (37) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (38) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

History Note: Authority G.S. 110-85; 110-88; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. March 1, 2015; May 1, 2013; September 1, 2012; July 3, 2012; July 1, 2012; November 1, 2007; May 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0203 ADMISSION OF TRAINEES

- (a) The school director shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.
- (c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.
- (d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.
- (e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to Basic law Enforcement Training, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test

as approved by the State Board of Community Colleges on October 17, 2014 <http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold general certification or who have held general certification within 12 months prior to the date of enrollment.
- (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;

(4) four or more crimes or unlawful acts defined as "Class B Misdemeanors," regardless of the date of conviction;

(5) four or more crimes or unlawful acts defined as "Class A Misdemeanors," except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;

(6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing, specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the

notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. March 1, 2015; January 1, 2015; June 1, 2012;
February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004;
August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992;
July 1, 1989; January 1, 1985.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07F .0206 POWER TRANSMISSION AND DISTRIBUTION

History Note: Authority G.S. 95-131; 150B-21.6;
Recodified from 13 NCAC 07F .0201(5) Eff. December 17, 2007;
Repealed Eff. March 1, 2015.

13 NCAC 13 .0101 DEFINITIONS

The following definitions apply throughout the rules in this Chapter and shall be construed as controlling in case of any conflict with the definitions contained in ANSI/NB-23 National Board Inspection Code Parts 2 and 3, The American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, or The North Carolina State Building Code:

- (1) "Accepted Design and Construction Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME Code), or a comparable code with standards that the Chief Inspector determines to be as safe as the ASME Code.
- (2) "Appurtenance" means any control, fitting, appliance, or device attached to or working in conjunction with the boiler proper or pressure vessel.
- (3) "ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
- (4) "Audit" means activities, other than those identified as certificate inspections, conducted by the Chief Inspector or his designee. These activities include the following:
 - (a) reviews and surveys for ASME and National Board stamp issuance and renewal;
 - (b) audits conducted on an authorized inspector at the location of a manufacturer or repair organization as may be required by the ASME Code, National Board Inspection Code, or National Board Rules for Commissioned Inspectors; and
 - (c) audits pursuant to evaluation for the issuance of North Carolina Specials.
- (5) "Automatically fired boiler" means a boiler that cycles automatically in response to a control

system and that does not require a constant attendant for the purpose of introducing fuel into the combustion chamber or to control electrical input.

- (6) "Authorized Inspection Agency" means an organization employing commissioned inspectors including the following:
 - (a) the Bureau as defined in Item (11) of this Rule.
 - (b) an inspection agency of an insurance company licensed to write boiler and pressure vessel insurance; or
 - (c) an owner-user inspection agency as defined in Item (38) of this Rule.
- (7) "Authorized inspector" means an employee of an Authorized Inspection Agency who is commissioned by the National Board and this State, holds an appropriate endorsement on his or her National Board Commission, and inspects as the third party inspector in ASME Code manufacturing facilities.
- (8) "Boiler," as defined in G.S. 95-69.9(b), includes the following types of boilers:
 - (a) "Exhibition boiler" means a historical or antique boiler that generates steam or hot water for the purposes of entertaining or educating the public or is used for demonstrations, tourist transportation, or exhibitions. This term includes steam tractors, threshers, steam powered sawmills, and similar usages;
 - (b) "High pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig, or water is heated to a temperature greater than 250°F and a pressure greater than 160 psig for use external to itself. High pressure boilers include the following:
 - (i) Electric boilers;
 - (ii) Miniature boilers;
 - (iii) High temperature water boilers; and
 - (iv) High temperature liquid boilers (other than water).
 - (c) "Low pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of not more than 15 psig, or water is heated to a temperature not greater than 250°F and a pressure not greater than 160 psig, including the following:
 - (i) "Hot water heating boiler" means a low pressure boiler that supplies heated water that is returned to the boiler from a piping system and is

- used normally for building heat applications (hydronic boiler);
 - (ii) "Hot water supply boiler" means a low pressure boiler that furnishes hot water to be used externally to itself (domestic water boiler); and
 - (iii) "Steam heating boiler" means a low pressure boiler that generates steam to be used normally for building heat applications.
- (d) "Model hobby boiler" means a boiler that generates steam, whether stationary or mobile, where the boiler does not exceed 20 square feet heating surface, a shell diameter of 16 inches, a volume of 5 cubic feet, and a pressure not exceeding 150 psig and is used for the purpose of entertainment or exhibiting steam technology; and
- (e) "Water heater" means a closed vessel in which water is heated by the combustion of fuel, by electricity, or by any other source and withdrawn for potable use external to the system at pressures not exceeding 160 psig and temperatures not exceeding 210°F.
- (9) "Boiler blowoff" means the system associated with the rapid draining of boiler water to remove concentrated solids that have accumulated as a natural result of steam generation. This term also applies to the blowoff for other boiler appurtenances, such as the low-water fuel cutoff.
- (10) "Boiler proper" or "pressure vessel" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:
 - (a) the first circumferential joint for welded end connections;
 - (b) the face of the first flange in bolted flange connections; or
 - (c) the first threaded joint in threaded connections.
- (11) "Bureau" means the Boiler Safety Bureau of the North Carolina Department of Labor.
- (12) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector as justification for issuing, withholding, or revoking the inspection certificate. The term "certificate inspection" also applies to the external inspection conducted in accordance with this Chapter whether or not a certificate is intended to be issued as a result of the inspection.
- (13) "Condemned boiler or pressure vessel" means a boiler or pressure vessel:
 - (a) that has been found not to comply with G.S. Chapter 95, Article 7A, or this Chapter;
 - (b) that constitutes a menace to public safety; and
 - (c) that cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and this Chapter.
- (14) "Coil type watertube boiler" means a boiler having no steam space, such as a steam drum, whereby the heat transfer portion of the water containing space consists only of a coil of pipe or tubing.
- (15) "Commissioned inspector" means an employee of an Authorized Inspection Agency that is commissioned by the National Board and the State of North Carolina and who is charged with conducting in-service inspections of pressure equipment and inspecting repairs or alterations to that equipment.
- (16) "Defect" means any deterioration to the pressure equipment affecting the integrity of the pressure boundary or its supports. Defects may be cracks, corrosion, erosion, bags, bulges, blisters, leaks, broken parts integral to the pressure boundary such as stays, or other flaws identified by NDE or visual inspection.
- (17) "Deficiency" means any violation of the Uniform Boiler and Pressure Vessel Act or this Chapter or identified defects.
- (18) "Design criteria" means accepted design and construction code requirements relating to the mode of design and construction of a boiler or pressure vessel.
- (19) "External inspection" means an inspection of the external surfaces and appurtenances of a boiler or pressure vessel. An external inspection may entail the "shutting down" of a boiler or pressure vessel while it is in operation, including inspection of internal surfaces, if the inspector determines this action is warranted.
- (20) "Hydropneumatic storage tank" means a pressure vessel used for storage of water at ambient temperature not to exceed 120°F and where a cushion of air is contained within the vessel.
- (21) "Imminent danger" means any condition or practice in any location that a boiler or pressure vessel is being operated such that a danger exists, and that could reasonably be expected to cause death or serious physical harm immediately if the condition is not abated.
- (22) "Insurance inspector" means the special inspector employed by an insurance company, and holding a valid North Carolina Commission and National Board Commission.
- (23) "Internal inspection" means as complete an examination as can reasonably be made of the

- internal and external surfaces and appurtenances of a boiler or pressure vessel while it is shut down.
- (24) "Maximum allowable working pressure (MAWP)" means the maximum gauge pressure as determined by employing the stress values, design rules, and dimensions designated by the accepted design and construction code or as determined by the Chief Inspector in accordance with this Chapter.
- (25) "Menace to public safety" means a boiler or pressure vessel that cannot be operated without a risk of injury to persons and property.
- (26) "Miniature boiler" means a boiler that does not exceed any of the following:
- (a) 16 inch inside shell diameter;
 - (b) 20 square feet of heating surface (does not apply to electrically fired boilers);
 - (c) 5 cubic feet volume; and
 - (d) 100 psig maximum allowable working pressure.
- (27) "National Board Commission" means the commission issued by the National Board to those individuals who have passed the National Board commissioning examination and have fulfilled the requirements of the National Board Rules for Commissioned Inspectors.
- (28) "National Board Inspection Code (NBIC)" means the ANSI/NB-23 standard published by the National Board, as incorporated by reference under Rule .0103 of this chapter.
- (29) "Nondestructive examination (NDE)" means examination methods used to verify the integrity of materials and welds in a component without damaging its structure or altering its mechanical properties. NDE may involve surface, subsurface, and volumetric examination. Visual inspection, x-rays, and ultrasound are examples of NDE.
- (30) "Nonstandard boiler or pressure vessels" means:
- (a) high pressure boilers contracted for or installed before December 7, 1935;
 - (b) heating boilers contracted for or installed before January 1, 1951;
 - (c) pressure vessels contracted for or installed before January 1, 1976;
 - (d) hydropneumatic storage tanks contracted for or installed before January 1, 1986; and
 - (e) boilers or pressure vessels for which the ASME Code is not intended to apply, other than those boilers and pressure vessels to which the term North Carolina Special applies.
- (31) "Normal working hours" means between the hours of 6:00 AM and 6:00 PM, Monday through Friday, except for state recognized holidays established in 25 NCAC 01E .0901.
- (32) "North Carolina Commission" means the commission issued by the Board, to holders of a National Board Commission, authorizing them to conduct inspections in this State.
- (33) "North Carolina Special" means a boiler or pressure vessel that is not constructed under the accepted design and construction code and for which the owner or operator shall apply for a special inspection certificate with the Chief Inspector.
- (34) "NPS" means nominal pipe size.
- (35) "Nuclear component" means the items in a nuclear power plant such as pressure vessels, piping systems, pumps, valves, and component supports.
- (36) "Nuclear system" means a system comprised of nuclear components which collectively serve the purpose of producing and controlling an output of thermal energy from nuclear fuel and includes those associated systems essential to the function and overall safety of the power system.
- (37) "Operating pressure" means the pressure at which a boiler or pressure vessel operates. It shall not exceed the MAWP except as shown in Section I of the ASME Code for forced flow steam generators.
- (38) "Owner or user" means any person or legal entity responsible for the operation of any boiler or pressure vessel installed in this State. This term also applies to a contractor, installer, or agent of the owner or user, as applicable.
- (39) "Owner-user inspector" means an individual who holds a valid North Carolina Commission and National Board Commission and is employed by a company operating pressure vessels for its own use and not for resale, and maintains an inspection program that meets the requirements of the National Board for periodic inspection of pressure vessels owned or used by that company.
- (40) "Pressure piping" means piping, including welded piping, external to high pressure boilers from the boiler proper to the required valve(s).
- (41) "Pressure relief devices" mean the devices on boilers and pressure vessels set to open and relieve the pressure in the event of an over pressurization event, and include the following:
- (a) "Non-reclosing pressure relief device" means a pressure relief device designed to remain open after operation and includes a rupture disk that is a non-reclosing pressure relief device actuated by static pressure upstream of the device and designed to

- function by the bursting of a pressure retaining disk; and
- (b) "Pressure relief valve" means a pressure relief device that is designed to reclose and prevent the further flow of fluid after normal conditions have been restored. These devices include:
- (i) "Relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure;
- (ii) "Safety relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action or by opening in proportion to the increase in pressure over the opening pressure; and
- (iii) "Safety valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action.
- (42) "PSIG" means pounds per square inch gauge.
- (43) "Reinspection or Follow-Up Inspection" means as complete an examination as is necessary to verify that any repair or corrective action required as a result of a certificate inspection is completed.
- (44) "Service vehicle" means a vehicle mounted with an air storage tank and often with other storage tanks that have oil, grease, or other fluids. The purpose of the vehicle is to service vehicles and equipment in the field away from the owner's shop.
- (45) "Shop inspection" means an inspection conducted by an Authorized Inspector or a Commissioned Inspector pursuant to an inspection service agreement whereby the fabrication process or the repair or alteration of a boiler or pressure vessel is observed to ensure compliance with the ASME Code and the NBIC. The term shop inspection includes nuclear shop inspection where fabrication or material supply is done by the holder of an ASME N type certificate.
- (46) "Special inspection" means any inspection conducted by a Deputy Inspector other than a regularly scheduled inspection. Special inspection also includes the performance of an inspection by a Deputy Inspector that requires that the inspector make a special trip to meet the needs of the individual or organization requesting the inspection, including conducting certificate inspections during hours other than normal working hours, and inspection of field repairs and alterations.
- (47) "Special inspector" means a National Board commissioned inspector employed by an insurance company authorized to write boiler and pressure vessel insurance in the state of North Carolina.
- (48) "Violation" means the failure to comply with the requirements of the Uniform Boiler and Pressure Vessel Act or this Chapter.

History Note: Authority G.S. 95-69.11; 95-69.14; Eff. May 29, 1981; Temporary Amendment [(16)]; Eff. March 10, 1982, for a Period of 120 Days to Expire on July 8, 1982; Amended Eff. March 1, 2015; July 1, 2011; January 1, 2009; July 1, 2006; January 1, 1995; January 1, 1987; January 1, 1986; June 1, 1982.

13 NCAC 13 .0203 NORTH CAROLINA COMMISSION

- (a) When requested by the employer and upon presentation of a properly completed Application for Commission as an Inspector of Boilers and Pressure Vessels, a North Carolina Commission, bearing the signature of the Commissioner, shall be issued by the Board of Boiler and Pressure Vessel Rules (the "Board") to persons holding a valid National Board Commission who have taken and passed the examination specified in 13 NCAC 13 .0202(b).
- (b) Applications for a North Carolina Commission shall be processed upon proof of a National Board Commission and payment of a thirty-five dollar (\$35.00) fee to the Department of Labor.
- (c) North Carolina Commissions are valid through December 31, at which time the inspector's employer shall submit a renewal request letter and a thirty-five dollar (\$35.00) fee to the Department of Labor.
- (d) The North Carolina Commission shall be returned by the employing company with notification of termination date to the Bureau within 30 days of termination of employment.
- (e) A North Carolina Commission may be suspended or revoked by the Board in accordance with G.S. 95-69.13 for incompetence, untrustworthiness, or falsification of any statement in an application or inspection report. The Board shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the Chief Inspector determines that the public health, safety, or welfare requires the suspension. In this case, the proceedings shall be promptly commenced and determined in accordance with G.S. 150B-3. The Board's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care ordinarily possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not

determinative. Failure to conduct the inspections in accordance with this Chapter shall constitute incompetence. The Board shall give the inspector opportunity to show that he is conducting his duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Board is not warranted, he may file a petition for judicial review pursuant to Article 4 of Chapter 150B of the N.C. General Statutes.

History Note: Authority G.S. 95-69.11; 95-69.15; Eff. May 29, 1981; Amended Eff. March 1, 2015; July 1, 2011; January 1, 2009; July 1, 2006; January 1, 1995; March 2, 1992; September 1, 1986.

13 NCAC 13 .0205 OWNER-USER INSPECTION AGENCY

(a) A company seeking to conduct inspections of its own pressure vessels shall file an application with the Chief Inspector and obtain approval from the Board.

(b) The company shall, in its application, designate a supervisor who shall be an engineer within its employ, who, upon approval of the application, shall:

- (1) ascertain that the company's inspectors, pursuant to Rules .0202 and .0203 of this Section, are issued owner-user commission cards;
- (2) supervise inspections of pressure vessels and see that an inspection report, signed by the owner-user inspector, is filed at the equipment site;
- (3) notify the Chief Inspector of any unsafe pressure vessel that presents a condition of imminent danger;
- (4) maintain a master file of inspection records that shall be made available for examination by the Chief Inspector or his representative during business hours:
 - (A) identifying each pressure vessel by serial number and abbreviated description; and
 - (B) showing the date of the last and next scheduled inspection;
- (5) on a date mutually agreed upon with the Chief Inspector, file an annual statement signed by the supervisor, showing the number of boilers and certifying that each inspection was conducted pursuant to this Chapter, accompanied by an administrative fee of twenty-five dollars (\$25.00) per vessel.

(c) Inspection certificates shall not be required for pressure vessels inspected under an owner-user program.

History Note: Authority G.S. 95-69.11; 95-69.15; 95-69.16; Eff. May 29, 1981;

Amended Eff. March 1, 2015; January 1, 2009; July 1, 2006; January 1, 1995; March 2, 1992; September 1, 1986.

13 NCAC 13 .0210 SHOP INSPECTIONS AND NATIONAL BOARD R STAMP QUALIFICATION REVIEWS

(a) Shop Inspections.

- (1) Manufacturers or repair firms seeking to employ the Boiler Safety Bureau to act as their Authorized Inspection Agency pursuant to the ASME Code or National Board Inspection Code, shall enter into a written agreement with the North Carolina Department of Labor, Boiler Safety Bureau for this purpose.
- (2) An audit of the Deputy Inspector serving as the Authorized Inspector pursuant to Subparagraph (a)(1) of this Rule, and the contracting company in which he or she is working shall be conducted on an annual basis for non-nuclear companies and twice each year for nuclear companies. The contracting company shall pay the audit fees required in Rule .0213 of this Section.

(b) National Board R Stamp Qualification Reviews

- (1) The Chief Inspector, or the Chief Inspector's designee, shall conduct the qualification reviews for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as provided in Subparagraph (b)(2) of this Rule.
- (2) The Chief Inspector or his designee shall not conduct the qualification reviews of those companies for which the Boiler Safety Bureau provides inspection services, or those companies which specifically request the review be conducted by the National Board.
- (3) A review to be conducted by the Boiler Safety Bureau shall be scheduled upon receipt of request by the National Board.

History Note: Authority G.S. 95-69.11; 95-69.14; Eff. May 29, 1981; Amended Eff. March 1, 2015; October 1, 2008; July 1, 2006; January 1, 1995.

13 NCAC 13 .0213 CERTIFICATE AND INSPECTION FEES

(a) An owner shall pay a thirty-five dollar (\$35.00) certificate and processing fee to the North Carolina Department of Labor for each boiler or pressure vessel inspected by an Insurance Inspector and found to be in compliance with the rules in this Chapter.

(b) An owner shall pay an inspection and certificate fee to the North Carolina Department of Labor for each boiler or pressure vessel inspected by a Deputy Inspector as follows:

Boilers - An inspection of a boiler where the heating surface is:

External Inspection

Internal
Inspection

Less than 500 sq. ft.	\$50.00	\$85.00
500 or more sq. ft. but less than 5000 sq. ft.	\$120.00	\$235.00
5000 or more sq. ft.	\$330.00	\$600.00
Cast iron boilers	\$50.00	\$80.00
Locomotive boilers (Antique Exhibition/Show)	N/A	\$150.00
Exhibition boilers (Antique Exhibition/Show)	N/A	\$50.00
Hobby boilers	N/A	\$35.00
Pressure Vessels - An inspection of a pressure vessel, other than a heat exchanger, where the product of measurement in feet of the diameter or width, multiplied by its length is:	External Inspection	Internal Inspection
Less than 20	\$40.00	\$45.00
20 or more but less than 50	\$50.00	\$60.00
50 or more but less than 70	\$85.00	\$135.00
70 or more	\$135.00	\$190.00
Heat Exchangers - An inspection of a heat exchanger, where the heating surface is:	External Inspection	
Less than 500 sq. ft.	\$45.00	
500 or more sq. ft. but less than 1000 sq. ft.	\$60.00	
1000 or more sq. ft. but less than 2000 sq. ft.	\$90.00	
2000 or more sq. ft. but less than 3000 sq. ft.	\$130.00	
3000	\$180.00	

(c) In addition to the fees established in Paragraph (b) herein, a fee of ninety dollars (\$90.00) per hour, including travel time, plus each expense allowed by G.S. 138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for each special inspection as defined by 13 NCAC 13 .0101(46) and for all inspections performed outside of normal working hours as defined by 13 NCAC 13 .0101(31).

(d) A fee of three-hundred fifty dollars (\$350.00) per one-half day (four hours) or any part of one-half day or five-hundred sixty-dollars (\$560.00) for one day (four to eight hours) plus, in either case, each expense allowed by G.S. 138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for each shop inspection as defined by 13 NCAC 13 .0101(45).

(e) A fee of four hundred dollars (\$400.00) per one-half day (four hours) or any part of one-half day or six hundred ten dollars (\$610.00) for one day (four to eight hours), plus, in either case, each expense allowed by G.S. 138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for each nuclear shop inspection as defined by 13 NCAC 13 .0101(45).

(f) A fee of four hundred fifty dollars (\$450.00) per one-half day (four hours) or any part of one-half day or six hundred ninety dollars (\$690.00) for one day (four to eight hours), plus, in either case, each expense allowed by G.S. 138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for audits as defined by 13 NCAC 13 .0101(4).

*History Note: Authority G.S. 95-69.11;
Eff. May 29, 1981;*

*Amended Eff. January 1, 1995; March 2, 1992; September 1, 1986;
Temporary Amendment Eff. March 11, 1997;
Temporary Amendment Eff. March 11, 1997 expired on December 27, 1997;
Temporary Amendment Eff. December 10, 1997;
Amended Eff. March 1, 2015; July 1, 2006; March 1, 2006;
August 1, 1998.*

13 NCAC 13 .0303 INSPECTIONS REVEALING DEFICIENCIES

(a) The owner or user shall complete any required repairs or corrective action and request an additional inspection within 60 calendar days of the inspection, except in cases where the boiler or pressure vessel is removed from service, in which case the owner or user shall send in written confirmation, signed by the owner or user, that use of the boiler or pressure vessel has been discontinued and that the boiler or pressure vessel has been removed from the source of energy.

(b) Upon notification by the inspector of a boiler or pressure vessel for which continued operation creates a condition of imminent danger, the Chief Inspector shall determine if the recommendations of the inspector are valid, and if so, the Chief Inspector shall notify the owner or user by the most expedient means possible, followed by written notification within 15 calendar days stating that the use of the boiler or pressure vessel shall be discontinued immediately.

(c) The owner or user may continue operation of the boiler or pressure vessel, including those boilers or pressure vessels that are condemned, during the 60 day period, except that this provision shall not apply to boilers and pressure vessels after notification by the Chief Inspector to the owner or user that a condition of imminent danger exists.

(d) After completion of any required repairs or corrective action, the boiler or pressure vessel shall be reinspected to the extent

necessary to verify satisfactory completion of the required repairs or corrective action.

(e) An owner shall pay a fee of forty dollars (\$40.00) to the North Carolina Department of Labor for each reinspection or follow-up inspection conducted by Deputy Inspectors.

History Note: Authority G.S. 95-69.11;

Eff. May 29, 1981;

Amended Eff. March 1, 2015; July 1, 2006; January 1, 1995.

13 NCAC 15 .0307 MAINTENANCE AND PERIODIC INSPECTIONS AND TESTS

(a) Inspections and Tests. Devices and equipment shall be subject to maintenance and periodic inspections and tests in accordance with the requirements of the A17.1 - American National Standard, incorporated by reference under Rule .0201 of this Chapter; and in accordance with the National Electric Code, incorporated by reference under Rule .0206 of this Chapter. Special equipment as defined by G.S. 95-110.4(n) shall be subject to periodic and to maintenance inspections and tests in accordance with A17.1 of the ASME Safety Code for Elevators and Escalators, the National Electric Code, and manufacturers' specifications.

(b) Inspections.

(1) Advance Notice. Inspections shall be accomplished without advance notice, except where the Director determines that advance notice of an inspection is necessary to complete the inspection.

(2) Inspection Report Forms. The inspector shall note findings of his inspection and tests on the inspection report form.

(c) Certificate of Operation Issuance.

(1) Closing Conference. After the inspections and tests of the equipment prescribed in this Rule, the inspector shall, when possible, hold a closing conference with the owner or his representative.

(2) Approval. When the inspector has determined that the equipment is in compliance with the rules in this Chapter and G.S. 95 Article 14A, the inspector may reissue the certificate of operation.

(3) Violations creating unsafe conditions. When the inspector has determined the equipment is not in compliance with the regulations of this Chapter and all applicable law, and that the non-compliance creates an unsafe condition that exposes the public to an unsafe condition likely to result in serious personal injury or property damage, the inspector shall immediately order, in writing, that the use of the equipment be stopped until such time as it is determined that the equipment has been made safe for use by the public. The inspector shall provide the owner or his representative with a description of all violations and necessary repairs.

(A) Notice. After an inspector has issued a written order which stops or limits the use of the equipment, the owner or his representative shall notify the Division, in writing, when the equipment is brought into compliance with the regulations of this Chapter and G.S. 95 Article 14A.

(B) Reinspection. After receipt of written notice from the owner or his representative that the equipment has been brought into compliance with the regulations of this Chapter and all applicable law, an inspector shall reinspect to determine if all violations have been corrected and necessary repairs have been made and the equipment is in compliance with the rules in this Chapter and G.S. 95 Article 14A.

(4) Violations not creating unsafe conditions. When the inspector has determined the equipment is not in compliance with the regulations of this Chapter and G.S. 95 Article 14A, and that the non-compliance does not create an unsafe condition which is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the inspector shall provide the owner or his representative with a description of all violations and necessary repairs.

(A) Corrective action. The owner or his representative shall have 60 calendar days from receipt of written notice of all violations and necessary repairs to comply with the regulations of this Chapter and all applicable law, correct violations and complete necessary repairs.

(B) Notice. The owner or his representative shall notify the Division in writing within 60 calendar days of receiving written notification of the violations and necessary repairs that the equipment has been brought into compliance with the regulations of this Chapter and G.S. 95 Article 14A.

(C) Follow-up Inspection. If the owner or his representative fails to provide notice of abatement as required by Part (B) of this Subparagraph, and an inspection is required to determine status of abatement, then the owner or his representative shall pay a follow-up inspection fee of two hundred dollars (\$200.00).

(d) Tests. Periodic tests required by the A17.1 - American National Standard Safety Code for Elevators and Escalators shall be performed in the presence of an elevator inspector whenever possible. In the absence of an inspector, a signed copy of the test report shall be sent to the Director of the Division without delay. The report shall be signed by the person conducting such tests.

*History Note: Authority G.S. 95-110.5;
Eff. August 1, 1987;
Amended Eff. March 1, 2015; December 1, 2004.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 26 - BOARD OF LANDSCAPE ARCHITECTS

21 NCAC 26 .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Landscape Architecture Act," G.S. 89A, establishes and authorizes the "North Carolina Board of Landscape Architects," hereafter called the "Board." Unless otherwise directed, all communications shall be addressed to the Board at Post Office Box 41225, Raleigh, North Carolina 27629. Applications and other information is available on the Board's website: www.ncbola.org.

*History Note: Authority G.S. 89A-3.1
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015; August 1, 2000; July 2, 1979.*

21 NCAC 26 .0103 ORGANIZATION OF THE BOARD: OFFICERS

In accordance with Article 33C of G.S. Chapter 143, meetings of the Board shall be open and public except that the Board may meet in closed session to prepare, approve, administer or grade written examinations; or to examine and deliberate the qualifications of an applicant for registration; or to dispose of a proceeding to discipline a registered landscape architect.

*History Note: Authority G.S. 89A-3; 143-318.11;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015; August 1, 1988.*

21 NCAC 26 .0105 FEES

- (a) The fee for any initial license application shall be one hundred dollars (\$100.00).
- (b) Examination fees payable to the Board shall be paid prior to the examination and in accordance with G.S. 89A-6.
- (c) The fee for a license by comity shall be one hundred fifty dollars (\$150.00).
- (d) The fee for a corporate certificate of registration shall be two hundred dollars (\$200.00).

(e) The fee for the annual renewal of any certificate of registration of any person, firm, or corporation shall be one hundred dollars (\$100.00).

(f) Annual renewal fees received after July 1st of each year shall be subject to a late fee of fifty dollars (\$50.00). Lapse of license renewal in excess of one year shall require an application reinstatement and an application fee of one hundred dollars (\$100.00).

(g) The fee for re-issue of a lost or damaged certificate shall be twenty-five dollars (\$25.00).

(h) If the accompanying payment in the amount of the renewal fee is dishonored by the firm's drawee bank for any reason, the Board shall suspend the firm registration until the renewal fee is paid.

*History Note: Authority G.S. 89A-3.1; 89A-5; 89A-6;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. December 1, 1994; June 1, 1991; April 1, 1990;
July 1, 1989;
Temporary Amendment Eff. October 1, 1997;
Temporary Amendment Expired July 12, 1998;
Amended Eff. March 1, 2015; August 1, 2000.*

21 NCAC 26 .0106 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

In the event the North Carolina Board of Landscape Architects' authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

*History Note: Authority G.S. 89A-3.1; 93B-2;
Eff. March 1, 2015.*

21 NCAC 26 .0107 DEFINITIONS

In addition to the definitions in G.S. 89A-1, for purposes of this Section, the following definitions apply:

- (1) "Board Executive" means the administrator of the Board.
- (2) "CLARB" means the Council of Landscape Architectural Registration Boards.
- (3) "Contact hour" means 60 continuous minutes.
- (4) "CEAC" means the Continuing Education Advisory Committee of the Board.
- (5) "Direct Supervision" means the level of supervision by a licensed professional overseeing the work of another in which both work in circumstances where professional contact is relevant and routine, and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.
- (6) "Education Activity" means an activity that increases the professional knowledge or skills of a licensee and relates to the protection or

- enhancement of the health, safety and welfare of the public and is approved by the Board.
- (7) "Examination" means the process by which the Board determines the experience, academic or other qualifications and fitness for practice of an applicant, and may include a written examination administered by the Board or a third party.
 - (8) "Foreign Corporation" means a foreign corporation as defined in G.S. 55B-16(b).
 - (9) "LAAB" means the Landscape Architecture Accreditation Board.
 - (10) "LARE" means the Landscape Architecture Registration Exam administered by the CLARB.
 - (11) "License Year" means July 1 through June 30.
 - (12) "Resident licensed professional" means a licensee who spends a majority of the licensee's normal working time in a specifically identified place of business within North Carolina. Such time shall not be less than a majority of the operating hours of the business. A licensed professional shall be the resident licensee at only one place of business at one time unless each business is at least one-third owned by the resident professional and is approved by the Board after a determination that the businesses are integrated in operation, ownership, office location, and that the licensee will be in responsible charge of the professional services.

History Note: Authority G.S. 89A-3.1(2); 89A-5;
Eff. March 1, 2015.

21 NCAC 26 .0201 BOARD LISTING OF INDIVIDUAL AND FIRM NAMES

Every individual licensee, partnership, firm or corporation has the continuing responsibility of keeping the Board advised of his, her or its current mailing address and other contact information and the name or names under which he, she or it is practicing landscape architecture. Each licensee or firm shall notify the Board of any and all changes of association, address or contact information. Upon the dissolution or change of a professional relationship, the member or members thereof shall notify the Board in writing concerning such dissolution, and of the succeeding status and addresses of the individual or firm. Notice to the Board required by this Rule shall be provided within 10 days of the change.

History Note: Authority G.S. 89A-3.1(2);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015.

21 NCAC 26 .0301 EXAMINATION AND LICENSURE

(a) The LARE published by CLARB shall be the examination recognized by the Board, so long as the Board shall remain a

member of the CLARB. The Board may administer a state supplement to the LARE as allowed by the CLARB.

(b) All persons desiring to submit an application to take the LARE are encouraged to first make application through CLARB. Upon taking and passing all sections of the LARE, candidates shall complete the Board's initial individual application for license by examination and submit the non-refundable application fee as established in Rule .0105 of this Chapter. If an application is complete and the applicant is otherwise qualified by statute and these rules to sit for examination, the Board shall approve the application for licensure by examination.

(c) CLARB sets the fees for the LARE. Fee information shall be made available to all applicants for examination on the Board website, www.ncbola.org, and may be obtained from the CLARB.

(d) An applicant shall be qualified for examination and licensure upon graduation from a LAAB accredited collegiate curriculum in landscape architecture, passage of the LARE, and the experience requirements of Paragraph (f) of this Rule.

(e) In allowing credit for education to satisfy the minimum qualification requirements established by G.S. 89A-4(a)(3), an undergraduate, a masters, or a doctorate degree from an accredited curriculum approved by the LAAB shall be deemed to have met the educational requirement.

(f) To fulfill the experience requirements established by G.S. 89A-4(a)(4), an applicant shall have a minimum of 8,000 hours of professional experience in landscape architecture working under the direct supervision of a registered landscape architect. In submitting an initial individual application to the Board for registration, a licensed landscape architect shall certify that the applicant has completed the number of hours required by this Rule. An applicant may petition the Board for up to 8,000 hours of experience credit by providing proof of work experience that is directly related to the practice of landscape architecture as defined by G.S. 89A-1(3). Experience credits shall be based on a full-time work week of 40 hours and a work year of at least 2,000 hours. Part-time work shall be fully described and may be given proportional credit. An applicant is ineligible to receive experience credit if the work was in fulfillment of an educational requirement.

(g) The Board shall treat as confidential and not subject to disclosure, except to the extent required by law or by rule of the Board, individual test scores and applications and material relating thereto, including letters of reference relating to an application.

History Note: Authority G.S. 89A-3.1(3); 89A-4(a),(b);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015; January 1, 2008; August 1, 1993;
August 1, 1988; November 1, 1980; July 2, 1979.

21 NCAC 26 .0303 LICENSE BY COMITY

(a) To assure that the requirements of the other state are at least equivalent to those of this state, an applicant for a license by comity shall show education and experience equal to those required of applicants residing in this State who seek licensure by examination.

(b) An application for a license by comity shall be made on the form provided by the Board and shall be accompanied by the fee.

(c) To be approved for a license by comity the applicant shall meet the following requirements:

- (1) Provide evidence of having successfully completed the written examination established by the CLARB or hold a certificate issued by the CLARB;
- (2) Provide certification from the proper official of any state having a landscape architectural registration act that the individual is currently certified, licensed, or registered and in good standing in that state;
- (3) Submit such additional information concerning the applicant's qualifications as may be requested by the Board; and
- (4) Submit examples of work upon request.

(d) In lieu of the requirements of Subparagraph (c)(1) of this Rule, an applicant for licensure by comity who was licensed prior to the adoption of a national written examination shall show proof of having met the requirements of their licensing state at the time of their licensure.

History Note: Authority G.S. 89A-3.1(3); 89A-4(c); Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. March 1, 2015; January 1, 2008; August 1, 1988; July 1, 1984.

21 NCAC 26 .0307 CONTINUING EDUCATION AS A CONDITION OF ANNUAL RENEWAL

(a) Every licensee shall meet the continuing education requirements for professional development as a condition for license renewal.

(b) In order for a licensee to qualify for license renewal as a landscape architect in North Carolina, the licensee shall have completed 10 contact hours of Board approved continuing education within the previous license year. Such continuing education shall be obtained by active participation in courses, seminars, sessions, or programs approved by the Board.

(c) To be acceptable for credit toward this requirement, all courses, seminars, webinars, sessions, or programs shall first be submitted to the CEAC. The CEAC shall review and recommend to the Board any course, seminar, webinar, session, or program for continuing education credit to the Board that the CEAC determines meets the criteria in Rule .0308(b) through (d) of this Section.

(d) Documentation of compliance with this Rule shall be by affidavit provided on the individual application for license renewal and available from the licensee's secure online profile. Erroneous or false information attested to by the licensee shall be deemed as grounds for denial of license renewal and possible suspension of license or denial of consideration for future license reinstatement, at the discretion of the Board.

(e) The Board may establish, in consultation with the CEAC, mandatory continuing education topics for a license year.

History Note: Authority G.S. 89A-3.1(2); 89A-5;

Eff. May 1, 1990;

Amended Eff. March 1, 2015; March 1, 1996.

21 NCAC 26 .0308 DUTIES AND FUNCTIONS OF CONTINUING EDUCATION ADVISORY COMMITTEE (CEAC)

(a) CEAC members shall be reimbursed per diem and travel expenses for official meetings at rates equivalent to rates allowed for Board members.

(b) CEAC members shall serve at the discretion of the Board. The Board Chair shall appoint the CEAC Chair who shall serve at the discretion of the Board Chair.

(c) Each continuing education activity recommended for approval by the Board shall, in the opinion of a majority of the members of the CEAC, have a direct relationship to the practice of landscape architecture as defined in Chapter 89A of the General Statutes of North Carolina and contain elements that will enhance the health, safety, and welfare of the citizens of North Carolina served by North Carolina licensed landscape architects.

(d) The CEAC shall meet at least once during each three month quarter of the year and act on each course, seminar, webinar, session, or program submitted for its review on the Board's Continuing Education Activity Approval form located on its website or available from the licensee's secure online profile. The CEAC shall review submissions in accordance with Paragraph (c) of this Rule. Each program shall be recommended for approval, recommended for disapproval, or deferred for lack of information. Programs recommended for approval shall be accompanied by a brief statement of findings by the committee of how the program meets the criteria established by this Rule.

(e) An activity may be recommended for pre-approval by the CEAC before it actually occurs by following the same procedure for submission as utilized for post-activity approval.

History Note: Authority G.S. 89A-3.1(6); 89A-5; Eff. March 1, 2015.

21 NCAC 26 .0309 EXEMPTIONS

(a) A registrant shall be exempt from the continuing education requirements for any of the following reasons:

- (1) New registrants by way of examination or comity for the current registration year.
- (2) A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 90 consecutive days in a year or as provided by G.S. 93B-15(b), whichever is greater.
- (3) A licensee experiencing physical disability or illness if supporting documentation is approved by the Board. Such documentation shall be in the form of a sworn statement by the registrant, a statement from a physician, or medical records which show that the disability or illness, prevented registrant's participation in a course that the registrant had enrolled, or prevented registrant's participation in the continuing education program for at least 90 consecutive days in a year.

- (4) A licensee with emeritus status from the Board.
- (b) In order to return to active practice, registrants who have received an exemption shall complete continuing education requirements for each exempted year, not to exceed two years.

History Note: Authority G.S. 89A-3.1(6); 89A-5; 93B-15;
Eff. March 1, 2015.

21 NCAC 26 .0310 REINSTATEMENT CRITERIA

- (a) A former licensee may only apply for reinstatement pursuant to G.S. 89A-5 if he or she has earned all delinquent contact hours within the 12 months preceding the application. However, if the total number of contact hours required to become current exceeds 24, then upon application, the Board shall determine the number of hours required.
- (b) An application for reinstatement shall be made on the form provided by the Board on its website, or by U.S. Mail if requested, by checking the appropriate box for "reinstatement" and shall be accompanied by the fee.

History Note: Authority G.S. 89A-3.1(6); 89A-5;
Eff. March 1, 2015.

21 NCAC 26 .0311 APPLICATIONS FOR APPROVAL

- (a) Renewal applications require the completion of a continuing education form specified outlining credit claimed, which located on the licensee's secure online profile. The licensee shall supply sufficient detail on the form to permit audit verification, certify the form by signature, and submit the form with the renewal application and fee.
- (b) The following schedule for submittal of hours shall apply:
- (1) Application for approval of continuing education shall be submitted online or by paper application located on the Board's website or available from the licensee's secure online profile.
 - (2) The deadline for submittal of an application shall be seven days prior to the regularly scheduled meeting of the CEAC.
 - (3) Activity forms submitted after May 15th cannot be guaranteed approval within the license renewal year.
 - (4) Applications for continuing education shall be completed in full and the answers to the essay questions contained in the application shall be in complete sentences, using proper grammar.
 - (5) Administrative staff, the CEAC, and the Board may defer any application deemed unsatisfactory and return it to the registrant for further information or if the application does not meet the requirements set forth in this Section. It is the responsibility of the licensee to submit sufficient information to satisfy the requirements of this Section.
 - (6) Failure of a registrant to complete the continuing education requirements, or failure to

file a report of completed continuing education are grounds for denial of license renewal and possible suspension of license, or denial of consideration for future license reinstatement.

History Note: Authority G.S. 89A-3.1(6); 89A-5;
Eff. March 1, 2015.

21 NCAC 26 .0312 COMPLIANCE

- (a) Compliance with annual continuing education requirements shall be determined through an audit process conducted by the Board. Determination of individuals to be audited shall be accomplished through a random selection process or as the result of information received or obtained by the Board that gives rise to the need for an audit. Licensees selected for auditing shall provide the Board with the following documentation of the continuing education activities claimed for the renewal period:
- (1) Attendance verification records in the form of transcripts, completion certificates, or other documents supporting evidence of attendance; and
 - (2) Information regarding course content, instructors, and sponsoring organization, for activities presented by other than approved sponsors as defined in Rule .0313 of this Section.
- (b) Attendance records shall be maintained by individual licensees for a period of three years for audit verification purposes.

History Note: Authority G.S. 89A-3.1(6); 89A-5;
Eff. March 1, 2015.

21 NCAC 26 .0313 INDIVIDUAL LICENSES

- (a) License registration shall be renewed on or before the first day in July each year. No less than 30 days prior to the renewal date, the Board shall send a renewal reminder to each individual licensee. The licensee shall complete the current license renewal documentation required by the Board and found in the licensee's secure online profile. The licensee shall submit to the Board the completed license renewal documentation, along with the annual license renewal fee. The Board shall not accept incomplete renewal documentation. If the accompanying charge, draft, or check in the amount of the renewal fee is dishonored by the landscape architect's drawee bank for any reason, the Board shall suspend the license until the renewal fee is paid. When the annual renewal has been completed according to the provisions of G.S. 89A-5 and Rule .0307 of this Section, the Board Executive shall approve renewal of the license for the current license year.
- (b) If the Board has not received the annual renewal fee and completed renewal documentation, on or before the first day of July each year the license shall expire and be delinquent. The license may be renewed at any time within one year of being deemed delinquent, upon the return of the completed renewal documentation, as found in the licensee's secure online profile, the annual renewal fee and the late renewal fee, along with demonstration of compliance with Rule .0307 of this Section. After one year from the date of delinquency the license may no

longer be renewed, but the licensee shall seek reinstatement. Reinstatement shall occur according to the provisions of G.S. 89A-5 and Rule .0301 of this Section.

(c) Renewal fees are non-refundable.

(d) Any individual who is currently licensed by and in good standing with the Board who is serving in the armed forces of the United States shall not be subject to late fees, suspension, or revocation for failure to renew licensure on or before the first day of July each year, provided that the individual has been granted an extension of time to file a tax return as set forth in G.S. 105-249.2. The licensee shall, however, comply with the continuing education requirement of Rule .0310 of this Section.

*History Note: Authority G.S. 89A-5; 89A-6;
Eff. March 1, 2015.*

**21 NCAC 26 .0314 CORPORATE PRACTICE OF
LANDSCAPE ARCHITECTURE**

(a) Prior to offering and rendering landscape architectural services as set forth in G.S. 89A and Rule .0206 of this Chapter, all corporations shall, submit an application for registration and be granted registration by the Board. Application for registration to practice landscape architecture within the State of North Carolina shall be made upon forms entitled "Application for Organization Certificate of Registration" provided by the Board on its website and include the required application fee. Certificates for corporate practice may be issued only under the provisions of G.S. 55B, except as provided in Paragraph (b) of this Rule and G.S. 57C.

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

- (1) The corporation or limited liability company must have been incorporated or organized prior to June 5, 1969 and permitted by law to render professional services, or must be a corporate successor to such corporation or limited liability company as defined by G.S. 55B-15; or
- (2) The corporation or limited liability company must have been incorporated or organized prior to October 1, 1979 and must have been a bona fide firm engaged in the practice of landscape architecture and such services as may be ancillary thereto within the State of North Carolina prior to that date.

(c) Firm registration must be renewed on or before June 30th. If the Board has not received the annual renewal fee and completed application on or before June 30th, the firm license shall expire and be delinquent. No less than 30 days prior to the renewal date, the Board shall send a notice of renewal to each registered firm. The firm shall designate a firm manager to complete the renewal documentation required by the Board. The Board shall not accept incomplete renewal documentation. Renewal documentation shall be accompanied by the renewal fee. If the accompanying payment in the amount of the renewal fee is dishonored by the

firm's drawee bank for any reason, the Board shall suspend the firm registration until the renewal fee is paid. When the annual renewal has been completed according to the provisions of G.S. 89A-5, the Board Executive shall approve renewal for the firm registration for the current renewal year. The firm license shall not be renewed until the individual landscape architect in responsible charge for the firm has completed the individual renewal process.

(d) Within one year of expiration, the firm license may be renewed at any time upon the return of the completed renewal documents, the annual renewal fee, and the late renewal fee. After one year from the date of expiration for non-payment of the annual renewal fee, the licensee shall not be eligible to seek reinstatement, as set forth in G.S. 89A-5, and the Board may reinstate the firms' certificate of registration only as allowed by G.S. 89A-4.

(e) Renewal fees are non-refundable.

(f) Each registered corporation shall adopt a seal pursuant to Rule .0207 of this Chapter.

(g) In addition to the requirements and limitations of G.S. 55 and G.S. 55B, the firm name used by a landscape architectural corporation shall conform with Rule .0206 of this Chapter and be approved by the Board before being used. This Rule shall not prohibit the continued use of any firm name adopted in conformity with the General Statutes of North Carolina and the Board's rules in effect at the date of such adoption.

(h) Landscape architects may practice in this State through duly authorized limited liability companies only as provided under G.S. 57C-2-01(c). Any limited liability company that offers to practice or practices landscape architecture in this State shall comply with the same requirements applicable to professional corporations under Rules .0201, .0206, .0214, .0218 and .0219 of this Chapter.

*History Note: Authority G.S. 55B-5; 55B-10; 55B-15;
89A-3.1(4);
Eff. March 1, 2015.*

21 NCAC 26 .0315 OUT-OF-STATE ENTITIES

(a) Landscape architectural entities from other states may be granted certificates of registration for practice in this State upon receipt by the Board of a completed application, fees, the submission of a certified copy of its corporate charter, or other corresponding documents, amended as may be necessary to ensure compliance with all requirements of Chapter 55B, the Professional Corporation Act of the State of North Carolina, and the payment of the firm application fee. In addition to the other requirements as set out in G.S. 83A-8, out-of-state (or "foreign") entities shall, prior to registration, receive from the Secretary of State of North Carolina a certificate of authority to do business within the State. A certificate for filing for a certificate of authority shall be obtained from the Board prior to submitting the application to the Secretary of State.

(b) An out-of-state entity may be permitted to practice landscape architecture within the State of North Carolina provided that it complies with G.S. 55B. If an out-of-state entity offers landscape architectural services, then it shall comply with requirements set forth in G.S. 89A. An out-of-state entity shall have at least one

officer or director licensed in the State as a landscape architect. Two-thirds of the issued and outstanding shares of the out-of-state corporations shall be held by a landscape architect, architect, geologist, engineer, or land surveyor licensed to practice the profession in a jurisdiction of the United States. However, the entity shall designate at least one landscape architect who is licensed in the State of North Carolina to be in responsible charge for the entity's practice of landscape architecture within the State of North Carolina. Notwithstanding the requirements of this Rule, an individual landscape architect who is licensed under G.S. 89A, et seq., may practice as an individual.

(c) An out-of-state limited liability company may practice landscape architecture, if the limited liability company complies with G.S. 57C and at least one member and one manager or member/manager is licensed as a landscape architect, architect, geologist, engineer, or land surveyor to comply with Paragraph (a) of this Rule.

(d) An out of state limited liability partnership may practice landscape architecture, if the limited liability partnership complies with G.S. 59-84.2, and at least one partner is licensed in this State as an individual pursuant to Rule .0301 of this Section.

(e) If the Board has not received the annual firm renewal fee and completed application on or before June 30th, the firm registration shall expire and be deemed delinquent. The firm registration may be renewed at any time within one year upon the payment of the annual renewal fee and the late renewal fees. After one year from the date of expiration for non-payment of the annual renewal fee, the license shall be automatically revoked. The Board may reinstate the firm's certificate of registration, as allowed by Rule .0301 of this Section.

History Note: Authority G.S. 55B-6; 83A-6; 89A-2(a1); Eff. March 1, 2015.

21 NCAC 26 .0510 DISCIPLINARY REVIEW PROCESS

(a) Allegations or evidence of a violation of the Landscape Architecture Licensing Act or the rules in this Chapter shall be preliminarily reviewed by the Board Chair and legal counsel to the Board. Upon a determination that evidence of a violation exists, the matter shall be subject to Board investigation and may be subject to disciplinary action by the Board.

(b) An investigation shall be initiated by a written notice and explanation of the allegation being forwarded to the person or entity against whom the charge is made and a response shall be requested of the person or firm so charged within 30 days of receipt of said notice to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.

(c) In the discretion of the Board Chair, a field investigation may be performed.

(d) After additional evidence has been obtained, the Board Chair shall either:

- (1) recommend dismissal of the charge; or

- (2) refer the matter to the Disciplinary Review Committee.

(e) If the Board Chair recommends dismissal, the Chair shall give a summary report to the Board and a vote shall be called to dismiss the complaint. If the Board does not vote to dismiss the complaint, the matter shall be forwarded to the Disciplinary Review Committee for further consideration.

(f) The Disciplinary Review Committee shall be made up of a minimum of one member of the Board and the Board Chair.

(g) Upon review of the evidence, and further investigation if necessary, the Disciplinary Review Committee shall present to the Board a written recommendation that may include the following:

- (1) The charge be dismissed as unfounded or that the Board is without jurisdiction over the matter;
- (2) The charge is admitted as true, whereupon the Board may accept the admission of guilt by the person or entity charged and discipline the person or entity accordingly;
- (3) The Board may accept a proposed settlement negotiated in an effort to resolve the alleged violations; or
- (4) The charge be presented to the full Board for a hearing and determination of sanctions by the Board in accordance with the substantive and procedural requirements of the provisions of G.S. 150B, Article 3A.

(h) A consultant to the Disciplinary Review Committee shall be designated by the legal counsel of the Board if the Chair of the Disciplinary Review Committee determines that it needs assistance. The consultant shall be a currently licensed landscape architect selected from former Board members or other licensed professionals who are knowledgeable with the Board's processes and have expressed an interest in serving as a consultant. The consultant shall review all case materials and assist the Disciplinary Review Committee in making a recommendation as to the merits of the case.

(i) At least 15 days written notice of the date of consideration by the Board of the recommendations of the Disciplinary Review Committee shall be given to the person or entity against whom the charges have been brought and the person submitting the charge.

(j) When the Board issues a notice of hearing against whom the charges are brought, the person or entity may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the person or entity and the Board's Disciplinary Review Committee do not agree to a resolution of the dispute for the full Board's consideration, the original disciplinary review process shall commence. During the course of the settlement conference, no sworn testimony shall be taken.

History Note: Authority G.S. 89A-3.1(7),(8),(9); 89A-7; Eff. December 1, 2005; Amended Eff. March 1, 2015.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission April 16, 2015 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Margaret Currin
Jay Hemphill
Faylene Whitaker

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Ralph A. Walker

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

April 16, 2015 May 21, 2015
June 18, 2015 July 16, 2015

AGENDA

RULES REVIEW COMMISSION
THURSDAY, APRIL 16, 2015 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Acupuncture Licensing Board – 21 NCAC 01 .0108, .0109, .0110, .0111, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0608, .0609 (May)
 - B. Irrigation Contractors Licensing Board - 21 NCAC 23 .0105 (Reeder)
 - C. Board of Physical Therapy Examiners – 21 NCAC 48C .0104 (Hammond)
 - D. State Human Resources Commission - 25 NCAC 01C .0311, 25 NCAC 01E .1603, 25 NCAC 01H .1103, 25 NCAC 01J .1304 (Hammond)
 - E. Building Code Council – 2012 NC Residential Code, Sections R101.2, R202, and R324, N-1 and N-2 Table Examples, N-1 and N-2 Tables, AM106 and AM111 Tables, Screen Enclosure; 2012 NC Building Code, Chapter 36; 2012 NC Fire Code, 4504.1 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between February 23, 2015 and March 20, 2015
 - Child Care Commission (May)
 - Environmental Management Commission (Hammond)
 - Marine Fisheries Commission (Hammond)
 - Coastal Resources Commission (Reeder)
 - Wildlife Resources Commission (May)
 - Well Contractors Certification Commission (Reeder)
 - Medical Board (Reeder)
 - Real Estate Commission (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - 1. 10A NCAC 13L - Medical Care Commission (May)

2. 10A NCAC 13M - Medical Care Commission (May)
3. 10A NCAC 13O - Medical Care Commission (May)
4. 10A NCAC 26A - DHHS - Commission for Mental Health (Hammond)
5. 10A NCAC 26B - DHHS - Commission for Mental Health (Hammond)
6. 10A NCAC 26D - DHHS - Commission for Mental Health (Hammond)
7. 15A NCAC 02R - Environmental Management Commission (Reeder)
8. 21 NCAC 32 - North Carolina Medical Board (Reeder)

VII. Commission Business

- Next meeting: Thursday, May 21, 2015

Commission Review
Log of Permanent Rule Filings
February 23, 2015 through March 20, 2015

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); and NC pre-kindergarten services (.3000).

<u>Application for a License for a Child Care Center</u>	10A	NCAC	09	.0302
Amend/*				
<u>General Safety Requirements</u>	10A	NCAC	09	.0604
Amend/*				
<u>Emergency Preparedness and Response</u>	10A	NCAC	09	.0607
Adopt/*				
<u>In-Service Training Requirements</u>	10A	NCAC	09	.0707
Amend/*				
<u>General Provisions Related to Licensure of Homes</u>	10A	NCAC	09	.1701
Amend/*				
<u>Health and Training Requirements for Family Child Care Ho...</u>	10A	NCAC	09	.1705
Amend/*				
<u>Safety, Medication, and Sanitation Requirements</u>	10A	NCAC	09	.1720
Amend/*				
<u>Requirements for Records</u>	10A	NCAC	09	.1721
Amend/*				
<u>Retention of Forms and Reports by a Child Care Operator</u>	10A	NCAC	09	.2318
Amend/*				
<u>Quality Points Options</u>	10A	NCAC	09	.2829
Amend/*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Riparian Buffer Mitigation Fees to the NC Ecosystem Enhan... 15A NCAC 02B .0269
Amend/*

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

Emission Rates Requiring a Permit 15A NCAC 02Q .0711
Amend/*

MARINE FISHERIES COMMISSION

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

Definitions 15A NCAC 03I .0101
Amend/*

User Conflict Resolution 15A NCAC 03I .0122
Adopt/*

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

Duke Energy Progress Brunswick Nuclear Plant Intake Canal 15A NCAC 03J .0207
Amend/*

New River 15A NCAC 03J .0208
Amend/*

Albemarle Sound/Chowan River River Herring Management Areas 15A NCAC 03J .0209
Amend/*

Pots 15A NCAC 03J .0301
Amend/*

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

Permits to Use Mechanical Methods for Shellfish on Shellf... 15A NCAC 03K .0111
Adopt/*

Permits to Use Mechanical Methods for Oysters and Clams o... 15A NCAC 03K .0206
Amend/*

Permits to Use Mechanical Methods for Oysters and Clams o... 15A NCAC 03K .0303
Repeal/*

Bay Scallop Harvest Management 15A NCAC 03K .0501
Amend/*

Taking Bay Scallops at Night and on Weekends 15A NCAC 03K .0502
Amend/*

Marketing Scallops Taken from Shellfish Leases or Franchises 15A NCAC 03K .0507
Adopt/*

Scallop Season and Harvest Limit Exemptions 15A NCAC 03K .0508
 Adopt/*

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

Shrimp Harvest Restrictions 15A NCAC 03L .0101
 Amend/*

Prohibited Nets, Mesh Lengths and Areas 15A NCAC 03L .0103
 Amend/*

Recreational Shrimp Limits 15A NCAC 03L .0105
 Amend/*

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

Mutilated Finfish 15A NCAC 03M .0101
 Amend/*

American Eel 15A NCAC 03M .0510
 Amend/*

River Herring 15A NCAC 03M .0513
 Amend/*

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

Procedures and Requirements to Obtain Licenses, Endorseme... 15A NCAC 03O .0101
 Amend/*

Display of Licenses and Registrations 15A NCAC 03O .0106
 Amend/*

Ocean Fishing Pier Reporting Requirements 15A NCAC 03O .0113
 Amend/*

Procedures and Requirements to Obtain Permits 15A NCAC 03O .0501
 Amend/*

Permit Conditions; Specific 15A NCAC 03O .0503
 Amend/*

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

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

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

Shrimp Trawl Prohibited Areas 15A NCAC 03R .0114
 Amend/*

Anadromous Fish Spawning Areas 15A NCAC 03R .0115
 Amend/*

River Herring Management Areas 15A NCAC 03R .0202
 Adopt/*

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7K set out activities in areas of environmental concern (AECs) which do not require a Coastal Area Management Act (CAMA) permit. These include activities that are not considered development (.0100); exempt minor maintenance and improvement (.0200); and exempt federal agency activities (.0400).

<u>Single Family Residences Exempted</u>	15A NCAC 07K .0208
Amend/*	

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Migratory Game Birds</u>	15A NCAC 10B .0105
Amend/*	
<u>Wildlife Taken for Depredations</u>	15A NCAC 10B .0106
Amend/*	
<u>Dog Training and Field Trials</u>	15A NCAC 10B .0114
Amend/*	
<u>Bear</u>	15A NCAC 10B .0202
Amend/*	
<u>Deer (White Tailed)</u>	15A NCAC 10B .0203
Amend/*	
<u>Coyote</u>	15A NCAC 10B .0219
Amend/*	
<u>Feral Swine</u>	15A NCAC 10B .0223
Amend/*	
<u>Trappers and Hunters</u>	15A NCAC 10B .0404
Amend/*	

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

<u>Public Mountain Trout Waters</u>	15A NCAC 10C .0205
Amend/*	
<u>Trotlines and Set-Hooks</u>	15A NCAC 10C .0206
Amend/*	
<u>Crappie</u>	15A NCAC 10C .0306
Amend/*	
<u>Striped Bass</u>	15A NCAC 10C .0314
Amend/*	
<u>Trout</u>	15A NCAC 10C .0316
Amend/*	

<u>Manner of Taking Nongame Fishes: Purchase and Sale</u> Amend/*	15A	NCAC	10C	.0401
<u>Taking Nongame Fishes for Bait or Personal Consumption</u> Amend/*	15A	NCAC	10C	.0402
<u>Permitted Special Devices and Open Seasons</u> Amend/*	15A	NCAC	10C	.0407

The rules in Subchapter 10D are game lands rules.

<u>General Regulations Regarding Use</u> Amend/*	15A	NCAC	10D	.0102
<u>Hunting On Game Lands</u> Amend/*	15A	NCAC	10D	.0103
<u>Fishing on Game Lands</u> Amend/*	15A	NCAC	10D	.0104

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

<u>Currituck County</u> Amend/*	15A	NCAC	10F	.0340
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The rules in Subchapter 10I concern endangered and threatened species.

<u>Protection of Endangered/Threatened/Special Concern</u> Amend/*	15A	NCAC	10I	.0102
<u>Threatened Species</u> Amend/*	15A	NCAC	10I	.0104

WELL CONTRACTORS CERTIFICATION COMMISSION

The rules in Chapter 27 concern well contractor certification including duties and definitions (.0100); well contractor fees (.0200); certification of well contractors (.0300); certification by examination (.0400); certification without examination (.0500); certification renewal (.0600); types of certification (.0700); continuing education (.0800); and procedures for disciplinary actions (.0900).

<u>Requirements</u> Amend/*	15A	NCAC	27	.0801
<u>Approval of Continuing Education Courses</u> Amend/*	15A	NCAC	27	.0810
<u>Determination of Credit</u> Amend/*	15A	NCAC	27	.0820
<u>Special Provisions for Continuing Education</u> Repeal/*	15A	NCAC	27	.0840

MEDICAL BOARD

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

<u>Definitions</u>	21	NCAC	32S	.0201
Amend/*				
<u>Qualifications and Requirements for License</u>	21	NCAC	32S	.0202
Amend/*				
<u>Agency</u>	21	NCAC	32S	.0211
Repeal/*				
<u>Prescriptive Authority</u>	21	NCAC	32S	.0212
Amend/*				
<u>Supervision of Physician Assistants</u>	21	NCAC	32S	.0213
Amend/*				
<u>Supervising Physician</u>	21	NCAC	32S	.0214
Repeal/*				
<u>Responsibilities of Primary Supervising Physicians in Reg...</u>	21	NCAC	32S	.0215
Amend/*				
<u>Continuing Medical Education</u>	21	NCAC	32S	.0216
Amend/*				
<u>Violations</u>	21	NCAC	32S	.0217
Amend/*				
<u>Scope of Rules</u>	21	NCAC	32S	.0224
Adopt/*				

The rules in Subchapter 32Y concern the controlled substance reporting system.

<u>Reporting Criteria</u>	21	NCAC	32Y	.0101
Adopt/*				

REAL ESTATE COMMISSION

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate education and recovery fund (.1400); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); brokers in military service (.2100); and broker price opinions and comparative market analyses (.2200).

<u>Agency Agreements and Disclosure</u>	21	NCAC	58A	.0104
Amend/*				
<u>Advertising</u>	21	NCAC	58A	.0105
Amend/*				
<u>Handling of Trust Money</u>	21	NCAC	58A	.0116
Amend/*				
<u>Mineral and Oil and Gas Rights Mandatory Disclosure State...</u>	21	NCAC	58A	.0119
Adopt/*				
<u>Examination Subject Matter, Format, and Passing Scores</u>	21	NCAC	58A	.0402
Amend/*				
<u>Business Entities</u>	21	NCAC	58A	.0502
Amend/*				
<u>Continuing Education Required of Nonresident Licensees</u>	21	NCAC	58A	.1711
Amend/*				

The rules in Subchapter 58C deal with real estate prelicensing education schools including rules dealing with the licensing of all schools except private real estate schools (.0100); private real estate schools (.0200); prelicensing courses (.0300); and pre-licensing course instructors (.0600).

<u>Request for Examinations and Video Recordings</u>	21	NCAC	58C	.0605
Amend/*				

The rules in Subchapter 58E are the real estate continuing education rules both update and elective course components including rules dealing with update courses (.0100); update course instructors (.0200); elective courses, sponsors, and instructors (.0300); general sponsor requirements (.0400); course operational requirements (.0500); and broker-in-charge annual review (.0600).

<u>Application and Criteria for Original Approval</u>	21	NCAC	58E	.0203
Amend/*				
<u>Active and Inactive Status: Renewal of Approval</u>	21	NCAC	58E	.0204
Amend/*				
<u>Application for Original Approval</u>	21	NCAC	58E	.0303
Amend/*				
<u>Request for a Video Recording</u>	21	NCAC	58E	.0308
Amend/*				
<u>Change in Sponsor Ownership</u>	21	NCAC	58E	.0408
Amend/*				
<u>Changes During Approval Period</u>	21	NCAC	58E	.0409
Amend/*				
<u>Denial or Withdrawal of Approval</u>	21	NCAC	58E	.0412
Amend/*				
<u>Advertising, Providing Course Information</u>	21	NCAC	58E	.0505
Amend/*				

**RRC DETERMINATION
PERIODIC RULE REVIEW
February 19, 2015
Necessary with Substantive Public Interest**

**State Budget and Management,
Office of**

09 NCAC 03A .0103
09 NCAC 03M .0201
09 NCAC 03M .0202
09 NCAC 03M .0203
09 NCAC 03M .0205
09 NCAC 03M .0401
09 NCAC 03M .0501
09 NCAC 03M .0601
09 NCAC 03M .0701
09 NCAC 03M .0702
09 NCAC 03M .0703
09 NCAC 03M .0704
09 NCAC 03M .0801
09 NCAC 03M .0802

**Information Technology Services,
Office of**

09 NCAC 06B .0301
09 NCAC 06B .0302
09 NCAC 06B .0314
09 NCAC 06B .0315
09 NCAC 06B .0316
09 NCAC 06B .0405
09 NCAC 06B .0701
09 NCAC 06B .0901

Social Services Commission

10A NCAC 97B .0401
10A NCAC 97B .0402
10A NCAC 97B .0403
10A NCAC 97C .0104
10A NCAC 97C .0106
10A NCAC 97C .0108

10A NCAC 97C .0109
10A NCAC 97C .0111

**Environmental Management
Commission**

15A NCAC 02S .0101
15A NCAC 02S .0102
15A NCAC 02S .0201
15A NCAC 02S .0202
15A NCAC 02S .0301
15A NCAC 02S .0501
15A NCAC 02S .0502
15A NCAC 02S .0503
15A NCAC 02S .0506
15A NCAC 02S .0508
15A NCAC 02S .0509

RULES REVIEW COMMISSION

Barber Examiners, Board of

21 NCAC 06A .0102	21 NCAC 06F .0110	21 NCAC 06L .0118
21 NCAC 06B .0101	21 NCAC 06F .0111	21 NCAC 06L .0119
21 NCAC 06B .0103	21 NCAC 06F .0113	21 NCAC 06L .0120
21 NCAC 06B .0105	21 NCAC 06F .0114	21 NCAC 06M .0102
21 NCAC 06B .0202	21 NCAC 06F .0116	21 NCAC 06N .0101
21 NCAC 06B .0204	21 NCAC 06F .0118	21 NCAC 06N .0102
21 NCAC 06B .0301	21 NCAC 06F .0119	21 NCAC 06N .0103
21 NCAC 06B .0302	21 NCAC 06F .0120	21 NCAC 06N .0104
21 NCAC 06B .0305	21 NCAC 06F .0121	21 NCAC 06N .0105
21 NCAC 06B .0306	21 NCAC 06F .0122	21 NCAC 06N .0106
21 NCAC 06B .0307	21 NCAC 06F .0123	21 NCAC 06N .0107
21 NCAC 06B .0308	21 NCAC 06F .0124	21 NCAC 06N .0108
21 NCAC 06B .0309	21 NCAC 06F .0125	21 NCAC 06N .0109
21 NCAC 06B .0501	21 NCAC 06G .0103	21 NCAC 06N .0110
21 NCAC 06B .0502	21 NCAC 06H .0101	21 NCAC 06N .0111
21 NCAC 06B .0503	21 NCAC 06H .0102	21 NCAC 06N .0112
21 NCAC 06B .0505	21 NCAC 06I .0101	21 NCAC 06O .0101
21 NCAC 06C .0101	21 NCAC 06I .0105	21 NCAC 06O .0102
21 NCAC 06C .0201	21 NCAC 06J .0101	21 NCAC 06O .0103
21 NCAC 06C .0202	21 NCAC 06J .0102	21 NCAC 06O .0104
21 NCAC 06C .0203	21 NCAC 06J .0103	21 NCAC 06O .0105
21 NCAC 06C .0204	21 NCAC 06J .0106	21 NCAC 06O .0106
21 NCAC 06C .0205	21 NCAC 06J .0108	21 NCAC 06O .0107
21 NCAC 06C .0501	21 NCAC 06J .0109	21 NCAC 06O .0108
21 NCAC 06C .0502	21 NCAC 06J .0110	21 NCAC 06O .0109
21 NCAC 06C .0503	21 NCAC 06K .0101	21 NCAC 06O .0110
21 NCAC 06C .0504	21 NCAC 06K .0103	21 NCAC 06O .0111
21 NCAC 06C .0601	21 NCAC 06K .0104	21 NCAC 06O .0112
21 NCAC 06C .0701	21 NCAC 06K .0110	21 NCAC 06O .0113
21 NCAC 06C .0801	21 NCAC 06K .0111	21 NCAC 06O .0114
21 NCAC 06C .0807	21 NCAC 06L .0102	21 NCAC 06O .0115
21 NCAC 06C .0808	21 NCAC 06L .0103	21 NCAC 06O .0116
21 NCAC 06C .0903	21 NCAC 06L .0104	21 NCAC 06O .0117
21 NCAC 06C .0904	21 NCAC 06L .0105	21 NCAC 06P .0101
21 NCAC 06C .0905	21 NCAC 06L .0106	21 NCAC 06P .0102
21 NCAC 06C .0906	21 NCAC 06L .0107	21 NCAC 06P .0103
21 NCAC 06C .0907	21 NCAC 06L .0108	21 NCAC 06Q .0101
21 NCAC 06C .0909	21 NCAC 06L .0109	21 NCAC 06Q .0102
21 NCAC 06D .0101	21 NCAC 06L .0111	21 NCAC 06Q .0103
21 NCAC 06F .0101	21 NCAC 06L .0112	21 NCAC 06Q .0104
21 NCAC 06F .0102	21 NCAC 06L .0113	21 NCAC 06R .0101
21 NCAC 06F .0103	21 NCAC 06L .0114	21 NCAC 06S .0101
21 NCAC 06F .0104	21 NCAC 06L .0115	
21 NCAC 06F .0109	21 NCAC 06L .0116	
	21 NCAC 06L .0117	

**RRC DETERMINATION
PERIODIC RULE REVIEW****February 19, 2015****Necessary without Substantive Public Interest****State Budget and Management,
Office of**09 NCAC 03A .0101
09 NCAC 03M .0101
09 NCAC 03M .0102**Information Technology Services,
Office of**09 NCAC 06A .0101
09 NCAC 06A .0102
09 NCAC 06B .0101
09 NCAC 06B .010309 NCAC 06B .0201
09 NCAC 06B .0202
09 NCAC 06B .0204
09 NCAC 06B .0303
09 NCAC 06B .0304
09 NCAC 06B .0305

09 NCAC 06B .0306
 09 NCAC 06B .0307
 09 NCAC 06B .0308
 09 NCAC 06B .0309
 09 NCAC 06B .0313
 09 NCAC 06B .0401
 09 NCAC 06B .0404
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 09 NCAC 06B .0504
 09 NCAC 06B .0505
 09 NCAC 06B .0601
 09 NCAC 06B .0602
 09 NCAC 06B .0603
 09 NCAC 06B .0703
 09 NCAC 06B .0801
 09 NCAC 06B .0902
 09 NCAC 06B .1001
 09 NCAC 06B .1002
 09 NCAC 06B .1003
 09 NCAC 06B .1004
 09 NCAC 06B .1005
 09 NCAC 06B .1006
 09 NCAC 06B .1030
 09 NCAC 06B .1031
 09 NCAC 06B .1101
 09 NCAC 06B .1102
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 09 NCAC 06B .1201
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 09 NCAC 06B .1301

09 NCAC 06B .1302
 09 NCAC 06B .1303
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 09 NCAC 06B .1305
 09 NCAC 06B .1401
 09 NCAC 06B .1402

Social Services Commission

10A NCAC 97A .0101
 10A NCAC 97B .0101
 10A NCAC 97B .0102
 10A NCAC 97B .0103
 10A NCAC 97B .0201
 10A NCAC 97B .0202
 10A NCAC 97B .0203
 10A NCAC 97B .0301
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 10A NCAC 97C .1101
 10A NCAC 97C .1201
 10A NCAC 97C .1202
 10A NCAC 97C .1301
 10A NCAC 97C .1302
 10A NCAC 97D .0101

Environmental Management Commission

15A NCAC 02S .0103
 15A NCAC 02S .0302
 15A NCAC 02S .0504
 15A NCAC 02S .0505
 15A NCAC 02S .0507

Agriculture Finance Authority

24 NCAC 02A .0101
 24 NCAC 02A .0102
 24 NCAC 02A .0103
 24 NCAC 02B .0101
 24 NCAC 02B .0102
 24 NCAC 02C .0101

**RRC DETERMINATION
PERIODIC RULE REVIEW
February 19, 2015
Unnecessary**

State Budget and Management,	10A NCAC 97D .0106	10A NCAC 97F .0301
Office of	10A NCAC 97D .0107	10A NCAC 97F .0302
09 NCAC 03M .0301	10A NCAC 97D .0108	10A NCAC 97F .0303
	10A NCAC 97D .0201	10A NCAC 97F .0304
Information Technology Services,	10A NCAC 97D .0202	10A NCAC 97F .0305
Office of	10A NCAC 97D .0203	10A NCAC 97F .0401
09 NCAC 06A .0103	10A NCAC 97E .0101	10A NCAC 97F .0402
	10A NCAC 97E .0102	10A NCAC 97F .0501
Social Services Commission	10A NCAC 97E .0103	10A NCAC 97F .0502
10A NCAC 97A .0102	10A NCAC 97E .0104	10A NCAC 97F .0503
10A NCAC 97B .0601	10A NCAC 97E .0105	10A NCAC 97F .0504
10A NCAC 97C .0303	10A NCAC 97E .0106	10A NCAC 97F .0505
10A NCAC 97C .0304	10A NCAC 97E .0201	10A NCAC 97F .0601
10A NCAC 97C .0305	10A NCAC 97E .0202	10A NCAC 97F .0602
10A NCAC 97C .0306	10A NCAC 97F .0101	10A NCAC 97F .0603
10A NCAC 97D .0102	10A NCAC 97F .0102	10A NCAC 97F .0604
10A NCAC 97D .0103	10A NCAC 97F .0103	
10A NCAC 97D .0104	10A NCAC 97F .0201	
10A NCAC 97D .0105	10A NCAC 97F .0202	

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May

A. B. Elkins II
Selina Brooks
Phil Berger, Jr.

J. Randolph Ward

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
ABC Commission v. Noble 6 Enterprises LLC, T/A Peppermint Rabbit	13 ABC 20226	08/13/14	
ABC Commission v. Demetrius Earl Smith, T/A Smith's Convenient Store	14 ABC 01354	08/18/14	
ABC Commission v. 40 and Holding, LLC T/A London Bridge Pub	14 ABC 01953	12/16/14	
Melody Locklear McNair v. ABC Commission	14 ABC 02323	06/25/14	
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WILDLIFE RESOURCES COMMISSION

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People for the Ethical Treatment of Animals, Inc., Jacob Matthew Norris, and Julie Coveleski v. North Carolina Wildlife Resources Commission and Gordon Myers, as Executive Director, North Carolina Wildlife Resources Commission	14 WRC 01348	08/01/14	
People for the Ethical Treatment of Animals, Inc., v. Wildlife Resources Commission and Gordon Myers, As Executive Director	14 WRC 10041	12/29/14	

STATE OF NORTH CAROLINA

COUNTY OF CHEROKEE

LAWRENCE JASON ROBERTS,

Petitioner,

v.

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

Respondent.

Filed

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

14 DOJ 05565

Office of

Administrative Hearings

PROPOSAL FOR DECISION

On November 3, 2014, Chief Administrative Law Judge Julian Mann III heard this case in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Robert A. McNew, Attorney at Law
Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUES

Has the Petitioner been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Did the Petitioner commit the Class B misdemeanor offenses of Stalking in September of 1994, and misdemeanor Injury to Personal Property on August 14, 2006?

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

11. Pursuant to the Commission's Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, the following of Petitioner's convictions constitute Class A misdemeanors: 1) Petitioner's Level 5 Driving While Impaired conviction, 1996 CR 001501; 2) Petitioner's littering conviction, 1996 CR 001501; and 3) Petitioner's possession of a malt beverage under the age of 19/20 conviction, 1993 CR 001139.

12. Pursuant to the Commission's Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, Petitioner's Level 1 Driving While Impaired conviction, 1996 CR 002730, constitutes a Class B misdemeanor conviction.

13. The above-referenced four (4) misdemeanor convictions occurred approximately 18 years ago. Petitioner was approximately 19 to 21 years of age at the time he committed these offenses. Petitioner regrets having committed these criminal acts and has fully accepted responsibility for his past actions.

14. Petitioner has grown considerably since his 1996 Driving While Impaired convictions. Petitioner is married and has four children residing in the marital home, ages 17, 14, 13, and 11. Being married and raising a family has changed Petitioner's life. The Petitioner no longer places himself in situations which could result in excessive drinking and drinking and driving. The Petitioner has the support of his family and is active in his community. The Petitioner has been open about his past drinking that resulted in the above-referenced criminal charges in the hopes that his children do not engage in similar activity.

15. Petitioner has been employed by the Cherokee County Sheriff's Office as a detention officer for approximately one year. Chief Deputy Joseph Wood testified at the administrative hearing. Chief Deputy Wood opined that Petitioner is a hard working, dependable officer. Chief Wood further opined that Petitioner is regarded highly in the community and that he possesses a respect for the law and for the rights of others.

16. Sheriff R.K. Lovin of Cherokee County also supports Petitioner's application for certification through the Respondent Commission. Sheriff Lovin indicates Petitioner is regarded highly in the community. Further, Sheriff Lovin believes Petitioner possesses the highest level of integrity and respect for the law. Sheriff Lovin would like to see Petitioner certified as a sworn justice officer in this State.

17. Sheriff Lovin provided a letter of support for Petitioner, which he would like the Commission to consider in rendering its decision. This letter was admitted as part of the record during the administrative hearing, as is marked as Petitioner's Exhibit 1.

18. This Court must also determine whether Petitioner committed the misdemeanor offenses of Injury to Personal Property on August 14, 2006, and misdemeanor stalking in September of 1994. Petitioner denies having committed either of these offenses.

19. The stalking matter arose out of a high school relationship between Petitioner and Melonie Elkins. Petitioner broke up with Ms. Elkins in 1996 and Petitioner believes the break up prompted Ms. Elkins to fabricate the stalking allegation. Petitioner denies stalking Ms. Elkins at any time. The undersigned finds that the evidence does not support a finding that Petitioner committed the misdemeanor offense of stalking.

20. The August 14, 2006 Injury to Personal Property allegation arose out of a family land dispute that included Petitioner's father, Daniel Roberts, and Daniel's sister, Elaine Passmore. This dispute continued for 10 years, during which a civil lawsuit was litigated and various allegations of misconduct were raised by both parties to the dispute. Petitioner denies injuring the personal property of Gail Hall on August 14, 2006. Criminal charges against Petitioner for Injury to Personal Property on the date in question were dismissed. The undersigned finds that the evidence does not support a finding that Petitioner committed the misdemeanor offense of Injury to Personal Property on August 14, 2006.

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. The evidence presented at the administrative hearing does not support a finding that Petitioner committed the misdemeanor offense of Injury to Personal Property on August 14, 2006. The undersigned finds that Petitioner did not commit this offense on the date in question.

4. The evidence presented at the administrative hearing does not support a finding that Petitioner committed the misdemeanor offense of stalking in 1996. The undersigned finds that Petitioner did not stalk Melonie Elkins in 1994.

5. However, the preponderance of the evidence presented at the administrative hearing does establish that Petitioner has been convicted of a combination of 4 or more Class A or Class B misdemeanors, as set out in greater detail below.

PROPOSAL FOR DECISION

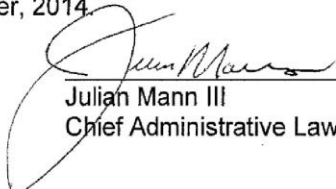
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent issue Petitioner's justice officer certification. Petitioner has matured considerably since his alcohol related offenses that occurred nearly 20 years ago. Petitioner is married and is a father of 4 children that reside within the marital home. Petitioner is regarded as having the highest level of professionalism within the law enforcement community. Further, the Petitioner has a desire to succeed in the field of law enforcement and has demonstrated the likelihood of success in this profession. Extenuating circumstances brought out at the administrative hearing justify the issuance of certification.

NOTICE

The Agency making the Final Decision in this contested case are 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 4th day of December, 2014.


Julian Mann III
Chief Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Filed
2014 JUL 21 PM 4:02

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 OSP 00867

ANNA M. HAMBURG,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT of
HEALTH and HUMAN SERVICES,
Respondent.

FINAL DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on June 25-27, 2014 in Raleigh, North Carolina. Petitioner initiated this contested case by filing in the Office of Administrative Hearings (OAH) a Petition alleging that she did not receive promotional priority consideration, that Respondent, in not selecting her for the adoption services manager position, discriminated against her on the basis of her age and race, and that she was retaliated against as a result of her whistleblower activity. The whistleblower/retaliation complaint was withdrawn by Petitioner at the hearing and was not the subject of the hearing and decision of this matter.

After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals after receipt of the official transcript as well as any petition for attorney fees and responses. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. Respondent's first and second motions for extension of time to file proposals and any other post hearing materials were granted. Petitioner and Respondent filed timely materials with receipt to the Undersigned from the OAH Clerk's Office being September 29, 2014 at which time the record was closed for further submissions. For good cause shown and by order of the Chief Administrative Law Judge, the Undersigned was granted an extension until November 25, 2014 to file the decision in this case. Despite the due diligence of all parties, the complexity of this case and time needed for completion of this matter, including all motions, exceeded the usual, regular and customary; and has presented a situation of a kind other than what ordinary experience or prudence would foresee. As such, extraordinary cause has been shown for the issuance of this decision beyond 180 days from the commencement of the case.

APPEARANCES

For Petitioner: M. Jackson Nichols
Allen, Pinnix & Nichols, P.A.
510 Glenwood Ave., Suite 301
Raleigh, NC 27602

For Respondent: Joseph E. Elder
Assistant Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602-0629

WITNESSES

For Petitioner: Kristin O'Connor
Stephen Davis
Jack Rogers
Anna Hamburg
Tammy Johnson

For Respondent: Kevin Kelley
Patricia Garcia
Kristin O'Connor

EXHIBITS

For Petitioner:

1. Job Posting, Social Services Program Manager II-DF, 1/16/13
2. Job Posting, Social Services Program Consultant II
3. Organizational Chart – DSS Child Welfare Services, 1/1/13
4. E-Mail from Kelley to DSS, 8/30/13
5. Petitioner's employment application, 1/25/13
6. Employee Grievance, Step 1, 9/10/13
7. Letter, DHHS/DSS to Petitioner, 9/16/13, Step 1 Response
8. Employee Grievance Step 2, 9/20/13
9. Letter from Black to Petitioner, 9/30/13, Step 2 Decision
10. Employee Grievance Step 3, 10/3/13
11. Letter from Payne for Wos, 1/8/14, Step 3 Decision
12. Hearing Officer's Report, 12/18/13
13. Verified Petition for Contested Case Hearing, 2/3/14
14. Not Offered
15. Not Offered
16. DHHS Direction III-8, Employee Grievance Policy
17. Position Description, Social Services Program Consultant II
18. DHHS Work Plan, Petitioner 6/1/06-5/31/09
19. DHHS Work Plan, Petitioner 6/1/09-5/31/10
20. DHHS Work Plan, Petitioner 7/7/11-6/30/12
21. Certificate of Appreciation, 5/10/13
22. Excerpts from Focus Group Results, 1/2014

23. Not Offered
24. Interview Notes of Kelley, 3/15/13, Bazemore and Hamburg interviews
25. Not Offered
26. Not Offered
27. E-Mail from Kelley to DSS/Child Welfare Services re Position Postings, 4/3/14
28. Not Offered
29. Not Offered
30. Memo from Black to Staff of Adoption Services Team, Child Welfare Services Section, 10/22/13
31. DHHS Work Plan, Petitioner 7/1/12 – 6/30/13
32. Petitioner's First Set of Interrogatories and Request for Production of Documents, 4/14/14
33. Petitioner's First Request for Admissions, 4/14/14
34. Respondent's Responses to Petitioner's First Request for Admissions, 4/29/14
35. Email Exchange between Petitioner and Bazemore, 6/19/14 and 6/20/14 re: OAH Hearing – Time Request
36. Memo from Bradsher to Cruz, 2/11/13 with attached DSS 2013 EEOC Plan
37. DHHS 2013 EEO Plan
38. Deposition of Tammy Johnson, 6/9/14
39. DVD, Video Deposition of Tammy Johnson, 6/9/14

For Respondent:

1. Job Posting, Social Services Program Manager II-DF, 1/16/13
2. Request for Posting, 1/14/13
3. Application of Jan. M. Bazemore, 2/22/13
4. Interview Notes of Kelley, 3/15/13, Bazemore interview
5. Not Offered
6. Application of Anna Hamburg, 2/14/13, printed from NEOGOV
7. Interview notes of Kelley, Hamburg interview, 3/11/13
8. Not Offered
9. Not Offered
10. Selection Log, 4/4/14
11. Not Offered
12. Not Offered
13. Not Offered
14. Not Offered
15. Not Offered
16. Not Offered
17. Not Offered
18. DHHS Policies and Procedures, Merit-Based Selection Program Plan, 5/26/06
19. Excerpt from State Human Resources Manual, Civil Leave, 12/1/95

ISSUES

Whether Petitioner was denied promotional priority when she was not selected for the adoption services manager position for which she applied.

Did Respondent violate N.C. Gen. Stat. § 127-7.1 because of the failure of the Department to give Petitioner Career State Employee priority consideration?

Did Respondent violate N.C. Gen. Stat. § 127-7.1 because of the failure of the Department to promote Petitioner as a Career State Employee?

Whether Respondent discriminated against Petitioner based on her age and race when not selecting Petitioner for the adoption services manager position.

Did Respondent commit an act of age discrimination when Respondent hired an applicant who was younger than Petitioner?

Did Respondent commit an act of race discrimination when Petitioner was denied employment in the position for which she applied and a Caucasian was hired?

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

FINDINGS OF FACT

1. Petitioner has been continuously employed by the State of North Carolina since May 4, 1987 and has been continuously employed with the North Carolina Department of Health and Human Services (DHHS), Division of Social Services (DSS), since November 17, 2003. Petitioner has worked as a Social Services Program Consultant II since beginning her employment with DSS. This work has been with the adoption services team of the Child Welfare Services Section.
2. On February 3, 2014, through counsel, Petitioner Anna Hamburg filed a Petition for a Contested Case Hearing with the OAH against Respondent North Carolina Department of Health and Human Services alleging that, in connection with its hiring for the position of Social Services Program Manager II (the "Position"):

- a. Respondent failed to provide Petitioner her rights as a Career State Employee;
- b. Respondent violated N.C. Gen. Stat. § 127-7.1 because it failed to give Petitioner promotional priority consideration;
- c. Respondent committed an act of age discrimination when Respondent hired an applicant who was younger and less experienced than Petitioner;
- d. Respondent committed an act of race discrimination when Respondent hired an applicant who was Caucasian rather than Petitioner, who is Latina;
- e. Respondent committed a procedural violation contrary to N.C. Gen. Stat. § 126-34.01 by failing to resolve Petitioner's grievance within the 90-day deadline.

3. At all times relevant to this proceeding, Petitioner was a career State employee, as defined by N.C. Gen. Stat. § 126-1, and was subject to the provisions of the State Personnel System [State Human Resources System] and entitled to the rights that the State Personnel Act guarantees.

4. Petitioner has been a State Employee since 1987. From 1986 to 1987, Petitioner worked for the Wake County District Attorney's Office. She first took a position as a paralegal working with district attorneys on preparing indictments and getting court records together. From 1987 to 1992, she worked as a victim witness assistant for the Wake County District Attorney's Office. From 1992 to May 2003, Petitioner worked with the guardian ad litem program (GAL program) as a Program Supervisor. In that role, Petitioner supervised and monitored all aspects of case assignments from volunteer assignment through disposition of the case through the court system. Her work included training the volunteers, attending court with the volunteers, attending outside meetings between the volunteers and external agencies and partners, and partnering with DSS. From May 2003 to November 2003, Petitioner worked as a Victim Education Outreach Specialist with the Department of Correction. In this role, Petitioner assisted crime victims with parole hearings for convicted inmates and assisted crime victims register with an outreach program under the crime victims' bill of rights laws.

5. Since November 2003, Petitioner has worked as a Program Consultant for DSS. In that role, Petitioner is responsible for two of the three primary functions of the Adoptions Service Unit: (a) adoption review and indexing, and (b) confidential intermediary services.

6. The Child Welfare Services section's core mission is to provide support to county departments of social services and private child placing agencies in serving children who have been reported or have been abused or neglected. The mission is to provide quality services to the children it serves and to find placement for them when appropriate in other homes either through the foster care system or through permanent placement.

7. The Adoptions Service Unit within the Child Welfare Section at DSS exists to promote permanency for youth that are served by the foster care system, as well as youth and children who are adopted outside of the foster care system. The adoption services team is one of seven teams within the Child Welfare Services section of the NCDSS. This team has three primary functions consisting of NC Kids, Confidential Intermediary, and Adoption Indexing.

8. The NC Kids function involves placement of children served by the foster care system into more permanent settings based on matching those children with individuals who have been approved to care for children based on the individuals' capabilities.

9. Confidential Intermediary is the newest function to the team and involves the coordination of adoptees meeting their birth parents if both parties agree to the meeting. The service is provided at the local level and supported at the State level.

10. The adoption indexing and review function is responsible for indexing all adoptions in North Carolina. This function is necessary for new birth certificates to be issued for the adoptee. While the statute specifically addresses the indexing function, the team has historically performed an additional quality assurance review.

11. In June 2013, Wayne Black began serving as the Director of DSS. Ms. Sherry Bradsher served as Director of DSS prior to June 2013. Jack Rogers serves as the Deputy Director of DSS. Mr. Rogers supports Mr. Black in the administration of DSS.

12. Timothy Kevin Kelley serves as the Section Chief for the Child Welfare Services Section of DSS within DHHS. Mr. Kelley reports to Mr. Black. Kristin O'Connor serves as the Assistant Section Chief for the Child Welfare Services Section of the Division of Social Services at the Department of Health and Human Services in North Carolina. Until her retirement in March 2013, Tammy Johnson served as Social Services Program Manager II at DSS.

13. A Social Services Program Manager II position with DSS was posted with an opening date of January 16, 2013. The position was being vacated by Ms. Johnson who retired in March 2013. The position served as the Adoption Services Manager in the Adoption Services Team of the Child Welfare Services Section. The Salary Grade for the Position was set at 75. The recruitment range for the Position was set as \$47,195 to \$78,204.

14. The job posting provided that the Minimum Education and Experience Requirements for the Position were as follows:

“A master’s degree in social work and three years of experience in social work including one year in a consultative or supervisory capacity; graduation from a four-year college or university, nine months of graduate training in social work, and four years of experience in social work including one year in a consultative or supervisory capacity; graduation from a four-year college or university and five years of experience in social work including two years in a consultative or supervisory capacity; or an equivalent combination of education and experience.”
Pet. Ex. 1

15. The job posting provided that the Knowledge, Skills and Abilities/Competencies for the Position were as follows:

“The successful candidate for this position will have a working knowledge of the laws, rules and policies related to the adoption of children in North Carolina. The candidate will need to demonstrate effective supervisory and leadership of individuals to provide support to all 100 county departments of social services as well as private child placing agencies. Emphasis is placed on ensuring good customer service is provided to all agency employees, their partners, and to the general public at large. Individual will need to have a strong attention to detail and

demonstrate ability to use automated information systems and data to inform and improve program operations.” Pet. Ex. 1

16. Ms. Johnson, who held the Position from 2001 until 2013, testified that the primary job responsibilities of the Position were as follows: “Interpreting the legal statutes in adoptions. It's not just adoptions. We have to know a little bit about termination of parental rights. You have to know about civil -- it's a little bit of everything -- foster care statutes. It's just having that legal background and being able to interpret and explain. And that's the most important role, even as a manager because your consultants that are working for you are having to come and you're having to make really major decisions that will affect people's lives.” Johnson Dep. 18. Ms. Johnson believed of the three primary functions of the Adoptions Service Unit, the adoption review and indexing was the most challenging and required the most work. Johnson Dep. 21, 23.

17. Petitioner submitted an application for the Adoption Service Manager position. This position would have been a promotion for Petitioner. She was a career State employee. She held a bachelor's degree in political science.

18. Jan M. Bazemore applied for the Adoption Services Manager position. She was employed with the Chatham County Department of Social Service at the time she applied. She had received both a bachelor's and master's degree in social work. Ms. Bazemore was ultimately selected for the manager position and received and accepted an offer of the position in August 2013.

19. Mr. Kelley prepared the job posting, particularly the description of the work to be performed and the knowledge skills and abilities and competencies necessary for a successful candidate. He reviewed the job description and considered the knowledge, skills and abilities of the position, including managerial and leadership skills, in creating the posting. He also considered the needs of the work unit. The hiring manager is responsible for preparing the job posting. Mr. Kelley, the Section Chief for Child Welfare Services, was the Hiring Manager for the Position.

20. Human resources conducted an initial review of the applications to determine the pool of minimally qualified candidates. The Office of Human Resources for DSS determined that 19 applicants for the Position were minimally qualified.

21. As hiring manager, Kelley determined the highly qualified candidates from the pool of minimally qualified candidates forwarded to him by human resources. He reviewed the applicants' knowledge and experience related to the adoptions work as well as their managerial and leadership skills. Kristin O'Connor also reviewed each highly qualified candidate's qualifications including their knowledge, skills and abilities related to the adoption services manager position.

22. Mr. Kelley is familiar with promotional priority in the hiring context. He is aware that applications from outside state government are not entitled to promotional priority.

23. Of the applicants that were deemed qualified, Mr. Kelley determined that four applicants were highly qualified and would be interviewed. These four applicants were Petitioner, Meisha Matthews, Heather Lockey Englehart, and Jan Bazemore.

24. Kelley signed the selection log which identifies the highly qualified candidates as well as those who received an interview. Each of the highly qualified candidates received an interview. The selection log was also signed by Rogers.

25. Of the highly qualified applicants chosen for interviews, the Human Resources Office determined that three of the four candidates had promotional preference. These three applicants were Petitioner, Ms. Matthews, and Ms. Lockey Englehart. At the time of their application, all three of these applicants worked on the adoption services team in the Child Welfare Section of DSS.

26. Respondent did not consider Ms. Bazemore to be a Career State Employee and did not find her to be entitled to priority promotional consideration.

27. Mr. Kelley created an Interview Committee consisting of himself and Ms. O'Connor. They conducted interviews for the Position in mid-March 2013. It was customary for at least two individuals at the management level to participate on an interview panel. He requested O'Connor based on her knowledge and experience working in the section and experience with the hiring process. Kelley prepared the interview questions and O'Connor reviewed them and suggested any changes she felt may be appropriate. In preparing the questions, Kelley reviewed the position description and job posting. They were designed to reveal how an applicant thinks about their work and the responsibilities of the position for which they have applied. The same set of interview questions were used for each of the four interviews conducted.

28. Petitioner's interview for the Position with the Interview Committee lasted about an hour. During her interview, Petitioner volunteered answers that brought up her leadership experience. Petitioner also discussed her supervisory experience with the Interview Committee.

29. After the interviews for the Position were concluded, Mr. Kelley could recall checking the references for only one interviewed candidate, Ms. Bazemore.

30. Petitioner had provided references to the Interview Committee. These references included a Wake District Court Judge and an attorney in the Attorney General's Office whose client was the Department. Mr. Kelley could not recall contacting any of these references. Mr. Kelley only spoke to Petitioner's immediate supervisor, Ms. Johnson.

31. Prior to her retirement, Ms. Johnson twice recommended Petitioner as her replacement to Mr. Kelley. Ms. Johnson also recommended Petitioner as her replacement to Gwen Sanders, when Ms. Sanders served as HR Director. Johnson Dep. 50.

32. When Ms. Johnson first recommended Petitioner to Mr. Kelley as her replacement, she told Mr. Kelley that Petitioner would be the best person for the Position because "the staff looked to her as a leader and that – it was a – I loved them dearly, but they are a hard group

sometimes, just like any group can be. They need a strong manager and someone that they respected.” Johnson Dep. 28.

33. Ms. Johnson testified that the second time that she recommended Petitioner for the Position, which was during her exit interview, Mr. Kelly told her, “I’ve got an outside applicant that’s very well qualified.” T. 617; Johnson Dep. 29. At Ms. Johnson’s exit interview, Ms. Johnson and Mr. Kelley discussed the Position and Mr. Kelley made “...a comment that sometimes it’s best to bring someone outside with a new vision.” T. 624-25; Johnson Dep. 35-36.

34. Mr. Kelley testified that Ms. Johnson’s recommendation of Petitioner was “made with a lot of hesitation” and “she expressed it with some concern.” T. 502-03. Ms. Johnson denies that she was reluctant or had any reservations in recommending Petitioner for the Position. Rather, Ms. Johnson merely suggested to Mr. Kelley that Petitioner “...have some management training skills with State Personnel. That was no bad reflection on her. I didn’t intend for that to be a reflection on her, but I’m an honest person. And I recommended her, but I also know that she needed some managerial training. That is not unusual. Usually when you hire a manager, just like when I was hired or Patrick was hired or any other manager, you take that state personnel training. It’s good. Every manager with state government needs to take it and probably take it every few years. But that was no reflection on her.” T. 635.

35. Mr. Kelley decided to hire Ms. Bazemore for the Position in April 2013. However, despite a high vacancy rate in staff and a backlog in reviewing files, Ms. Bazemore was not offered the position until August 2014. Mr. Kelley offered Ms. Bazemore the position in a telephone call in August 2013. At hearing, Respondent did not explain why Ms. Bazemore’s hiring was delayed. Ms. Johnson had given Mr. Kelley and Ms. O’Connor one year’s advanced notice of her retirement so that Mr. Kelley could hire her replacement and so that she would train the person before she left. Johnson Dep. 31.

36. Both O’Connor and Kelley referred to the need to have a manager that could understand the continuum of services provided through the child welfare services system and how the adoptions services team fit into that continuum. Additionally, the successful candidate needed leadership skills and supervisory experience in the adoptions context.

37. At the time she applied for the adoption services manager position, Bazemore was the placement services supervisor with the Chatham County DSS with supervisory responsibility for five employees. She had been in that position since August 2008 and had over four years of directly related supervisory experience.

38. O’Connor and Kelley believed Bazemore was more comprehensive than Petitioner in her interview responses and was able to make connections between the outcomes sought in the Child Welfare Services section. She was able to speak of the REAP initiative despite Chatham County not being involved in that initiative. She was familiar with the NC Kids function. The interview team believed Bazemore revealed a more positive and proactive approach, and was able to give detailed examples of her work throughout her responses. Overall the interviewers

thought Bazemore was better able to express how to move the team forward versus maintaining the status quo and how to manage individuals in difficult situations.

39. Petitioner had supervised volunteers of the Guardian ad Litem program during her work with the Administrative Office of the Courts. The interview team thought Petitioner failed to make any connection between her experience supervising volunteers in the GAL program and the adoption services manager position. At the time she applied for the adoption services manager position Petitioner did not officially have direct experience supervising State employees.

40. Ms. Johnson testified that Petitioner would serve as her “back-up” for the Position when she was away from the office. Johnson Dep. 44-45. According to Ms. Johnson, “the other team members, the other staff, respected [Petitioner], would go to her and ask her questions. Anytime I was not there, they would go to [Petitioner.]” *Id.*

41. Petitioner showed she was knowledgeable and professional. Her answers focused more on the day-to-day operations and the interview team thought she did not show a broader understanding of the work. Petitioner had experience with the Confidential Intermediary function as the only person on the adoption services team working in that role.

42. During the seven months between Ms. Johnson’s retirement and Ms. Bazemore’s start of employment, Petitioner largely performed the duties of the Position, without additional compensation. Indeed, Respondent acknowledged as much in Petitioner’s interim performance review on May 31, 2013, in which Petitioner’s immediate supervisor wrote, “Anna has taken on a lead role on her team since the supervisor retired from the agency and helped lead the completion of the federal AFCARS report. She takes pride in her work and is a strong advocate for the needs of the team.” T. 217-19; Pet. Ex. 31.

43. O’Connor and Kelley believed Petitioner had a less positive approach in her responses. She discussed administrative changes and the stress and uncertainty associated with that. In reference to the adoption services team and solving conflicts, she discussed the strong personalities within the team and the need for a strong leader and supervisor. She stated that she would be good for the position. Petitioner acknowledged that she would need training with personnel matters.

44. O’Connor and Kelley discussed each candidate following their interviews and again after all of the interviews of the highly qualified candidates had been completed. They were in agreement that Bazemore reflected the knowledge, skills and abilities required of the manager position, and that through her interview she demonstrated the skills and behaviors they were looking for in a successful candidate.

45. Mr. Kelley made a conscious decision to reject the internal applicants and selected Ms. Bazemore, whom he knew to be an external candidate. Mr. Kelley testified that he thought an external candidate would be preferential because DSS benefits from having a diverse applicant pool.

46. Ms. Bazemore was hired for the Position, effective October 15, 2013.

47. Petitioner consistently has been evaluated as an "Outstanding" employee in her performance evaluations throughout her tenure. In her Work Plans and evaluations from 2006 to 2012, management rated her as Outstanding.

48. Ms. Johnson testified that she rated Petitioner as "Outstanding" in her performance evaluations and that she did not give all of her subordinates such a high ranking. Ms. Johnson testified that she took the evaluation process "very seriously" and rewarded those who went "above and beyond." Johnson Dep. 47

49. Ms. Johnson, while recommending Petitioner for the position among the internal candidates, did not know the qualifications or experience of Bazemore. Johnson acknowledged that having supervisory experience was helpful.

50. Petitioner and Johnson had developed a friendship during their time working together which included Petitioner visiting Johnson at her beach home.

51. Before Ms. Johnson retired, Petitioner submitted a reclassification request to DSS management. Petitioner's request was not granted.

52. In April 2013, prior to Ms. Bazemore's selection for the Position, Petitioner asked Mr. Kelley to consider reclassifying her position from salary grade 71 to salary grade 73, given that other consultants were salary grade 73 and given that she had been managing the confidential intermediary program for five years without additional compensation. Mr. Kelley responded by telling Petitioner that he did not feel that confidential intermediary was a program.

53. At the time that Petitioner's reclassification request was pending, the DSS was involved in a department wide workplace planning initiative that involved each employee completing a talent inventory and new job description. There are over 400 positions in the DSS that required new job descriptions and a talent inventory. The DSS human resources office was informed of the initiative in the spring of 2013. The DSS human resources office was understaffed at the time the initiative was underway. As of the hearing, human resources had four of six positions filled. Based on the talent inventory and job description project for over 400 positions, the DSS HR office has not been able to move on any reclassification requests.

54. In July 2013, prior to Ms. Bazemore's selection for the Position, Petitioner requested for a second time a reclassification of her salary grade. As of the hearing, Petitioner had not received a formal response to her request from management but, in the course of this litigation, Petitioner learned through the deposition of Mr. Kelley that the request was denied.

55. Kelley reviewed Petitioner's most recent reclassification request and did not agree that reclassification was indicated. This was based on the fact that he believed Petitioner's work duties had not changed significantly.

56. Prior to Ms. Johnson's retirement, Petitioner raised concerns about problems with inadequate heat in her office. Specifically, the Adoption Service team worked in a building for three to four years with inadequate heating. According to Ms. Johnson, Petitioner led the efforts in having this issue addressed and finally resolved by management. These concerns were raised by other members on the adoption services team and Kelley shared those concerns. Kelley acknowledged that this was a problem and supported the team as best he could, including advocating repeatedly to his management that the problem be dealt with. He even considered moving the team as he did not consider the conditions to be conducive to a productive work environment.

57. Prior to Ms. Bazemore's selection for the Position, Petitioner had raised concerns to management about compliance with certain issues within DSS and the Child Welfare Section. She raised concerns about inadequate staffing as well as concerns about a shortened adoption indexing review. This was a matter of discussion for some time within the Child Welfare Services section at various levels of management. Ultimately, the director determined that in order to address the backlog of adoptions to index, a minimal review was all that would be done. While management and team members alike expressed a desire to conduct a quality assurance review, the minimal review was all that was required by law.

58. In her Petition for Contested Case Hearing, Petitioner asserted a claim based on the denial of promotional priority consideration, which is contrary to N.C. Gen. Stat. § 126-7.1.

59. Mr. Stephen Davis was tendered by Petitioner and accepted as an expert witness in the following categories: As an expert regarding the State Personnel Act, its implementing regulations, and the Human Resources Manual (formerly known as the State Personnel Manual); as an expert regarding the procedures to be followed in the hiring and promotion of State Employees consistent with the State Personnel Act, regulations and Human Resources Manual; and, as an expert regarding the development and use of an EEO plans in hiring and promotional decisions, particularly with respect to priority promotional consideration.

60. From July 1978 until November 1981, Mr. Davis worked as a Personnel Analyst for the Division of Health Services (which was a Division of the former Department of Human Resources). From November 1981 until May 1984, Mr. Davis worked as a Personnel Analyst II for the Office of State Personnel. From May 1984 until 1985, Mr. Davis worked at N.C. State University as an Associate HR Director. From 1985 until July 1989, Mr. Davis worked as the Assistant Personnel Director for the Department of Administration.

61. From July 1989 until February 1993, Mr. Davis became a Personnel Officer for the Office of the State Controller. In this role, he was responsible for establishing a personnel system for the newly-created agency. He also was responsible for developing personnel-related policies. From February 1993 until May 1998, Mr. Davis served as Division Director for the Division of Human Resources with the Department of Health and Human Services. In this role, Mr. Davis administered three personnel systems: (a) one system for approximately 20,000 employees of DHHS who were subject to the State Personnel Act; (b) one education system subject to 116C of the North Carolina General Statutes; and (c) one local government system for local social services, public health, and mental health departments (other than those that were substantially equivalent in their personnel systems).

62. From May 1998 until May 2000, Mr. Davis worked as the Deputy Director for the Office of State Personnel. From May 2000 until September 2000, Mr. Davis served as the Assistant Secretary for Human Resources and Community Services for DHHS. From September 2000 until February 2001, Mr. Davis served as the interim State Personnel Director at the Office of State Personnel. From February 2001 until July 2003, Mr. Davis was appointed as Director of Employee Relations and Local Government Services. In that role, he oversaw a staff of ten consultants, who worked with assigned agencies on employee relations issues.

63. Since retiring from State employment, Mr. Davis has engaged in contract work regarding personnel issues for state and local government agencies. In the course of that work, Mr. Davis has proactively stayed informed of changes to the State Personnel System [State Human Resources System], its implementing regulations, and the policies adopted by the State Human Resources Commission. Over the past five years, Mr. Davis has been retained as an expert witness in other personnel matters.

64. While retained as an expert witness in this case, Mr. Davis reviewed the following materials during the course of formulating his opinions:

- a. Excerpts from the Petitioner's personnel file;
- b. The job posting for the Position;
- c. The Petition for Contested Case Hearing;
- d. The Prehearing Statements filed by both parties;
- e. N.C. Gen. Stat. § 126 *et seq.*, with emphasis on N.C. Gen. Stat. § 126-7.1 and its implementing regulations; and
- f. Depositions taken during the course of the litigation;
- g. The Hearing Officer's Report from Petitioner's internal grievance;
- h. Ms. Bazemore's and Petitioner's applications for employment;
- i. Interview notes taken during Respondent's interview of Ms. Bazemore for the Position;
- j. Performance evaluations regarding Petitioner.

65. Mr. Davis testified that the purpose of the promotional priority rights are as follows:

The promotional priority policy exists to - certainly in the eyes of state employees - assure fairness in the selection when they are competing with candidates who are not state employees. So this particular policy is very clear in that it is specifically designated for career state employees, that is those who are in a permanent position and who have been continuously employed, that is without a break in service, for the immediately preceding 24 months. The policy is a form of protection, I think, for state employees. It enables a state employee some recourse if they have career status, if they have not been selected when competing with an outside candidate whose qualifications are deemed less than equal. And so this particular policy that the state Human Resources Commission approved in 1997 assured those protections and also gave those employees recourse if they felt they had been denied their priority as a state employee. T. 113

66. Mr. Davis testified that based upon his review, Petitioner was entitled to promotional priority. When applying for the Position, Petitioner had 20 years' of experience in social work, 11 of which included on-the-job consultative experience with hands-on work. Ms. Bazemore only had 7 years' of experience in social work, less than 5 of which included supervisory experience.

67. Mr. Davis testified that the experience of Petitioner was significantly better than that of Ms. Bazemore:

When you consider that the 20 years that Ms. Hamburg brings to the job, or brings to the table, I think appropriately recognizes that she has had this amount of time to develop skills and abilities and knowledge that are probably an exact match that are shown on the job posting, if not exact, a pretty close match. So I would argue that certainly that range of experience compared to that presented by the individual hired is dramatically wide. There's a big gap there. . . . [W]hen you have such a wide disparity, I think, in experience, I don't know how you can come to the conclusion, quite frankly, that 20 plus years perhaps is equal to seven years. I can't get there." T. 122

68. Ms. Bazemore has a one-year master's degree in Social Work and Petitioner has an undergraduate degree in political science.

69. Davis opined that the education and job experience set forth in the posting established equivalencies such that each combination of education and experience would make the applicant qualified for the position. He stated that someone with an undergraduate degree and 15 years of on the job, specific experience in the field of work may be better suited to a position than someone with a master's degree and less experience. Mr. Davis testified that, generally, listings under the Minimum Education and Experience Requirements for job postings are equivalent.

70. Davis acknowledged that there is a qualitative component to a hiring. He did not know Bazemore and did not participate in any of the interviews such that he could assess the candidates' qualitative performance. He was also not familiar with the day-to-day work

performed in the Child Welfare Services section and was not familiar with the personalities and working relationships within the adoption services team.

71. Petitioner has taken staff development training throughout the course of her 20-year career in the areas of child abuse, neglect and child welfare. Petitioner completed the Office of State Personnel's month-long professional management course while working with the Guardian ad Litem program.

72. Ms. Bazemore had no experience with the confidential intermediary work and had never done anything with the AFCARS report. Petitioner had substantial experience in both areas of work. Petitioner took a lead role in submitting the AFCAR report in 2013, following Ms. Johnson's retirement, which was a responsibility above and beyond her normal duties as Program Consultant. Both confidential intermediary work and the submission of the AFCARS report are supervised by the Social Services Manager II.

73. According to her application, Ms. Bazemore supervised 5 employees for approximately 4 years 4 months while employed by Chatham County. By contrast, according to Petitioner's application, Petitioner supervised over 60 volunteers for over 10 years as a Program Supervisor for the Guardian ad Litem Program. Davis acknowledged that managers have discretion whether to consider an applicant's experience supervising volunteers and that management could consider the needs of the work unit in assessing candidates.

74. As the job posting was written, a successful candidate could present experience either in a supervisory role or a consultative role. In Mr. Davis' opinion, Ms. Bazemore's supervisory experience was not significantly better than Petitioner's 11 years of on-the-job consultative experience.

75. No direct questions regarding supervision were asked during the applicants' interview. The Interview Committee determined the applicants' supervisory experience only from the information provided in their respective applications. Based on only his review of the applications, Mr. Kelley determined that Ms. Bazemore had more supervisory experience than the other highly-qualified applicants who were interviewed.

76. The Interview Committee did not give Petitioner credit for her supervisory experience with the Guardian Ad Litem (GAL) volunteers, during which Petitioner supervised approximately 60 volunteers for over 10 years.

77. According to Mr. Davis, the Office of State Human Resources historically encourages HR Directors to advise managers to give applicants credit for supervisory experience over volunteers, if that experience is germane to the nature of the work to be performed. Mr. Davis testified that, with regard to Petitioner's supervision of GAL volunteers, "I would contend that that level of supervisory responsibility and experience is as good as supervising a full-time employee and in some respect maybe more of a challenge." T. 124-25.

78. According to Mr. Davis, Petitioner's supervisory experience over the GAL volunteers was germane to the nature of the work to be performed, given the nature of the knowledge,

skills and abilities of the Position. Specifically, the knowledge, skills and abilities included: (a) effective supervisory and leadership; (b) providing support to private child placing agencies; and (c) a strong attention to detail. In Mr. Davis' opinion, Petitioner's skills in supervising GAL volunteers was "absolutely transferable" to the skills required for the Position.

79. Ms. Johnson testified that she would have recommended Petitioner for the Position, even if Petitioner had limited supervisory experience. Johnson Dep. 27. Ms. Johnson stated that she would have done so because:

"[Petitioner] had done such a good job with confidential intermediary services. She really took it and as a program. The other employees liked Anna. They respected her. And that is a huge part of having a leader in a manager right there. There were other -- I knew she knew the -- I had trained her for years. I knew she knew the statutes. She knew how to interpret them. She was good on the phone with the public. It's hard to find those leadership qualities in just anyone. And I liked to think, too, she looked at me as setting an example. So she knew go to personnel, go to Human Resources, and, you know -- trying to the right way to do things." Johnson Dep. 27

80. Respondent presented no evidence to show that the applicants' interview responses were scored or ranked with "fair and valid selection criteria." See N.C. Admin. Code 1H .0634. Respondent presented no evidence of any methods or means by which the applicants' interview responses were measured.

81. In Mr. Davis' opinion, the questions posed by the Interview Committee to the applicants were not sufficiently structured to elicit responses that ultimately were used as the justification for the selection decision; especially in light of the fact that Petitioner's experience was far greater than that of Ms. Bazemore.

82. Mr. Davis opined that selection of an outside applicant over an applicant with promotional priority for the purpose of avoiding an internal candidate is not compliant with N.C. Gen. Stat. §126-7.1. Mr. Davis opined that selection of an outside applicant over an applicant with promotional priority for the purpose of bringing in a "different perspective" or overcoming "morale problems" is not compliant with N.C. Gen. Stat. §126-7.1.

83. The interview team considered that Petitioner and Bazemore were both highly qualified but that Bazemore was better able to express her experience as a leader and supervisor better during the interview. The posting identified a preference for someone with supervisory experience and Mr. Kelley believed Bazemore's supervisory experience from 2008 until she was hired was stronger than Petitioner's experiences.

84. Mr. Rogers received the hiring packet for the adoption services manager team. Rogers was aware that promotional priority was indicated with respect to Petitioner. Consideration was given to the qualifications of both Petitioner and Bazemore as those qualifications related to the adoption services manager position and the needs of the adoption services team.

85. Mr. Rogers gave approval for Ms. Bazemore's hiring for the Position, upon the recommendation of Mr. Kelley. To justify his recommendation, Mr. Kelley gave Mr. Rogers a comparison chart summarizing the candidates' knowledge, skills and abilities. Nothing in this comparison chart justified the selection of Ms. Bazemore based upon her interview. Mr. Rogers relied upon this chart in approving the selection of Ms. Bazemore. Mr. Rogers testified that if he found that the chart was inaccurate, this might affect his approval of Ms. Bazemore's selection. Because it was not provided in discovery, the chart was not introduced as an exhibit.

86. In her application for the Position, Petitioner identified herself as Hispanic. She also identified her date of birth as 7/20/1964, which also indicates that she was over forty (40) years of age.

87. Petitioner's race was not viewable to Kelley as hiring manager or O'Connor as an interview panelist. Petitioner had not previously held herself out as identifying as Hispanic and confirmed that her personnel file would reveal she not had identified herself as Caucasian until applying for the adoption services manager position.

88. When Respondent submitted its request that the Position be posted, the Human Resources Office for DSS ("DSS HR") noted that the department's EEO Plan indicated a need for outreach recruitment.

89. The 2013 EEO Plan for DHHS (the "2013 Departmental EEO Plan") establishes policies, procedures, and goals for agencies of the Department, including DSS, to meet in order to "...provide equal employment opportunities for all persons regardless of race, color, national origin, creed, religion, sex, age, disability, genetic information or political affiliation." Pet. Ex. 37.

90. The 2013 EEO Plan written for DSS (the "2013 Division EEO Plan") provides that DSS shall "assure that all the employment practices of the agency will be administered without regard to race, color, national origin, creed, religion, sex, age, disability, or political affiliation." Pet. Ex. 36.

91. The 2013 Division EEO Plan delegated "the responsibility for the actual development of the Equal Employment Opportunity plan and program to the EEO officer. However, responsibility for the implementation of and compliance with this plan and program will be shared by the Director and all managers and supervisors." Pet. Ex. 36.

92. One program objective in the 2013 Division EEO Plan included taking steps to "ensure greater utilization of all persons by identifying the underutilized groups based upon their representation in the workforce and making special efforts to increase their participation in . . . recruitment, selection, training and development, upward mobility programs, and any other terms, condition or privilege of employment." Pet. Ex. 36

93. The EEO plan states that neither race nor age can be a factor in making a hiring or promotion decision. Respondent follows a merit based hiring policy which requires the hiring

of the most qualified candidate for a position. This policy is not inconsistent with the equal employment goals set forth in its EEO policy and plan.

94. Mr. Kelley, as the hiring manager and Section Chief, was aware of the existence of the 2013 Departmental EEO Plan but had not seen the 2013 Departmental EEO Plan or 2013 Division EEO Plan.

95. When Mr. Kelley signed the Selection Log as Hiring Manager, the following language is written above his signature: "All of the below Hiring Authorities have given consideration for EEO, Priority Promotion, RIF & Veteran Preferences." Res. Ex. 10.

96. Mr. Kelley testified that his signature did not mean that he was attesting to that review, but "That's an agency responsibility and that other individuals have responsibility to ensure some of those components are met." T. 463.

97. The EEO plan identifies areas of underutilization -- areas where particular classes of employees are underrepresented in the work pool of DHHS as compared to the general population. The plan sets goals in an attempt to address the identified underutilizations, but there are not quotas that must be adhered to by Respondent.

98. The 2013 Division EEO Plan projected that there was an underutilization for a female other than a White or Black female (identified as OF) in the Standard Occupational Classification ("SOC") Category to which Petitioner applied. Mr. Kelley confirmed that the hiring of an Other Female (that is, Other than a White or Black Female) was a hiring goal for the Division in the SOC Professional Category.

99. Mr. Kelley testified that he did not refer to the 2013 Division EEO Plan when making hiring recommendations or hiring decisions of the Position. Mr. Kelley stated that he did not recall discussing with anybody in HR about the EEO aspects of the hiring for the Position.

100. The 2013 Departmental EEO Plan provides that:

To ensure the selection procedures, hiring standards and placement process remain free from discrimination based on race, color, creed, religion, sex, age, national origin, disability, genetic information and political affiliation, the following activities are occurring

a. Require that hiring managers and human resources offices [sic], in completing the merit-based requirements, determine first whether the position is an EEO goal or there is an underutilized group.

b. Monitor the difference in qualified applicant pools and highly qualified pools to assure discrimination was not involved in the decision. This includes monitoring throughout the entire process, from the initial advertising of the position to the offer of hire.

c. Encourage hiring managers to interview members of underutilized groups. Underutilized groups should be interviewed based

upon their qualification and not because of membership in any class. Pet. Ex. 37.

101. The 2013 Departmental EEO Plan provides that: "It is a goal of [DHHS] to increase the number of minorities in upper management and supervisory positions. Because of this, specific recruitment efforts will be implemented, including encouraging current employees to apply for promotional opportunities." Pet. Ex. 37. Mr. Kelley testified that he was unaware of this directive when making the hiring decision for the Position.

102. In January 2014, a focus group prepared a report for the Child Welfare Services Section of DSS to examine, among other things, the agency's climate and culture. A number of concerns about discrimination were set forth in that report, as follows:

- a. There's concern among staff . . . that there are cultural and racial issues not being addressed. This is one area that needs to be worked on. Recognition is the first step.
- b. How can you see good leadership with 99.9 percent of the leaders are white? That's not diversity, not inclusion, it's discriminatory. The closed door meetings might as well say 'Whites only.' All managers there are White males. T. 507.

103. The staff survey conducted in 2013 and presented in a January 2014 revealed some concerns related to unresolved cultural and race related issues and a lack of diversity in management positions. There was nothing more specific as to what the concerns were and whether these had to do with discrimination in the hiring process or whether they related to the individuals involved in the hiring decision for the adoption services manager position. Kelley and O'Connor were not aware of these concerns at the time they were conducting the hiring process for the adoption services manager position.

104. Other than this contested case, Petitioner has not made any other complaint about age or race discrimination. Petitioner was unaware of Kelley or O'Connor ever behaving in a discriminatory manner and she never heard them make any discriminatory remarks or suggest that they preferred to hire someone of a particular race or age.

105. Petitioner filed her Step 1 grievance on September 10, 2013. On September 16, 2013, Mr. Kelley sent a letter to Petitioner, noting that her grievance "...was considered timely and this Memorandum constitutes my Step I Response in according with DHHS Directive III-8, Employee Grievance Policy." Pet. Ex. 7. In that letter, Mr. Kelley stated: "Neither your age nor your ethnicity had any bearing on the recommendation of the Program Manger [sic] II position." Pet. Ex. 7

106. Petitioner filed her Step 2 grievance on September 20, 2013. Mr. Black sent Petitioner a letter on September 30, 2013, denying her grievance. That letter provided as follows: "Based on my consideration of the issues involved, it is my determination that your "Race and Age" have no bearing on your non-selection for the Social Services Program Manager II position." Pet. Ex. 9

107. Petitioner filed her Step 3 grievance on October 2, 2013. The agency hearing officer conducted the grievance hearing on October 28, 2013 and issued a Hearing Report and Recommendation on December 18, 2013. On January 8, 2014, Mark Payne, acting on behalf of the DHHS Secretary, sent Petitioner a Certified Mail letter denying her grievance and accepting the Recommendation of the DHHS Hearing Officer.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. All parties are properly before the Office of Administrative Hearings (OAH), and jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. A court need not make findings as to every fact that arises from the evidence and need 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. Petitioner has the burden of proving that Respondent unlawfully discriminated against her because of her race and/or age. With regard to Petitioner's discrimination claim, the North Carolina Supreme Court has adopted the burden-shifting scheme used by federal courts, which was articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). See *North Carolina Dep't of Corr. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983); *North Carolina Dep't of Crime Control & Pub. Safety v. Greene*, 172 N.C. App. 530, 537-38, 616 S.E.2d 594, 600 (2005).
4. The ultimate burden of persuading the trier of fact that the employer intentionally discriminated against an applicant remains at all time with the applicant. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 143, 147 L.Ed. 2d 105, 117 (2000); see also *Gibson*, 308 N.C. at 138, 301 S.E.2d at 83.
5. In order to prove discrimination, Petitioner employee must prove that the protected trait(s) actually motivated the adverse employment decision. *Hill v. Lockheed Martin Logistics Mgmt.*, 354 F.3d 277, 286 (4th Cir. 2004) ("The protected trait must have actually played a role in the employer's decision-making process, and had a determinative influence on the outcome." (internal quotation marks omitted)).
6. The issue is whether the employer's decision was unlawfully motivated. *Enoch v. Alamance County DSS*, 164 N.C.App. 233, 595 S.E.2d 744, 752 (2004)(citing *Olsen v. Southern Pac. Transp. Co.*, 480 F.Supp. 773, 780 (N.D. Cal. 1979)) "It is not enough . . . to

disbelieve the employer; the fact finder must believe the [claimant's] explanation of intentional discrimination." *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 519, 125 L. Ed. 2d 407, 424 (1993).

7. Petitioner failed to prove ultimately by the greater weight of the evidence that Respondent's non-selection for the Position was the result of discrimination based on Petitioner's race or age. Petitioner failed to prove the decision maker had a discriminatory animus against Petitioner based on Petitioner's race or age.

8. On August 21, 2013, the North Carolina Governor signed House Bill 834 into law which substantially revised Chapter 126 of the General Statutes, now cited as State Personnel System [State Human Resources System]. Any use of terms such as State Personnel Act or Office of State Personnel or the like shall be construed as a reference to the State Human Resources System.

9. Petitioner was a career state employee at the time she applied for the Position and entitled to the protections of the North Carolina State Human Resources System, including the provision that provided her with promotional priority rights N.C. Gen. Stat. § 126-7.1

10. The State Personnel Act specifically holds that Career State employees shall be granted certain preferences when seeking promotional opportunities in State employment:

If a State employee subject to this section: (1) Applies for another position of State employment that would constitute a promotion; and (2) Has substantially equal qualifications as an applicant who is not a State employee; then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

N.C. Gen. Stat. § 126-7.1(e).

11. The term "qualifications" as used in N.C. Gen. Stat. § 126-7.1(e) is defined as follows: "(1) Training or education; (2) Years of experience; and (3) Other skills, knowledge and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for." N.C. Gen. Stat. § 126-7.1(g)

12. Under the regulations implementing N.C. Gen. Stat. § 126-7.1(e);, an employee with promotional priority rights must be selected for promotion over an outside applicant when it is practical and feasible:

Promotion is a change in status upward, documented according to customary professional procedure and approved by the State Personnel Director, resulting from assignment to a position assigned a higher salary grade. When it is practical and feasible, a vacancy shall be filled from among eligible employees; a vacancy must be filled by an applying employee if required by 25 NCAC, Subchapter 1H, Recruitment and Selection, Section .0600, General Provisions, Rule .0625, Promotion Priority Consideration for Current

Employees. Selection shall be based upon demonstrated capacity, quality, and length of service.

25 N.C. Admin. Code 1D .0301

13. Under the regulations implementing N.C. Gen. Stat. § 126-7.1(e), an employee with promotional priority rights must be selected for promotion over an outside applicant unless the hiring authority can reasonably determine that the outside applicant's job-related qualifications are significantly better than the those of the State employee:

(a) Promotional priority consideration shall be provided when a career State employee, as defined in G.S. 126-1.1, applies for a position that is a higher salary grade (salary grade equivalency) or has a higher statewide journey market rate and the eligible employee is in competition with outside applicants.

(b) If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee must receive the job offer over an outside applicant.

(c) "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

25 N.C. Admin. Code 1H .0801

14. In this case, it is not disputed that Petitioner was entitled to promotional priority under N.C. Gen. Stat. § 126-7.1(e) and that the selected candidate was not.

15. In this case, the Undersigned cannot discern what, if any, objective merit-based standards Respondent applied in determining that Ms. Bazemore's job-related qualifications were "significantly better" than those of Petitioner. The evidence suggests that Respondent, in making the selection, did not properly apply Petitioner's training, years of experience and other demonstrated skills, knowledge and abilities as advertised in the job posting for the Position. Instead, the Respondent primarily based its selection decision on a subjective and standard-less interview process, without the use of any uniform score or ranking system.

16. In this case, Petitioner has proven, by a greater weight of the evidence, that she had, at the very least, substantially equal qualifications to that of the selected candidate, Ms. Bazemore:

a. First, Petitioner has shown that she had, at least, substantially equal training or education when compared to Ms. Bazemore. Although Ms. Bazemore completed a one-year MSW program in social work and Petitioner did not, Petitioner proved that she regularly has taken staff development training throughout the course of her 20-year career in the areas of child abuse, neglect and child welfare. Moreover, Petitioner completed the Office of State Personnel's month-long professional management course while working with the Guardian ad Litem (GAL) program.

b. Second, Petitioner has shown that she had superior years of experience when compared to Ms. Bazemore. Specifically, Petitioner had 20 years of experience in social work, 11 of which included on-the-job consultative experience with hands-on work while Ms. Bazemore only had 7 years' of experience in social work, less than 5 of which included supervisory experience.

c. Third, Petitioner has shown that she had superior attainment of the skills, knowledge and abilities set forth in the job posting when compared to Ms. Bazemore. Petitioner has shown an outstanding level of "working knowledge of the laws, rules and policies related to the adoption of children in North Carolina" during her 20-year career with DSS. According to Petitioner's last supervisor, Ms. Johnson, Petitioner has demonstrated "effective supervisory and leadership" to members on the Adoptions Service Unit, as she often served as a back-up during Ms. Johnson's absences. Moreover, Petitioner exercised supervisory and leadership skills for over 10 years while supervising over 60 volunteers in the GAL program. Petitioner's performance evaluations indicate that Petitioner has a "strong attention to detail and demonstrated ability to use automated information systems and data to inform and improve program operations." By contrast, Respondent has not presented any objective or competent evidence that Ms. Bazemore exercised these abilities.

17. Respondent violated N.C. Gen. Stat. § 126-7.1(e) when it failed to give Petitioner promotional priority consideration, and failed to select Petitioner instead of a non-State applicant for the Position.

18. Respondent violated N.C. Gen. Stat. § 126-7.1(e) because of the failure of the Department to promote Petitioner as a Career State Employee who had more than substantially equivalent qualifications than the successful applicant.

19. As remedy for Respondent's violation of N.C. Gen. Stat. § 126-7.1 (e), Petitioner is entitled to be placed in a comparable position, with back pay and benefits. *See Dockery v. NC Dep't of Human Resources*, 120 N.C. App. 827, 832, 463 S.E.2d 580, 584 (1995) (affirming State Personnel Commission's order to place successful petitioner in the position that she sought, with back pay).

20. Respondent's denial of Petitioner's request to use leave in connection with her pursuit of this Contested Case is contrary to the Leave Policy in the State Human Resources Manual, as codified in the N.C. Administrative Code. 25 N.C. Admin. Code 01E .1010 provides as follows:

(a) An appointing authority shall grant leave with pay to an employee for any of the following purposes: (1) to prepare for participation in his or her internal agency grievance or mediation procedure in accordance with 25 NCAC 01J .1208(a) [and] (2) to participate in contested case hearings or other administrative hearings in accordance with 25 NCAC 01J .1208(b).

21. Furthermore, 25 N.C. Admin. Code 01D .1937 provides that “The time an employee spends during a regular work schedule in adjusting a grievance under the state procedure on Employee Appeals and Grievances in work time.” Respondent’s denial of Petitioner’s request was arbitrary and capricious and Petitioner is entitled to reinstatement of the vacations days that she was required to use in pursuit of this Contested Case.

22. In accordance with N.C. Gen. Stat. § 150B-33(b)(11), an administrative law judge may “order the assessment of reasonable attorneys’ fees and witnesses’ fees against the State agency involved in contested cases decided under ... Chapter 126 where the administrative law judge ...orders reinstatement or back pay.”

23. In accordance with N.C. Gen. Stat. § 126-34.02 the “Office of Administrative Hearings may award attorneys’ fees to an employee where reinstatement or back pay is ordered.”

24. The starting point for determining the amount of a reasonable fee is the calculation of “the number of hours reasonable expended on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed2d 40 (1983).

25. The determination of a reasonable attorney’s fee is a matter of discretion with the Court. See *Robinson v. Equifax Info. Services*, 560 F.3d 235, 243 (4th Cir. 2009). In determining what is reasonable, the Fourth Circuit has instructed that a Court should be guided by the following factors, known as the “Johnson factors”: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney’s opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney’s expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys’ fees awards in similar cases. *Grissom v. The Mills Corp.*, 549 F.3d 313, 321 (4th Cir. 2008) (applying twelve-factor test set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir.1974)) (citation omitted).

26. Petitioner has filed a Motion and Affidavit for Attorneys’ Fees and Costs which includes a Detail Fee Transaction File List and a Detail Cost Transaction File List. The Undersigned has studied and considered all matters regarding Petitioner’s Motion.

27. Petitioner seeks an award of attorneys’ fees and related costs in the amount of \$73,339.10 (see Para 10 of Petitioner’s Motion) (incorrectly calculated as \$72, 636.10 in Para 1 of the Motion) based upon the handling of this case as follows: Fees for Allen Pinnix & Nichols law firm: \$63,616.00, Costs for Allen, Pinnix & Nichols law firm: \$6,713.10, and Fees and Costs of Expert Witness Steve Davis: \$3,010.00. All attorneys representing the Petitioner are licensed in the State of North Carolina and are attorneys in good standing with the North Carolina Courts.

28. An award of attorney fees should be based on rates prevailing in the community where the action takes place. The Undersigned has reviewed the qualifications and experience of Petitioner's attorneys as well as the reasonableness of the charges associated with paralegal and administrative services. Based on the information provided and the Undersigned's own knowledge of and experience with prevailing rates charged in the relevant community, the Undersigned finds the requested hourly fees to be reasonable. Further, the Undersigned finds that the time charged by each of the legal professionals involved in the representation of the Petitioner are reasonable in light of their respective skill, training, and experience.

29. Petitioner seeks to recover costs incurred by her attorneys for filing fees, postage, coping, faxes, and the like as well as the fees and costs of Petitioner's expert witness. The Undersigned concludes the claimed costs are reasonable. The Undersigned has reviewed these fees and costs, and finds them to be proper in light of the complexity and novelty of the matters at issue, the resources available to the Petitioner, and the skill necessary to successfully represent the Petitioner.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

FINAL DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency.

Based on those conclusions and the facts in this case, the Undersigned holds as follows:

- I. Petitioner met the qualifications for the position of Social Services Program Manager;
- II. Petitioner was entitled to priority promotional rights as a permanent career State Employee for the Position;
- III. The selected candidate, Jan M. Bazemore, was a non-State employee;
- IV. The Hiring Committee and the Department hired Ms. Bazemore, a non-State employee, as the successful applicant;
- V. Petitioner's qualifications in all regards were substantially equal and in many areas exceeded the qualifications of Ms. Bazemore; and
- VI. Respondent failed to provide Petitioner with promotional priority in denying Petitioner promotion to the Position.

Petitioner is entitled to appropriate and proper placement with a salary commensurate to that to which she would have been entitled had Respondent not erred in denying Petitioner promotion to the position of Social Services Program Manager. Petitioner is to be paid all compensation to which she would otherwise have been entitled since the date of the hiring of the non-State applicant, including but not limited to back pay, leave, contributions into the State retirement system, and any and all benefits to which she would have been entitled. Petitioner is further entitled to reinstatement of the vacations days that she was required to use in pursuit of this Contested Case.

The Undersigned further holds that Petitioner's Motion for Attorneys' Fees and Costs is granted, and Petitioner shall have and recover of the Respondent the sum \$63,616.00 in attorney's fees and \$9,723.10 in costs.

NOTICE

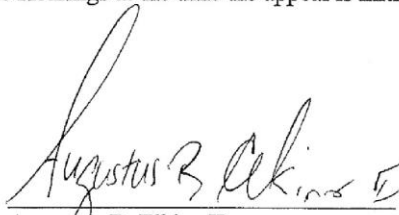
THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 126-34.02(a): "An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. 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."

In conformity with the Office of Administrative Hearings' Rules, 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.

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 the Court of Appeals 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 is the 20th day of November, 2014.


Augustus B. Elkins II
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2014 DEC -9 AM 10:55

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 OSP 04286

Office of

KARIS FITCH,
Petitioner,
NORTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY,
Respondent.

**FINAL DECISION
ORDER ENFORCING
SETTLEMENT AGREEMENT**

HAVING HEARD and reviewed the Petitioner's Motion to Enforce Settlement Agreement, and having considered the governing law, the filings, and the arguments of counsel for both parties, the Court finds as follows:

FINDINGS OF FACT

1. On July 2, 2014, counsel for Petitioner Michael C. Byrne sent the following communication to Assistant Attorney General Tamika Henderson, counsel for the Respondent, upon Ms. Henderson informing the undersigned that she was counsel for the Respondent:

Dear Tamika:

Thank you. Please note that I have been authorized to make the following settlement offer on this case:

- 1. Ms. Fitch's termination is changed to a resignation dated the day of her separation. The termination documents are removed from her personnel file in lieu of a resignation letter; the AG may retain a copy.*
- 2. No payment of back pay or attorney's fees.*
- 3. Release of claims.*

Please let me know if this is agreeable to your client.

Thank you,

Michael Byrne

2. On July 21, 2014, Mr. Byrne followed up to Ms. Henderson as follows:

Dear Tamika:

Some days ago I communicated a settlement offer in this case, which was a resignation and clearing of my client's file. Does your client have a response?

Thank you,

Michael Byrne

3. Ms. Henderson responded as follows:

I just got authority to accept the offer. However, because of the underlying issue with the death of the prisoner and an order to retain any and all documents related to it; DPS will need to retain a copy of all those documents including the dismissal letter in the General Counsel's office. However, everything will be removed from her personnel file. If that is acceptable, I will send you a settlement agreement to review. Thanks.

4. Mr. Byrne responded:

I have no objection to that caveat. Please send the settlement agreement.

5. Approximately two hours later, Ms. Henderson emailed Mr. Byrne as follows:

Michael:

Unfortunately, I was premature in communicating with you. Apparently, there was miscommunication within DPS. They do not intend to settle this matter. I am in my office, please feel free to call if you would like to discuss. Again, I apologize for the miscommunication.

6. Mr. Byrne responded:

This is most distressing. I have already communicated this to my client and our position is that an offer was made and accepted through you as their representative.

Please tell your client that if they try to back out at this point that I will seek to enforce the agreement in the OAH.

7. Ms. Henderson answered:

Ok. We are clear on your position.

8. The following day, July 23, 2014, Ms. Henderson wrote to Mr. Byrne:

My client does not intend to settle this case.

9. Mr. Byrne replied:

Your client HAS settled this case, and I intend to hold them to it – just as your client did in the Jimmy Carter matter.

See you in OAH.¹

10. Ms. Henderson did not reply. On July 24, 2014, Respondent filed a Motion to Dismiss Petitioner's case. In that motion, Respondent made no reference to the discussions above.

11. These facts as found were not materially disputed by either party.

Based upon these Finding of Facts, the Court makes the following:

CONCLUSIONS OF LAW

1. The public policy of this state and the Office of Administrative Hearings (OAH) is set forth in N.C.G.S 150B-22:

§ 150B-22. Settlement; contested case

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, **should be settled through informal procedures.** In trying to

¹ As is explained below, the "Jimmy Carter matter" is 13 OSP 09785, *Carter v. Department of Public Safety*. This involved the same agency, and indeed the same attorneys, as this case. In it, Judge Gray enforced an oral agreement by the Petitioner to settle his case for a resignation and a clearing of his file – again, almost identical to this case. When the Petitioner refused to sign a written settlement agreement confirming his oral agreement, the Court ruled to enforce it on motion of DPS, ordering that Petitioner must sign the agreement or his case would be dismissed with prejudice.

reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case."

2. Moreover, OAH Rules, which have the force of law in these cases, specifically authorize settlement of a case by "informal disposition," such as was the case here. Those rules also specifically call for settlements made between the parties "by agreement":

**.0106 CONSENT ORDER: SETTLEMENT:
STIPULATION**

Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with an administrative law judge to promote consensual disposition of the case.

3. Here, a settlement agreement was reached between the duly authorized representatives of the parties. The settlement agreement terms were clear and unambiguous: Petitioner's resignation and cleaning up the Petitioner's file.² The offer was made, and was accepted following Petitioner's acceptance of one additional term proposed by DPS. Ms. Henderson stated specifically that her client had authorized her to accept the offer. When an attorney representing a state agency has authorization from a client to settle a case, that attorney has authority to bind the agency to a settlement. *Tice v. DOT*, 67 N.C. App. 48, 312 S.E.2d 241(1984).

4. The settlement did not have to be reduced to a formal settlement agreement to be binding. The parties committed to the agreement and its terms, in writing, via electronic mail. This is more than enough to satisfy the Statute of Frauds. OAH and state policy favor settlement agreements.

5. An analogous situation arose in *Currituck Associates v. Hollowell*, 166 N.C. App. 17, 601 S.E.2d 256 (2004). In that case, counsel for the parties agreed by letter and email to settle a case. On 28 August 2002, appellants' counsel extended a settlement offer to appellee. On 30 August 2002, appellants' counsel sent appellee's counsel a letter accepting appellee's proposal. Appellants suggested that the only issue preventing the parties from settling their claims was the marketing of the condominiums after purchase. On 3 September 2002, **appellee's**

² The Court notes the lack of financial harm to the Respondent through enforcement of this agreement, as under its terms there is no payment from the public purse and Petitioner absorbs her own attorney's fees.

counsel confirmed via email that an agreement between the parties had been reached regarding appellants' marketing of Windswept Ridge. The email also stated that 'in view of our settlement, please permit this e-mail to confirm [that] the depositions scheduled for later this week will not take place.' On 6 September 2002, appellee's counsel sent an email to appellants' counsel, attaching a "Mutual Release and Settlement Agreement" that outlined the parties' agreement.

Id. at. 19-20.

6. Note that at this point in *Currituck*, no additional formal, written settlement agreement had been executed and the clients themselves had signed nothing. In the following days, one of the parties attempted to back out of the agreement. Counsel for the non-breaching party responded: "The parties have a settlement. [Appellants] cannot now come up with some "issues" to try to back out of the agreement. I hope we're not getting to this point, but I do want to make sure your client realizes that this agreement will be enforced." *Id.* at 21.³

7. When the breaching party refused to honor the settlement agreement, the other filed a Motion to Enforce Settlement Agreement, which was heard in the Dare County Superior Court. The Superior Court granted the motion, dismissed the breaching party's case, and (as requested here) taxed the breaching party with the opposing party's attorney's fees and costs. *Id.* at 21. The breaching party appealed.

8. The Court of Appeals affirmed the Superior Court and enforced the settlement agreement. This was the case even though a reading of the communications between counsels in the *Currituck* case showed that there were additional terms left to be discussed. *Id.* at 26. The Court rejected the breaching party's contention that there had not been a "meeting of the minds" with respect to the essential settlement terms: "Mutual assent and the effectuation of the parties, intent is normally accomplished through the mechanism of offer and acceptance." *Id.* at 27, citing *Snyder v. Freeman*, 300 N.C. 204, 218, 266 S.E.2d 593, 602 (1980).

9. The Court of Appeals also rejected the breaching party's argument that the settlement agreement violated the Statute of Frauds because it was not signed "by the party to be charged", here the client. "However, there is a presumption in North Carolina in favor of an attorney's authority to act for the client he professes to represent. Thus, one who challenges the actions of an attorney as being unauthorized has the burden of rebutting this presumption and proving lack of authority to the satisfaction of the court." *Id.* at 28, citing *Harris v. Ray Johnson Constr. Co.*, 139 N.C. App. 827, 829, 534 S.E.2d 653, 655 (2000).

10. The Court of Appeals thus ruled in *Currituck* that the trial court was correct in enforcing the settlement and taxing the breaching party with fees and costs. Notably, this was in the absence of a statute, such as in this case, making settlement of contested cases the public policy of this State and, again, as here, a specific rule of the court holding that the parties may resolve cases by informal agreement.

³ This is very similar to the undersigned's response to the Respondent in this case, though the undersigned was not aware of this case at the time he made those statements.

11. Administrative Law Judge Gray some months ago heard the contested case of 13 OSP 09785, *Carter v. Department of Public Safety*. Following the presentation of the evidence, Judge Gray spoke to both counsel (the same counsel as in the present case on both sides) and proposed that the parties settle the matter by Mr. Carter resigning from DPS and having DPS clean up Mr. Carter's file. Mr. Carter and DPS agreed to do this. None of these discussions were in writing.

12. When presented with a written settlement agreement, Mr. Carter refused to sign it. On his instruction, the undersigned filed a motion seeking to allow Mr. Carter to simply submit his resignation. DPS vigorously opposed this motion, contending that the parties had agreed to settle the case and arguing that Mr. Carter should be held to the terms of his agreement. Judge Gray agreed with DPS and ruled that Mr. Carter either had to sign the agreement or have his case dismissed.

13. Ms. Henderson had apparent authority to settle this case. *See Purcell Intern. Textile Group, Inc. v. Algemene AFW N.V.*, 185 N.C. App. 135, 647 S.E.2d 667, *review denied*, 362 N.C. 88, 655 S.E.2d 840 (2007). However, a more senior official countermanded that decision. The parties agreed to a settlement through an offer and acceptance, and then Respondent attempted to renege on that settlement. Grounds do not exist for refusing to enforce a very specific and simple agreement reached between the duly authorized representatives of each side of the case.

ORDER

1. Respondent is ordered with all due expediency to follow the terms of the settlement agreement which includes changing Petitioner's termination to a resignation and removing the disciplinary documents from Petitioner's personnel file. As agreed between the parties, DPS may retain copies of these documents in its General Counsel's office. The parties shall bear their own fees and costs.

2. Upon Respondent's compliance with this Order, which should be communicated to the Undersigned upon completion, this case shall be dismissed with prejudice.

3. Respondent's Motion to Dismiss is hereby DENIED as moot.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 126-34.02(a): "An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. 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." In conformity with the Office of Administrative Hearings' Rules, 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

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This the 9th day of December, 2014.



Hon. Craig Croom
Administrative Law Judge

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2. Upon Respondent's compliance with this Order, which should be communicated to the Undersigned upon completion, this case shall be dismissed with prejudice.

3. Respondent's Motion to Dismiss is hereby DENIED as moot.

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This the 12th day of December, 2014.



Hon. Craig Croom
Administrative Law Judge