

NORTH CAROLINA REGISTER

VOLUME 29 • ISSUE 21 • Pages 2433 - 2529

May 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.

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana Vojtko, Publications Coordinator

dana.vojtko@oah.nc.gov

(919) 431-3075

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

(919) 431-3074

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

(919) 431-3080

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

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
29:22	05/15/15	04/24/15	05/30/15	07/14/15	07/20/15	09/01/15	05/2016	02/09/16
29:23	06/01/15	05/08/15	06/16/15	07/31/15	08/20/15	10/01/15	05/2016	02/26/16
29:24	06/15/15	05/22/15	06/30/15	08/14/15	08/20/15	10/01/15	05/2016	03/11/16
30:01	07/01/15	06/10/15	07/16/15	08/31/15	09/21/15	11/01/15	05/2016	03/27/16
30:02	07/15/15	06/23/15	07/30/15	09/14/15	09/21/15	11/01/15	05/2016	04/10/16
30:03	08/03/15	07/13/15	08/18/15	10/02/15	10/20/15	12/01/15	05/2016	04/29/16
30:04	08/17/15	07/27/15	09/01/15	10/16/15	10/20/15	12/01/15	05/2016	05/13/16
30:05	09/01/15	08/11/15	09/16/15	11/02/15	11/20/15	01/01/16	05/2016	05/28/16
30:06	09/15/15	08/24/15	09/30/15	11/16/15	11/20/15	01/01/16	05/2016	06/11/16
30:07	10/01/15	09/10/15	10/16/15	11/30/15	12/21/15	02/01/16	05/2016	06/27/16
30:08	10/15/15	09/24/15	10/30/15	12/14/15	12/21/15	02/01/16	05/2016	07/11/16
30:09	11/02/15	10/12/15	11/17/15	01/02/16	01/20/16	03/01/16	05/2016	07/29/16
30:10	11/16/15	10/23/15	12/01/15	01/15/16	01/20/16	03/01/16	05/2016	08/12/16
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.

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

Office of Land & Water Stewardship
1601 Mail Service Center
Raleigh, North Carolina, 27699-1601

Invites the public to review and comment on the
Draft North Carolina Aquatic Nuisance Species Management Plan

The Office of Land & Water Stewardship (OLWS), within the N.C. Department of Environment and Natural Resources (DENR), invites the public to review and comment on the draft North Carolina Aquatic Nuisance Species Management Plan (ANSMP). The plan is a non-regulatory document that will provide guidance for inter-agency cooperation with other public and private partners to minimize ecologic and economic risks associated with aquatic nuisance species. Included in the document is information about various aquatic nuisance species and recommendations for future efforts to minimize and prevent their spread. The draft plan is available on this website at <http://www.go.denr.gov/aquaticinvasives>

Written comments regarding the draft North Carolina Aquatic Nuisance Species Management Plan will be accepted for 30 days after the publication date of this notice and must be received by the Office of Land and Water Stewardship before close of business May 30, 2015. Comments can be submitted at the webpage noted above.

You can contact Judy Francis at judy.francis@ncdenr.gov, or (828) 296-4523 for more information.

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 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to adopt the rules cited as 08 NCAC 17 .0101-.0105.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncsbe.gov (in box in lower left area of the page, click on "Rule-making" tab)

Proposed Effective Date: January 1, 2016

Public Hearings:

Date: June 3, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: State Board of Elections Office, Board Room, 441 North Harrington Avenue, Raleigh, NC

Date: June 4, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: Dare County Administration Building, Room 168, 954 Marshall C. Collins Drive, Manteo, NC

Date: June 5, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: New Hanover County Human Resources Department, Conference Room 401, 230 Government Center Drive, Suite 135, Wilmington, NC

Date: June 8, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: Hal Marshall Auditorium, 700 North Tryon Street, Charlotte, NC

Date: June 9, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: Forsyth County Government Center, Multi-Purpose Room, 201 Chestnut Street, Winston-Salem, NC

Date: June 10, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: Watauga County Administration Building, Board of Commissioners Meeting Room, 814 West King Street, Boone, NC

Date: June 11, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: Jackson County Board of Elections Office, Conference Room, 876 Skyland Drive, Suite 1, Sylva, NC

Date: June 12, 2015

Time: 5:00 p.m. – 7:00 p.m.

Location: Cumberland County Board of Elections, Training Room, 227 Fountainhead Lane, Suite 101, Fayetteville, NC

Reason for Proposed Action:

08 NCAC 17 .0101, .0102 – G.S. 163-166.14(i) requires that the State Board of Elections shall adopt rules for the administration of that statute, pertaining to the determination of reasonable resemblance of photo identification by voters for in-person voting.

08 NCAC 17 .0103 - G.S. 163-166.14(i) requires that the State Board of Elections shall adopt rules for the administration of that statute, pertaining to the determination of reasonable resemblance of photo identification by voters for in-person voting. This Rule makes clear that if curbside voters present photo identification, the provisions of 08 NCAC 17 .0101 shall apply.

08 NCAC 17 .0104 – G.S. 163-22(a) provides that the State Board of Elections "shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter." Here, a Rule is necessary to provide along with 08 NCAC 17 .0101 to make clear that existing law applies to name and address changes, which may become pertinent while election officials are examining photo IDs and the information contained on the photo IDs.

08 NCAC 17 .0105 – G.S. 163-82.7A(e) provides that the State Board of Elections "shall adopt rules to establish a standard form for the administration of this section," pertaining to a declaration of religious objection to being photographed.

Comments may be submitted to: George McCue, North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255 and email rules@ncsbe.gov.

Comment period ends: June 30, 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 17 – PHOTO IDENTIFICATION

08 NCAC 17 .0101 DETERMINATION OF REASONABLE RESEMBLANCE AT CHECK-IN

(a) Photo identification at check-in procedure: An election official shall check the registration status of all persons presenting to vote in-person on election day or during one-stop early voting pursuant to G.S. 163-166.7, and then shall require that all persons presenting to vote provide one of the forms of photo identification listed in G.S. 163-166.13(e), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-182.1A.

(b) The election official shall not require photo identification of a person who has a sincerely held religious objection to being photographed and meets the requirements of G.S. 163-166.13(a)(2), or who is the victim of a natural disaster and meets the requirements of G.S. 163-166.13(a)(3). Persons falling within any exception listed in this Paragraph shall be allowed to proceed pursuant to G.S. 163-166.7.

(c) The election official shall inspect any photo identification provided by the person presenting to vote and shall determine the following:

- (1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-166.13(e). A valid United States passport book or a valid United States passport card is acceptable pursuant to G.S. 163-166.13(e)(3).
- (2) That the photo identification is unexpired or is excepted from an expiration requirement pursuant to G.S. 163-166.13(e).
- (3) That the photograph appearing on the photo identification depicts the person presenting to vote. Perceived differences of the following features shall not be grounds for the election official to find that the photograph appearing on the photo identification fails to depict the person presenting to vote:
 - (A) weight;
 - (B) hair features and styling, including changes in length, color, hairline, or use of a wig or other hairpiece;
 - (C) facial hair;

- (D) complexion or skin tone;
- (E) cosmetics or tattooing;
- (F) apparel, including the presence or absence of eyeglasses or contact lenses;
- (G) characteristics arising from a perceptible medical condition, disability, or aging;
- (H) photographic lighting conditions or printing quality.

(4) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record. The name appearing on the photo identification shall be considered substantially equivalent to the name contained in the registration record if differences are attributable to one or more of the following:

- (A) Omission of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick William Smith, Jr. versus Patrick William Smith, or Maria Guzman-Santana versus Maria Guzman);
- (B) Use of a customary variation rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);
- (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. Smith versus Aaron B. Smith);
- (D) Use of a former name or a variation that includes or omits a hyphenation (such as, for illustrative purposes only, Mary Beth Smith versus Mary Beth Jacobson, or Mary C. Jacobson-Smith versus Mary C. Jacobson);
- (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia).

(d) The election official shall not require any additional evidence outside the four corners of the photo identification. The election official shall not request that any person remove apparel for the purposes of rendering a determination under Paragraph (c) of this Rule. If the face of the person presenting to vote is covered such that the election official cannot render a determination under Subparagraph (c)(3) of this Rule, then the election official shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-182.1A, and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the person bears any reasonable resemblance to the photo identification.

(e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph (c)(1) of

this Rule and the address contained in the registration record shall not be construed as evidence that the photographic identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule.

(f) The election official shall construe all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. After an examination performed in the manner set out in Paragraphs (a) through (d) of this Rule, the election official shall proceed as follows:

- (1) If the election official determines that the photo identification meets all the requirements of Paragraph (c) of this Rule, then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and G.S. 163-166.13(b); or
- (2) If the election official determines that the photo identification does not meet all of the requirements of Subparagraphs (c)(1) and (c)(2) of this Rule, the election official shall inform the person presenting to vote of the reasons for such determination (such as, for illustrative purposes only, that the photo identification is expired) and shall invite the person to provide any other acceptable photo identification that he or she may have. If the person presenting to vote does not produce photo identification that meets all the requirements of Subparagraph (c)(1) and (c)(2) of this Rule, then the election official shall inform the person presenting to vote that he or she may cast a provisional ballot. The election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.
- (3) If the election official determines that the photo identification does not meet all the requirements of Subparagraphs (c)(3) and (c)(4) of this Rule, the election official shall notify the voting site's judges of election that the person presenting to vote does not bear any reasonable resemblance to the photo identification.

Authority G.S. 163-82.6A; 163-82.15; 163-166.7; 163-166.13; 163-166.14; 163-182.1A.

08 NCAC 17 .0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION

(a) The judges of election shall make a determination as to reasonable resemblance pursuant to G.S. 163-166.14 only if the person presenting to vote is referred to them by an election official as set out in Rule .0101(f)(3) of this Section.

(b) The judges of election shall inspect the photo identification provided by the person presenting to vote and shall make a determination as to all requirements set out in Rule .0101(c)(3)

and (4) of this Section. The judges of election shall make their determinations based on the totality of the circumstances, construing all evidence in the light most favorable to the person presenting to vote. The judges of election may consider the following:

- (1) Any information contained in the photo identification meeting the requirements of Rule .0101(c)(1) of this Section and the registration record (such as, for illustrative purposes only, date of birth, sex, or race);
- (2) Any explanation proffered by the person presenting to vote or by other persons; and
- (3) Any additional documentation provided by the person presenting to vote or by other persons.

(c) The judges of election shall follow Rule .0101(e) of this Section with regard to addresses appearing on the photo identification.

(d) After considering the evidence, the judges of election shall vote to determine whether the photo identification bears any reasonable resemblance to the person presenting to vote. All judges of election must vote either yea or nay, and the result shall be governed by the following:

- (1) Unless the judges of election unanimously find that the photo identification does not bear any reasonable resemblance to the person appearing before them as set out in Subparagraph (d)(2) of this Rule, the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and G.S. 163-166.13(b).
- (2) If the judges of election unanimously find that the photo identification does not meet all the requirements of Rule .0101(c)(3) and (4) of this Section, the judges of election shall enter a determination that the photo identification does not bear any reasonable resemblance to the person presenting to vote, and shall record their determinations in the manner set out in Paragraph (e) of this Rule. The judges of election shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-182.1A. The judges of election shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

(e) The judges of election shall record their determination as to reasonable resemblance on a form provided by the State Board of Elections that provides the date and time, the voting site, the names of the judges of election, the name of the person presenting to vote, and the determination of each individual judge of election.

Authority G.S. 163-82.6A; 163-82.15; 163-166.7; 163-166.13; 163-166.14; 163-182.1A.

08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS

An election official assisting curbside voters shall require identification of curbside voters pursuant to G.S. 163-166.9(b). If the curbside voter provides one of the forms of photo identification listed in G.S. 163-166.13(e), the provisions of Rule .0101 of this Section shall apply.

Authority G.S. 163-166.9; 163-166.13.

08 NCAC 17 .0104 OPPORTUNITY TO UPDATE NAME OR ADDRESS AFTER REASONABLE RESEMBLANCE IS DETERMINED

A person able to vote a regular ballot pursuant to either Rule .0101 or .0102 of this Section, but whose name or address does not match the name or address appearing in the registration record shall be provided the opportunity to update his or her name or address in the registration record pursuant to G.S. 163-82.15(d) and G.S. 163-82.16(d) to reflect the person's true and current name and address. If the person updates his or her name or address, the person shall be permitted to vote as set out in G.S. 163-166.7 and G.S. 163-166.13(b), so long as the person remains eligible to vote based on residence within the county of the voting place.

Authority G.S. 163-82.15(d); 163-82.16(d); 163-166.7; 163-166.13(b).

08 NCAC 17 .0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH

(a) Declaration form: Every county board of elections shall have available a Declaration of Religious Objection to Photograph form, as prescribed by the State Board of Elections. This form shall contain:

- (1) The voter's information;
- (2) The following declaration: "I, [voter's name], have a sincerely-held religious objection to being photographed. My voter registration will be identified as excepted from the photo identification requirements associated with in-person voting beginning in 2016. This declaration will be effective for all future elections at least 25 days from the date of this declaration being received by my local County Board of Elections, or, if I have already cast a provisional ballot for an election, at the time I make this declaration and provide one of the documents listed in G.S. 163-166.12(a)(2) to the County Board of Elections. I understand that if at some time in the future I no longer hold such religious objection to being photographed, I may request a cancellation of this declaration with my local County Board of Elections. I understand that a false or fraudulent declaration is a Class I felony."; and
- (3) The voter's dated signature.

(b) A signed declaration form will be effective for all elections going forward that are held at least 25 days from the date of the

completed declaration being received by the county board of elections, or until the voter cancels the declaration.

(c) The voter may cancel the declaration at any time by submitting a written statement, signed and dated, to the county board of elections.

(d) Upon moving to a new county in the State of North Carolina, a voter who has completed a declaration that is still in effect shall continue to be excepted from the photo identification requirements associated with in-person voting.

(e) Upon receiving a completed declaration form that is received at least 25 days prior to the next election, or receiving a new voter registration for a voter that has completed a still-current declaration from another county, the county board of elections shall identify the voter as excepted from the photo identification requirements set out in G.S. 163-166.13(a)(2), so that the voter is identified as such in all voter registration lists and pollbooks associated with in-person voting.

Authority G.S. 163-82.7A; 163-166.12(a)(2); 163-166.13(a)(2); 163-182.1A(b)(2); 163-275.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Radiation Protection Commission intends to adopt the rules cited as 10A NCAC 15 .0807 and .0808, amend the rules cited as 10A NCAC 15 .0502, .0801-.0806, and repeal the rule cited as 10A NCAC 15 .0518.

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

Proposed Effective Date: *October 1, 2015*

Public Hearing:

Date: *May 27, 2015*

Time: *10:00 a.m.*

Location: *Dorthea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603*

Reason for Proposed Action: *There are a growing number of facilities utilizing electronic x-ray machines for non-medical purposes. Many of these machines utilize technology that has been developed since the last revisions of these rules. The proposed amendments to the rules clarify and update the rules for use of electronic analytical and industrial x-ray machines based on the most current draft of the Suggested State Regulations for these machines. These are documents that the Conference of Radiation Control Programs Directors maintain and provide the framework for uniformity of radiation control laws and regulations among states. Two new rules are being added to clarify and simplify requirements for radiographic installations, industrial radiography machines and bomb detection x-ray machines. Changes to Section .0500 rules remove the reference to cabinet x-ray machines, as these machines will now be regulated under Section .0800 rules, along with other machines that typically*

operate at lower energies and are less hazardous than the machines that are regulated in the Section .0500 rules. The result of these proposed rule changes is to simplify compliance with the regulations on the use of electronic analytical and industrial x-ray machines for facilities thereby improving safety for radiation workers and the citizens of the state.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: June 30, 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 15 – RADIATION PROTECTION

SECTION .0500 - SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHY OPERATIONS

10A NCAC 15 .0502 DEFINITIONS

~~(a) As used in this Section, In addition to terms found in Rule .0104 of this Chapter, the following definitions shall apply-apply to this Section:~~

- (1) "Annual refresher safety ~~training~~-training," as defined in 10 CFR 34.3, means a review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of industrial radiography. The review may ~~include, as appropriate, include~~ the results of internal inspections, new procedures or equipment, new or revised regulations, ~~accidents or accidents~~ or errors that have been ~~observed, observed, and shall~~ The review shall

also provide opportunities for employees to ask safety questions.

- (2) "Associated equipment" means equipment used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides or comes in contact with the sealed source or radiation machines [e.g. guide tube, control tube, control (guide) tube, removable source stop, "J" tube and collimator when it is used as an exposure head].
- ~~(3) "Cabinet radiography using radiation machines" means industrial radiography using radiation machines, which is conducted in an enclosed, interlocked cabinet, such that the radiation machine will not operate unless all openings are securely closed, and which cabinet is so shielded that every location on the exterior meets conditions for an unrestricted area as specified in Rule .1611 of this Chapter.~~
- ~~(4)~~(3) "Certifying entity" means an independent certifying organization meeting the requirements in Rule .0525 of this Section.
- ~~(5)~~(4) "Collimator" means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to limit the size, shape, and direction of the primary radiation when the sealed source is cranked into position, to make a radiographic exposure.
- ~~(6)~~(5) "~~Control device~~," "Control device," commonly called a crank-out, means the control cable, the protective sheath and control drive mechanism used to move the sealed source from the shielded position in the radiographic device or camera to an unshielded position outside the device for the purpose of making a radiographic exposure.
- ~~(7)~~(6) "Control drive mechanism" means a device that enables the source assembly to be moved to and from the exposure device.
- ~~(8)~~(7) "Control tube" means a protective sheath for guiding the control cable. The control tube connects the control device mechanism to the radiographic exposure device.
- ~~(9)~~(8) "~~Exposure head~~," "Exposure head," commonly called a source stop, means a device that locates the gamma radiography sealed source in the selected working position.
- ~~(10)~~(9) "Field examination" means a practical examination.
- ~~(11)~~(10) "Field station" means a facility where licensed material or registered equipment may be stored or used and from which licensed material or registered equipment is dispatched.
- ~~(12)~~(11) "~~Guide tube~~ (~~Projection sheath~~) "Guide tube," commonly called a projection sheath, means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure

- head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.
- (13)(12) "Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process.
- (14)(13) "Independent certifying organization" means an independent organization that meets all of the requirements of Rule .0525 of this Section.
- (15)(14) "Industrial radiography" means the examination of the structure of materials by nondestructive methods utilizing ionizing radiation to make radiographic images.
- (16)(15) "Lay-barge radiography" means industrial radiography performed on any water vessel used for laying pipe.
- (17)(16) "Off-shore platform radiography" means industrial radiography conducted from a platform over a body of water.
- (18)(17) "Periodic training" means a periodic review conducted or provided instruction provided at least every 12 months by the licensee or registrant for its employees operators and individuals subject to the requirements of Rule .1003 of this Chapter on radiation safety aspects of radiography. The review topics shall include the results of internal inspections, new procedures or equipment, accidents or errors that have been observed, and opportunities for employees to ask safety questions.
- (19)(18) "Permanent radiographic installation" means an enclosed shielded room, cell, or vault not located at a temporary job-site in which radiography is performed.
- (20)(19) ~~"Projection sheath"~~, "Projection sheath" means a guide tube.
- (21)(20) "Practical examination" means a demonstration through practical application of the safety rules and principles in industrial radiography including the use of all appropriate equipment and procedures.
- (22)(21) "Radiation safety officer" means an individual named by the licensee or registrant who has knowledge of and responsibility for the overall radiation safety program on behalf of the licensee or registrant and who meets the requirements of Rule .0510(h) of this Section.
- (23)(22) "Radiographer" means any individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these Rules and all license or registration conditions.
- (24)(23) "Radiographer certification" means written approval received from ~~a~~ an independent certifying organization stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.
- (25)(24) "Radiographer's assistant" means any individual who, under the direct supervision of a radiographer, uses radiographic exposure devices, sources of radiation, related handling tools, or survey instruments in industrial radiography.
- (26)(25) ~~"Radiographic exposure device"~~, "Radiographic exposure device," commonly called a camera or projector, means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.
- (27)(26) "Radiographic operations" means all activities associated with the presence of radioactive ~~or x-ray~~ sources in a radiographic exposure device during use of the device or transport (except when being transported by a common or contract transport), ~~to include~~ including surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.
- (28)(27) "S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device.
- (29)(28) "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.
- (30)(29) "Shielded position" means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement. This position incorporates maximum shielding for the sealed source.
- (31)(30) "Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly also includes the stop ball if one is used to secure the sealed source in the shielded position. The connector attaches to the control cable.
- (32)(31) "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.
- (33)(32) ~~"Storage area"~~ "area," as defined in 10 CFR 34.3, means any location, facility or vehicle which is used to store or secure a radiographic exposure device, a storage ~~container~~ container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with or

unauthorized removal of the device, storage container or sealed source.

~~(34)~~(33) "Storage container" means a device in which sealed sources are secured and stored.

~~(35)~~(34) "Temporary jobsite" means a ~~location, location~~ where radiographic operations are conducted and where licensed material may be stored other than those location(s) of use authorized on the license.

~~(36)~~(35) "Underwater radiography" means industrial radiography performed when the radiographic exposure device or related equipment are beneath the surface of the water.

~~(b) Other definitions applicable to this Section may be found in Rule .0104 of this Chapter.~~

Authority G.S. 104E-7; 10 CFR 34.3.

10A NCAC 15 .0518 RADIATION MACHINES

~~The following are special requirements for radiography employing radiation machines:~~

~~(1) Cabinet radiography using radiation machines shall be exempt from requirements of this Section except that no registrant shall permit any individual to operate a cabinet radiography unit until:~~

~~(a) the registrant has provided the individual a copy of, and instruction in, the operating procedures for the unit; and~~

~~(b) the individual has demonstrated, to the registrant, understanding of the operating procedures for the unit and competence in its use.~~

~~(2) Other radiography using radiation machines are exempt from Rules .0503, .0504, .0505, .0507, .0508 and .0521 of this Section.~~

Authority G.S. 104E-7; 104E-12(a)(1).

SECTION .0800 - REQUIREMENTS FOR NON-HUMAN USE OF RADIATION GENERATING DEVICES

10A NCAC 15 .0801 PURPOSE AND SCOPE

~~This Section provides special requirements for analytical x-ray equipment which are in addition to, and not in substitution for, applicable requirements in the other sections of this Chapter.~~

~~(a) This Section provides special requirements for use of ionizing radiation generating devices (RGDs) operating above five thousand electron volts (5 keV), but below one million electron volts (1 MeV) that are in addition to, and not in substitution for, applicable requirements in the other sections of this Chapter.~~

~~(b) This Section does not pertain to radiation safety requirements for x-ray equipment that is covered in other sections of this Chapter (e.g., x-rays in the healing arts in Section .0600 of this Chapter, and particle accelerators in Section .0900 of this Chapter.)~~

Authority G.S. 104E-7.

10A NCAC 15 .0802 DEFINITIONS

~~(a) "Analytical x-ray equipment" means equipment used for x-ray diffraction or fluorescence analysis.~~

~~(b) "Analytical x-ray system" means a group of local and remote components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials. Local components include those that are struck by x-rays such as radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors and shielding. Remote components include power supplies, transformers, amplifiers, readout devices, and control panels.~~

~~(c) "Fail-safe characteristics" means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.~~

~~(d) "Normal operating procedures" mean operating procedures for conditions suitable for analytical purposes with shielding and barriers in place. These do not include maintenance but do include routine alignment procedures. Routine and emergency radiation safety considerations are part of these procedures.~~

~~(e) "Open beam configuration" means an analytical x-ray system in which an individual could accidentally place some part of his body in the primary beam path during normal operation.~~

~~(f) "Primary beam" means ionizing radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing.~~

(a) In addition to terms found in Rule .0104 of this Chapter the following definitions shall apply to this Section:

(1) "Accredited bomb squad" means a law enforcement agency utilizing certified bomb technicians.

(2) "Analytical RGD equipment" means equipment that uses electronic means to generate ionizing radiation for the purpose of examining the microstructure of materials, i.e. x-ray diffraction and x-ray spectroscopy.

(3) "Analytical RGD system" means a group of local and remote components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials.

(4) "Bomb detection RGDs" means RGDs used solely for the purpose of remotely detecting explosive devices.

(5) "Certified bomb technician" means a member of an accredited bomb squad who has successfully completed the FBI Hazardous Devices School. Information pertaining to this program can be found on the school website at <http://www.fbi.gov/about-us/cirg/hazardous-devices>.

(6) "Certifiable cabinet x-ray system" means an existing uncertified RGD that has been modified to meet the certification requirements specified in 21 CFR 1020.40 as incorporated by reference in Rule .0117 of this Chapter.

- (7) "Certified cabinet x-ray system" means an RGD utilized in an enclosed, interlocked cabinet, such that the radiation machine will not operate unless all openings are securely closed. These systems shall be certified in accordance with 21 CFR 1010.2 as incorporated by reference in Rule .0117 of this Chapter, as being manufactured and assembled pursuant to the provisions of 21 CFR 1020.40 as incorporated by reference in Rule .0117 of this Chapter.
- (8) "Collimator" means a device or mechanism by which the x-ray beam is restricted in size.
- (9) "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.
- (10) "Electron Beam Device" means any device using electrons below 1MeV to heat, join or otherwise irradiate materials.
- (11) "Enclosed beam RGD" means an RGD with all possible x-ray beam paths fully contained in a chamber, coupled chambers, or other beam-path-confinement devices to prevent any part of the body from intercepting the beam during normal operations. Normal access to the primary beam path, such as a sample chamber door, shall be interlocked with the high voltage of the x-ray tube or the shutter for the beam to be considered "enclosed." An open-beam device placed in an interlocked enclosure is considered an "enclosed beam" unless there are provisions for routine bypassing of the interlocks.
- (12) "Fail-safe characteristics" means a design feature that causes the radiation beam to terminate, port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device. For example, if an "X-ray On" light indicator or shutter indicator or interlock fails, the radiation beam shall terminate.
- (13) "Hand-held x-ray system" means any device or equipment that is portable and used for similar purposes as analytical x-ray equipment.
- (14) "Hybrid gauge" means an x-ray gauge device utilizing both x-ray and radioactive sources.
- (15) "Industrial radiography" means RGDs used to make radiographic images to examine the structure of materials by nondestructive methods. These RGDs are not contained in a cabinet and are not permanent installations.
- (16) "Ion implantation equipment, low-energy" means any closed device operating below 1MeV used to accelerate elemental ions and implant them in other materials.
- (17) "Leakage radiation" means radiation emanating from the source assembly housing except for:
 - (A) the primary beam;
 - (B) scatter radiation emanating from other components (e.g., shutter or collimator); and
 - (C) radiation produced when the beam on switch or timer is not activated.
- (18) "Local components" means part of an RGD x-ray system and include areas that are struck by x-rays such as radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding, but do not include power supplies, transformers, amplifiers, readout devices, and control panels.
- (19) "Mobile RGD" means RGD equipment mounted on a permanent base with wheels or casters for moving while assembled.
- (20) "Normal operating procedures" means step-by-step instructions necessary to accomplish a task. These procedures shall include sample insertion and manipulation, equipment alignment, routine maintenance by the registrant, and data recording procedures, that are related to radiation safety.
- (21) "Open-beam RGD" means a device or system designed in such a way that the primary beam is not completely enclosed during normal operation and used for analysis, gauging or imaging in which an individual could accidentally place some part of their body in the primary beam or stray radiation path during normal operation.
- (22) "Permanent radiographic installation" means an RGD utilized in an enclosed shielded room, cell, or vault that allows entry when the RGD is not energized.
- (23) "Portable RGD" means RGD equipment designed to be carried.
- (24) "Primary beam" means radiation which passes through an aperture of the source assembly housing by a direct path from the radiation source.
- (25) "Radiation generating device (RGD)" means any system, device, subsystem, or machine component that may generate by electronic means x-rays or particle radiation above 5 keV, but below 1 MeV, and not used for healing arts on humans or animals. Examples of RGDs are the following:
 - (A) analytical x-ray machines;
 - (B) certified and certifiable cabinet x-ray systems;
 - (C) gauging devices using x-ray sources;
 - (D) hybrid gauging devices;
 - (E) e-beam welders;
 - (F) baggage scanners;
 - (G) industrial radiography RGDs; and
 - (H) permanent radiographic installations.

- (26) "Remote components" means parts of an RGD x-ray system that are not struck by x-rays such as power supplies, transformers, amplifiers, readout devices, and control panels.
- (27) "Scattered radiation" means radiation, other than leakage radiation, that during passage through matter, has been deviated in direction or has been modified by a decrease in energy.
- (28) "Shutter" means an adjustable device, generally made of lead or other high atomic number material, fixed to a source assembly housing to intercept, block or collimate the primary beam.
- (29) "Source" means the point of origin of the radiation, such as the focal spot of an x-ray tube.
- (30) "Stationary RGD" means RGD equipment that is installed or placed in a fixed location.
- (31) "Stray radiation" means the sum of leakage and scatter radiation emanating from the source assembly or other components except for the primary beam, and radiation produced when the beam on switch or timer is not activated.
- (32) "X-ray generator" means the part of an x-ray system which provides the accelerating (high) voltage and current for the x-ray tube.
- (33) "X-ray gauge" means an x-ray producing device designed and manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, or interface location of manufactured products.

Authority G.S. 104E-7.

10A NCAC 15 .0803 EQUIPMENT REQUIREMENTS

~~(a) A safety device which prevents the entry of any portion of an individual's body into the primary x ray beam path of which causes the beam to be shut off upon entry into its path shall be provided on all open beam configurations. A registrant or licensee may apply to the agency for an exemption from the requirement of a safety device. This application shall include:~~

- ~~(1) a description of the various safety devices that have been evaluated;~~
- ~~(2) the reason safety devices cannot be used; and~~
- ~~(3) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.~~

~~(b) Open beam configurations shall be provided with a readily discernible indication of:~~

- ~~(1) X ray tube status (ON OFF) located near the radiation source housing, if the primary beam is controlled in this manner; and~~
- ~~(2) Shutter status (OPEN CLOSED) located near each port on the radiation source housing, if the primary beam is controlled in this manner.~~

~~Warning devices shall be labeled so that their purpose is easily identified. On equipment installed after the effective date of this Rule, warning devices shall have fail safe characteristics.~~

~~(c) Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening.~~

~~(d) All analytical x ray equipment shall be labeled with a readily discernible sign or signs bearing the radiation symbol and the words:~~

- ~~(1) "CAUTION HIGH INTENSITY X RAY BEAM," or words having a similar intent, on the x ray source housing; and~~
- ~~(2) "CAUTION RADIATION THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED", or words having a similar intent, near any switch that energizes an x ray tube, if the radiation source is an x ray tube; or~~
- ~~(3) "CAUTION RADIOACTIVE MATERIAL", on the source housing, if the radiation source is a radionuclide.~~

~~(e) On open beam configurations installed after the effective date of this Rule each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.~~

~~(f) An easily visible warning light labeled with the words "X RAY ON" or words having a similar intent, shall be located outside each entrance into the room containing an analytical x ray tube and shall be illuminated only when the tube is energized; or in the case of a radioactive source, shall be illuminated only when the shutter is open. On equipment installed after the effective date of this Rule, warning lights shall have fail safe characteristics.~~

~~(g) Each x ray tube housing shall be so constructed that when all shutters are closed the leakage radiation measured at a distance of five centimeters from its surface is not capable of producing a dose in excess of 2.5 mrem in one hour.~~

~~(h) Each x ray generator shall be supplied with a protection cabinet which limits leakage radiation measured at a distance of five centimeters from its surface such that it is not capable of producing a dose in excess of 0.04 mrem in one hour.~~

~~(a) Certified cabinet x-ray systems shall meet the requirements of 21 CFR 1020.40 as incorporated by reference in Rule .0117 (a)(3) of this Chapter.~~

~~(b) All certified and certifiable cabinet x-ray systems shall:~~

- ~~(1) be constructed so that, the radiation emitted from the system shall not exceed an exposure of 0.5 milliroentgen (mR) in one hour at any point five centimeters outside the external surface; and~~
- ~~(2) have a fail-safe interlock that prevents irradiation when the cabinet, chamber or coupled chambers are open.~~

~~(c) Open-beam analytical RGD systems shall be equipped with a safety device which prevents the entry of any portion of an individual's body into the primary x-ray beam path that causes the beam to be shut off upon entry into its path.~~

~~(d) Open-beam analytical RGDs shall be provided with a visible and legible indication of:~~

- (1) x-ray tube status (ON-OFF) located near the radiation source housing, if the primary beam is controlled in this manner; or
- (2) shutter status (OPEN-CLOSED) or beam status (ON-OFF) located near each port on the radiation source housing, if the primary beam is controlled in this manner.
- (e) Warning devices on open-beam analytical RGDs shall be labeled so that their purpose is easily identified. On open-beam analytical RGDs installed after February 1, 1980, warning devices and lights shall have fail-safe characteristics.
- (f) Unused ports on radiation source housings for open-beam RGDs shall be secured in the closed position in a manner that will prevent unintended opening.
- (g) Each port on the radiation source housing on open-beam analytical RGDs, installed after February 1, 1980 and designed to accommodate interchangeable components, shall be equipped with a shutter that cannot be opened unless a collimator or a component coupling is connected to the port.
- (h) Portable open-beam analytical RGDs that are manufactured to be used hand-held without safety devices are exempt from the requirements of Paragraph (c) of this Rule and shall be constructed according to International Standard IEC 62495 and subsequent amendments. This standard can be downloaded for one hundred twenty-one dollars (\$121.00) at the following website:
<http://webstore.ansi.org/FindStandards.aspx?SearchString=IEC+62495+Ed.+1.0+en%3a2011&SearchOption=0&PageNum=0&SearchTermsArray=null%7cIEC+62495+Ed.+1.0+en%3a2011%7cnull>.
- (i) A registrant may apply to the agency for an exemption from the requirement of a safety device. This request shall include:
 - (1) a description of the safety devices;
 - (2) the reason safety devices cannot be used; and
 - (3) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.
- (j) Analytical RGDs shall be provided with a visible and legible label(s) bearing the radiation symbol and the words:
 - (1) "CAUTION - HIGH INTENSITY X-RAY BEAM," or words having a similar meaning, near the exit port to identify the location of the beam; and
 - (2) "CAUTION - RADIATION - THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED", or words having a similar meaning, near any switch that energizes an x-ray tube, if the radiation source is an x-ray tube.
- (k) Warning lights labeled with the words "X-RAYS ON," or other words having similar meaning, shall be located:
 - (1) near any switch which activates the high voltage to energize an x-ray tube; or
 - (2) in a conspicuous location near the radiation source housing and radiation beam(s) and visible from all instrument access areas.

- (l) Warning lights shall activate when the x-ray tube is energized.
- (m) Each x-ray tube housing shall be:
 - (1) constructed that when all shutters are closed the leakage radiation measured at a distance of five centimeters from its surface is not capable of producing an exposure in excess of 2.5 millirem (mrem)/ (25 microsieverts μ Sv) in one hour; and if the tube housing is the primary shielding for the x-ray tube
 - (2) does not produce x-rays when the housing is opened or disassembled.
- (n) Each x-ray generator shall be supplied with a protection cabinet which limits leakage radiation measured at a distance of five centimeters from its surface such that it is not capable of producing an exposure in excess of 0.25 mrem/2.5 μ Sv in one hour.
- (o) Industrial radiography RGDs and permanent radiographic installations shall comply with the requirements of Rule .0807 of this Section.

Authority G.S. 104E-7.

10A NCAC 15 .0804 AREA REQUIREMENTS

- (a) The local components of an analytical x-ray system RGDs shall be so located located and arranged and shall include to include sufficient shielding or access control that to ensure no radiation levels exist in any area surrounding the local component group which components that could result in a dose to an individual present therein in excess of the dose limits given in Rule .1611 .1611(a) of this Chapter. For systems utilizing x-ray tubes, these levels shall be met at any specified tube rating. A registrant or licensee may apply to the agency for an exemption from this requirement pursuant to Rule .0106(a) of this Chapter.
- (b) Surveys Survey Requirements
 - (1) Radiation surveys, as required by Rule .1613 as set forth in Rule .1613(a) and (b) of this Chapter, of all analytical x-ray systems RGDs sufficient to show compliance with Paragraph (a) of this Rule, shall be performed:
 - (A) upon installation of the equipment; within 30 days after initial operation of the device;
 - (B) prior to use following any change in the initial arrangement, arrangement including the number or type of local components in the system; and
 - (C) prior to use following any maintenance requiring the disassembly or removal of a local component in the system which that could affect the radiation exposure to personnel; personnel.
 - (D) radiation monitoring shall be performed during maintenance.
 - (2) A licensee or A registrant may apply to the agency for approval of procedures differing from those in Subparagraph (b)(1) of this Rule, provided that the licensee or registrant

demonstrates satisfactory compliance with Paragraph (a) of this Rule.

(3) Surveys must be performed with a radiation survey instrument capable of the following:

(A) measuring the radiation energies of the system surveyed;

(B) confirming that the radiation limits of this Section are met; and

(C) calibrated according to the manufacture's recommended frequency or at least annually when a frequency is not recommended.

(c) Each area of use or room containing ~~analytical x-ray equipment~~ RGDs shall be conspicuously posted with a sign or signs caution signs in accordance with the requirements of Rule .1623 of this Chapter, bearing the radiation caution symbol and the words "CAUTION - X-RAY EQUIPMENT", "EQUIPMENT," or words having a similar intent, meaning.

Authority G.S. 104E-7(a)(2).

10A NCAC 15 .0805 OPERATING REQUIREMENTS

(a) RGDs shall be operated by individuals that have completed the training requirements of Rule .0806 of this Section.

~~(a)(b)~~ Normal operating procedures shall be written and available to all analytical x-ray equipment workers. RGD operators and support staff. No person shall be permitted to operate analytical x-ray equipment in any manner other than that specified in the procedures unless the person has obtained written approval of the person responsible for radiation safety.

(c) No person shall be permitted to operate RGDs in any manner other than that specified in the operating procedures unless the person has obtained written approval of the person responsible for radiation safety, or Radiation Safety Officer (RSO) as defined in Rule .0104 of this Chapter.

~~(b)(d)~~ No person shall bypass a safety device unless the person has obtained the approval of the person responsible for radiation safety, safety or RSO. Such approval shall be for a specified period of time. This process shall be incorporated into the radiation protection program, as set forth in Rule .1613(a), and the operating procedures as set forth in Rule .0603(a)(1)(B). The written approval shall include an expiration date. When a safety device has been bypassed, a readily discernible legible sign bearing the words "SAFETY DEVICE NOT WORKING", "WORKING," or words having a similar intent, meaning shall be placed on the radiation source housing and the control panel during the period such bypassing is in effect. bypassing period.

(e) Prior to an individual modifying the:

(1) x-ray tube system, resulting in the removal of tube housings, covers, or shielding materials;

(2) shutters;

(3) collimators; or

(4) beam stops;

the individual shall determine the tube is off and will remain off until safe conditions have been restored.

(f) Safety devices including interlocks, shutters, and warning lights shall be tested for proper operation on all RGDs in operation

once annually. Records of the testing shall be retained for three years.

(g) Individuals shall not hold a sample or object being irradiated.

Authority G.S. 104E-7; 104E-12.

10A NCAC 15 .0806 PERSONNEL REQUIREMENTS

(a) Instructions of personnel operating or maintaining RGDs shall comply with the following:

(1) No person shall be permitted to operate or maintain ~~analytical x-ray equipment~~ RGDs unless the person has received instruction in ~~instruction in the operating and emergency procedures for the RGD and instruction that is in accordance with Rule .1003 of this Chapter.~~

~~(A) identification of possible radiation hazards and biological effects associated with the use of the equipment;~~

~~(B) significance of the various radiation warning and safety devices incorporated into the equipment, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in these cases;~~

~~(C) proper operating procedures for the equipment;~~

~~(D) appropriate use and limitations of dosimetric devices;~~

~~(E) proper procedures for reporting an actual or suspected exposure.~~

(2) Each licensee or registrant shall maintain, for inspection by the agency, records of training which demonstrate that demonstrate the requirements of this Rule have been met, satisfied.

~~(b) Personnel monitoring or wrist dosimetric devices shall be provided to, and shall be used by:~~

~~(b) The registrant shall provide ring or wrist personnel monitoring equipment to:~~

~~(1) analytical x-ray equipment workers using systems having an open beam configuration and individuals using open-beam RGDs not equipped with a safety device; and~~

~~(2) personnel maintaining analytical x-ray equipment individuals maintaining RGDs if the maintenance procedures require the presence of a primary x-ray beam when any local component in the analytical x-ray system RGD is disassembled or removed.~~

Authority G.S. 104E-7; 104E-11; 104E-12.

**10A NCAC 15 .0807 PERMANENT RADIOGRAPHIC
INSTALLATIONS AND INDUSTRIAL RADIOGRAPHY
RGDS**

(a) Permanent radiographic installations and industrial radiography RGDS are exempt from the requirements of the rules of this Section except Rule .0802 and Rule .0804(a), (b)(1)(A), (b)(1)(C), (b)(2), and (b)(3).

(b) Permanent radiographic installations and industrial radiography RGDS shall comply with the following rules of this Chapter:

- (1) .0501;
- (2) .0502;
- (3) .0506;
- (4) .0509-.0520;
- (5) .0522;
- (6) .0523(a)(1);
- (7) .0523(a)(3);
- (8) .0523(a)(6) -.0523(a)(15);
- (9) .0523(b)(1) -.0523(b)(4);
- (10) .0523(b)(6) -.0523(b)(7);
- (11) .0523(b)(9) -.0523(b)(12);
- (12) .0523(c); and
- (13) .0525.

Authority G.S. 104E-7.

**10A NCAC 15 .0808 APPLICABLE RULES FOR
BOMB DETECTION RGDS**

Bomb detection RGDS utilized by accredited bomb squads and certified bomb technicians shall comply with the following Rules of this Chapter:

- (1) .0501;
- (2) .0502;
- (3) .0509;
- (4) .0511-.0520 except for the requirements for a direct reading pocket dosimeter and operating alarm ratemeter in .0512(a);
- (5) .0522;
- (6) .0523(a)(1);
- (7) .0523(a)(3);
- (8) .0523(a)(6) -.0523(a)(15);
- (9) .0523(b)(1) -.0523(b)(4);
- (10) .0523(b)(6) -.0523(b)(7);
- (11) .0523(b)(9) -.0523(b)(12);
- (12) .0523(c); and
- (13) .0525.

Authority G.S. 104E-7.

*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 March 19, 2015.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

PESTICIDE BOARD

<u>Eastern and Hairy-Tailed Moles</u>	02 NCAC 09L .0707*	29:08 NCR
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BANKS, OFFICE OF THE COMMISSIONER OF

<u>Definitions</u>	04 NCAC 03D .0105*	29:09 NCR
<u>Reports of Condition of State Trust Entities</u>	04 NCAC 03D .0201*	29:09 NCR
<u>Administration of Trust Business</u>	04 NCAC 03D .0302*	29:09 NCR
<u>Books and Records</u>	04 NCAC 03D .0303*	29:09 NCR
<u>Collective Investment</u>	04 NCAC 03D .0304*	29:09 NCR

MEDICAL CARE COMMISSION

<u>Medication Labels</u>	10A NCAC 13F .1003*	29:08 NCR
<u>Pharmaceutical Services</u>	10A NCAC 13F .1010*	29:08 NCR
<u>Medication Labels</u>	10A NCAC 13G .1003*	29:08 NCR
<u>Pharmaceutical Services</u>	10A NCAC 13G .1010*	29:08 NCR
<u>Group Homes; Developmentally Disabled Adults</u>	10A NCAC 13H .0101	29:08 NCR
<u>Group Homes for Developmentally Disabled Adults</u>	10A NCAC 13H .0102	29:08 NCR
<u>Private For Profit Group Homes</u>	10A NCAC 13H .0103	29:08 NCR
<u>Definitions</u>	10A NCAC 13H .0104	29:08 NCR
<u>Regulation</u>	10A NCAC 13H .0201	29:08 NCR
<u>The Co-Administrator</u>	10A NCAC 13H .0202	29:08 NCR
<u>Relief Person-in-Charge</u>	10A NCAC 13H .0203	29:08 NCR
<u>The Home Manager in Private Non-Profit Homes</u>	10A NCAC 13H .0301	29:08 NCR
<u>Change of Manager</u>	10A NCAC 13H .0302	29:08 NCR
<u>Personnel Requirements</u>	10A NCAC 13H .0401	29:08 NCR
<u>Qualifications of Other Staff and Family Members Living In</u>	10A NCAC 13H .0402	29:08 NCR
<u>Qualifications of Relief Person-In-Charge</u>	10A NCAC 13H .0403	29:08 NCR
<u>Responsibilities of Relief Person-In-Charge</u>	10A NCAC 13H .0404	29:08 NCR
<u>Qualifications of Other Staff Not Living In</u>	10A NCAC 13H .0405	29:08 NCR
<u>Health Requirements</u>	10A NCAC 13H .0406	29:08 NCR
<u>General Personnel Requirements</u>	10A NCAC 13H .0407	29:08 NCR
<u>Staff Competency and Training</u>	10A NCAC 13H .0408	29:08 NCR
<u>Training Program Content and Approval</u>	10A NCAC 13H .0409	29:08 NCR
<u>Qualifications of Medication Staff</u>	10A NCAC 13H .0410	29:08 NCR
<u>Medication Administration Competency Evaluation</u>	10A NCAC 13H .0411	29:08 NCR
<u>Location</u>	10A NCAC 13H .0501	29:08 NCR
<u>Construction</u>	10A NCAC 13H .0502	29:08 NCR

APPROVED RULES

<u>Living Areas</u>	10A NCAC 13H .0601	29:08 NCR
<u>Dining Area</u>	10A NCAC 13H .0602	29:08 NCR
<u>Kitchen</u>	10A NCAC 13H .0603	29:08 NCR
<u>Bedrooms</u>	10A NCAC 13H .0604	29:08 NCR
<u>Closets</u>	10A NCAC 13H .0605	29:08 NCR
<u>Bathrooms</u>	10A NCAC 13H .0606	29:08 NCR
<u>Storage Areas</u>	10A NCAC 13H .0607	29:08 NCR
<u>Floors</u>	10A NCAC 13H .0608	29:08 NCR
<u>Laundry</u>	10A NCAC 13H .0609	29:08 NCR
<u>Outside Entrances</u>	10A NCAC 13H .0610	29:08 NCR
<u>Fire Safety Requirements</u>	10A NCAC 13H .0611	29:08 NCR
<u>Other Requirements</u>	10A NCAC 13H .0612	29:08 NCR
<u>Housekeeping and Furnishings</u>	10A NCAC 13H .0613	29:08 NCR
<u>Personal Care</u>	10A NCAC 13H .0701	29:08 NCR
<u>Health Care</u>	10A NCAC 13H .0702	29:08 NCR
<u>Food Service</u>	10A NCAC 13H .0703	29:08 NCR
<u>Other Regulations</u>	10A NCAC 13H .0704	29:08 NCR
<u>Individual Goals</u>	10A NCAC 13H .0801	29:08 NCR
<u>Individual Records</u>	10A NCAC 13H .0802	29:08 NCR
<u>Policies and Procedures</u>	10A NCAC 13H .0803	29:08 NCR
<u>Resident's Living Status</u>	10A NCAC 13H .0804	29:08 NCR
<u>Activities Outside the Home</u>	10A NCAC 13H .0805	29:08 NCR
<u>Accident Prevention</u>	10A NCAC 13H .0806	29:08 NCR
<u>Plan for Medical Services</u>	10A NCAC 13H .0807	29:08 NCR
<u>Personal Skills Development</u>	10A NCAC 13H .0808	29:08 NCR
<u>Admissions</u>	10A NCAC 13H .0901	29:08 NCR
<u>Medical Requirements</u>	10A NCAC 13H .0902	29:08 NCR
<u>Personal Information</u>	10A NCAC 13H .0903	29:08 NCR
<u>Written Agreements</u>	10A NCAC 13H .0904	29:08 NCR
<u>Plans at Time of Admission</u>	10A NCAC 13H .0905	29:08 NCR
<u>Procedures for Transfer</u>	10A NCAC 13H .0906	29:08 NCR
<u>Procedures for Discharge</u>	10A NCAC 13H .0907	29:08 NCR
<u>Physicians</u>	10A NCAC 13H .1001	29:08 NCR
<u>Physical Examinations</u>	10A NCAC 13H .1002	29:08 NCR
<u>Medications</u>	10A NCAC 13H .1003	29:08 NCR
<u>Handling Funds of Residents</u>	10A NCAC 13H .1101	29:08 NCR
<u>Refund Policies</u>	10A NCAC 13H .1102	29:08 NCR
<u>Records</u>	10A NCAC 13H .1201	29:08 NCR
<u>Reports</u>	10A NCAC 13H .1202	29:08 NCR
<u>Capacity</u>	10A NCAC 13H .1301	29:08 NCR
<u>Increase in Capacity</u>	10A NCAC 13H .1302	29:08 NCR
<u>Application for License</u>	10A NCAC 13H .1401	29:08 NCR
<u>New Construction: Additions and Renovations</u>	10A NCAC 13H .1402	29:08 NCR
<u>Current License</u>	10A NCAC 13H .1501	29:08 NCR
<u>Renewal of License</u>	10A NCAC 13H .1502	29:08 NCR
<u>Termination of License</u>	10A NCAC 13H .1503	29:08 NCR

<u>Denial or Revocation of License</u>	10A NCAC 13H .1504	29:08 NCR
<u>Procedures for Appeal</u>	10A NCAC 13H .1505	29:08 NCR
<u>Suspension of Admissions</u>	10A NCAC 13H .1506	29:08 NCR
<u>Administrative Penalty Determination Process</u>	10A NCAC 13H .1601	29:08 NCR
<u>Resident Assessment</u>	10A NCAC 13H .1602	29:08 NCR
<u>Resident Care Plan</u>	10A NCAC 13H .1603	29:08 NCR
<u>Licensed Health Professional Support</u>	10A NCAC 13H .1604	29:08 NCR
<u>Cooperation with Case Managers</u>	10A NCAC 13H .1605	29:08 NCR
<u>Health Care Personnel Registry</u>	10A NCAC 13H .1606	29:08 NCR
<u>Respite Care</u>	10A NCAC 13H .1607	29:08 NCR
<u>Definitions</u>	10A NCAC 13H .1701	29:08 NCR
<u>Persons Not Eligible for New Adult Care Home Licenses</u>	10A NCAC 13H .1702	29:08 NCR
<u>Conditions for License Renewal</u>	10A NCAC 13H .1703	29:08 NCR
<u>Definitions</u>	10A NCAC 13H .1901	29:08 NCR
<u>Scope</u>	10A NCAC 13H .1902	29:08 NCR
<u>Reporting Requirements</u>	10A NCAC 13H .1903	29:08 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Definitions</u>	10A NCAC 43K .0101*	29:11 NCR
<u>Screening Requirements</u>	10A NCAC 43K .0102*	29:11 NCR
<u>Reporting Requirements</u>	10A NCAC 43K .0103*	29:11 NCR
<u>Accreditation Requirements</u>	10A NCAC 48B .0103	29:11 NCR
<u>Benchmark 34</u>	10A NCAC 48B .1301	29:11 NCR
<u>Benchmark 37</u>	10A NCAC 48B .1304*	29:11 NCR
<u>Benchmark 38</u>	10A NCAC 48B .1305	29:11 NCR
<u>Benchmark 39</u>	10A NCAC 48B .1306	29:11 NCR
<u>Benchmark 40</u>	10A NCAC 48B .1307	29:11 NCR
<u>Benchmark 41</u>	10A NCAC 48B .1308	29:11 NCR

TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES

<u>Driver's License Examination</u>	19A NCAC 03B .0201*	29:12 NCR
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DENTAL EXAMINERS, BOARD OF

<u>Functions Which May Be Delegated</u>	21 NCAC 16G .0101*	28:22 NCR
<u>Approved Education and Training Programs</u>	21 NCAC 16H .0104*	28:22 NCR
<u>Permitted Functions of Dental Assistant II</u>	21 NCAC 16H .0203*	28:22 NCR
<u>Applications</u>	21 NCAC 16I .0101*	28:22 NCR
<u>Continuing Education Required</u>	21 NCAC 16I .0102*	28:22 NCR
<u>Penalty/Non-Compliance/Continuing Education Requirement</u>	21 NCAC 16I .0105*	28:22 NCR
<u>License Void Upon Failure to Renew</u>	21 NCAC 16I .0107*	28:22 NCR
<u>Form of Certificate</u>	21 NCAC 16I .0108	28:22 NCR
<u>Definitions</u>	21 NCAC 16I .0110	28:22 NCR
<u>Exemptions Granted</u>	21 NCAC 16I .0111*	28:22 NCR
<u>Premises</u>	21 NCAC 16J .0101*	28:22 NCR

APPROVED RULES

<u>Instructors to be Approved</u>	21	NCAC 16K .0103	28:22 NCR
<u>Reports to Board</u>	21	NCAC 16K .0106*	28:22 NCR
<u>Request for Hearing</u>	21	NCAC 16N .0502*	28:22 NCR
<u>Notice of Hearing</u>	21	NCAC 16N .0504*	28:22 NCR
<u>Who Shall Hear Contested Cases</u>	21	NCAC 16N .0505*	28:22 NCR
<u>Petition for Intervention</u>	21	NCAC 16N .0506*	28:22 NCR
<u>Disqualification of Board Members</u>	21	NCAC 16N .0508*	28:22 NCR
<u>Subpoena</u>	21	NCAC 16N .0603*	28:22 NCR

IRRIGATION CONTRACTORS LICENSING BOARD

<u>Conduct of Hearing</u>	21	NCAC 23 .0206*	28:24 NCR
<u>Decision of Board</u>	21	NCAC 23 .0207*	28:24 NCR
<u>Trenching and Piping</u>	21	NCAC 23 .0505*	28:24 NCR

PHYSICAL THERAPY EXAMINERS, BOARD OF

<u>Continuing Competence Activities</u>	21	NCAC 48G .0109*	n/a G.S. 150B-21.5(a)(5)
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REFRIGERATION EXAMINERS, BOARD OF

<u>Office of the Board</u>	21	NCAC 60 .0102*	n/a G.S. 150B-21.5(a)(4)
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STATE HUMAN RESOURCES COMMISSION

<u>Time Frame for Raising Allegation of Discrimination</u>	25	NCAC 01B .0350*	29:11 NCR
<u>Exercise of Commission Discretion</u>	25	NCAC 01B .0413*	29:11 NCR
<u>Permanent and Time-Limited Appointment</u>	25	NCAC 01C .0402*	29:11 NCR
<u>Reduction in Force</u>	25	NCAC 01C .1004*	29:11 NCR
<u>Unavailability When Leave is Exhausted</u>	25	NCAC 01C .1007*	29:11 NCR
<u>Initial Employment</u>	25	NCAC 01D .0201*	29:11 NCR
<u>Total State Service Defined</u>	25	NCAC 01E .0204*	29:11 NCR
<u>Approved Holidays</u>	25	NCAC 01E .0901*	29:11 NCR
<u>Purpose</u>	25	NCAC 01E .1601*	29:11 NCR
<u>Definitions</u>	25	NCAC 01E .1602*	29:11 NCR
<u>Community Service Leave Administration</u>	25	NCAC 01E .1605*	29:11 NCR
<u>Additional Time for Community Service Activities</u>	25	NCAC 01E .1606	29:11 NCR
<u>Special Applicant Considerations Related to Priority</u>	25	NCAC 01H .0633*	29:11 NCR
<u>Selection of Applicants</u>	25	NCAC 01H .0634*	29:11 NCR
<u>Employment: E-Verify</u>	25	NCAC 01H .0636*	29:11 NCR
<u>Employment of Relatives</u>	25	NCAC 01H .0641*	29:11 NCR
<u>Reduction in Force Application and Appeal</u>	25	NCAC 01H .0901*	29:11 NCR
<u>Requirements for Reduction in Force Priority Consideration</u>	25	NCAC 01H .0902*	29:11 NCR
<u>Agency and Employee Responsibilities</u>	25	NCAC 01H .0904*	29:11 NCR
<u>Office of State Human Resources Responsibilities</u>	25	NCAC 01H .0905*	29:11 NCR
<u>Appeals</u>	25	NCAC 01J .0603*	29:11 NCR
<u>Written Warning</u>	25	NCAC 01J .0610*	29:11 NCR
<u>Investigatory Leave</u>	25	NCAC 01J .0615*	29:11 NCR

<u>Credentials</u>	25	NCAC 01J .0616*	29:11 NCR
<u>Discrimination and Retaliation</u>	25	NCAC 01J .0617*	29:11 NCR
<u>Unlawful Workplace Harassment and Retaliation</u>	25	NCAC 01J .1101*	29:11 NCR
<u>General Provisions</u>	25	NCAC 01J .1201	29:11 NCR
<u>Agency Responsibilities</u>	25	NCAC 01J .1202	29:11 NCR
<u>Agency Grievance Reports</u>	25	NCAC 01J .1203	29:11 NCR
<u>Discrimination and Retaliation/Special Provisions</u>	25	NCAC 01J .1204	29:11 NCR
<u>Unlawful Workplace Harassment</u>	25	NCAC 01J .1205	29:11 NCR
<u>Time Limits</u>	25	NCAC 01J .1206	29:11 NCR
<u>Final Agency Action</u>	25	NCAC 01J .1207	29:11 NCR
<u>Leave In Connection with Grievances</u>	25	NCAC 01J .1208	29:11 NCR
<u>Minimum Procedural Requirements</u>	25	NCAC 01J .1301	29:11 NCR
<u>General Agency Grievance Procedure Requirements</u>	25	NCAC 01J .1302*	29:11 NCR
<u>Agency and University Grievance Reports and Data Entry</u>	25	NCAC 01J .1303*	29:11 NCR
<u>Office of State Human Resources Review and Approval of Fi...</u>	25	NCAC 01J .1305*	29:11 NCR
<u>Back Pay</u>	25	NCAC 01J .1306*	29:11 NCR
<u>Front Pay</u>	25	NCAC 01J .1307*	29:11 NCR
<u>Leave</u>	25	NCAC 01J .1308*	29:11 NCR
<u>Health Insurance</u>	25	NCAC 01J .1309*	29:11 NCR
<u>Interest</u>	25	NCAC 01J .1310	29:11 NCR
<u>Reinstatement</u>	25	NCAC 01J .1311*	29:11 NCR
<u>Causes for Reinstatement</u>	25	NCAC 01J .1312*	29:11 NCR
<u>Suspension Without Pay</u>	25	NCAC 01J .1313*	29:11 NCR
<u>Discrimination, Harassment, or Retaliation</u>	25	NCAC 01J .1314*	29:11 NCR
<u>Voluntary Programs or Benefits</u>	25	NCAC 01J .1315*	29:11 NCR
<u>Remedies for Procedural Violations</u>	25	NCAC 01J .1316*	29:11 NCR
<u>Remedies: Salary Adjustments</u>	25	NCAC 01J .1317*	29:11 NCR
<u>Certain Remedies not Available</u>	25	NCAC 01J .1318*	29:11 NCR
<u>Situations in Which Attorney's Fees May be Awarded</u>	25	NCAC 01J .1319	29:11 NCR
<u>Attorney's Fees may be Awarded as a Result of a Settlement</u>	25	NCAC 01J .1320*	29:11 NCR
<u>Minimum Procedural Requirements</u>	25	NCAC 01J .1401	29:11 NCR
<u>Flexibility</u>	25	NCAC 01J .1402	29:11 NCR
<u>Informal Meeting with Supervisor</u>	25	NCAC 01J .1403	29:11 NCR
<u>Mediation Procedure</u>	25	NCAC 01J .1404	29:11 NCR
<u>Conclusion of Mediation</u>	25	NCAC 01J .1405	29:11 NCR
<u>Limitations on a Mediation Agreement</u>	25	NCAC 01J .1406	29:11 NCR
<u>Post Mediation</u>	25	NCAC 01J .1407	29:11 NCR
<u>Employee Responsibilities for Mediation</u>	25	NCAC 01J .1408	29:11 NCR
<u>Agency Responsibilities for Mediation</u>	25	NCAC 01J .1409	29:11 NCR
<u>Office of State Personnel Responsibilities</u>	25	NCAC 01J .1410	29:11 NCR
<u>Agency Procedural Requirements for Employee Mediation and...</u>	25	NCAC 01J .1411	29:11 NCR
<u>Office of State Personnel Responsibilities for Employee M...</u>	25	NCAC 01J .1412	29:11 NCR

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

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

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

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

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

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

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

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

*History Note: Authority G.S. 143-444(1); 143-458;
Eff. April 1, 2015.*

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 03D .0105 DEFINITIONS

As used in this Subchapter:

- (1) "Board of Directors" shall have the same meaning as defined in G.S. 53-301(a)(6a).
- (2) "Collective investment fund" shall mean any fund established pursuant to 12 C.F.R. 9.18, which is incorporated by reference in Rule .0304 of this Subchapter.
- (3) "State trust entity" shall mean a "state bank" or "state trust company" as defined in G.S. 53-301(a)(43) and (45).
- (4) "Trust business" shall have the same meaning as defined in G.S. 53-301(a)(50).

*History Note: Authority G.S. 53-366; 53C-2-5;
Eff. April 1, 2015.*

**04 NCAC 03D .0201 REPORTS OF CONDITION OF
STATE TRUST ENTITIES**

Each state trust entity, on a form or forms provided by the Office of the Commissioner of Banks, shall submit reports of condition

that shall include information on operations, statutory and regulatory requirements, supervisory standards, and assets under management. The form or forms shall be obtained from and filed with:

Office of the Commissioner of Banks
316 West Edenton Street
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

Forms 29TC, 29A, and TARS® may be submitted electronically at:
<http://www.nccob.gov/Public/financialinstitutions/banks/banksff.aspx>.

*History Note: Authority G.S. 53-366; 53-367; 53C-2-5; 53C-8-3;
Eff. February 1, 1976;
Amended Eff. April 1, 2015; September 1, 2006; September 26, 1979.*

**04 NCAC 03D .0302 ADMINISTRATION OF TRUST
BUSINESS**

(a) A state trust entity shall conduct its trust business separate and apart from any other business it conducts. A state trust entity may, however, utilize personnel and facilities of other departments of the state trust entity and other departments of the state trust entity may utilize its trust personnel and facilities to the extent not prohibited by law.

(b) Board of Directors

- (1) The trust business of a state trust entity shall be managed by or under the direction of its board of directors. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the state trust entity's trust business as it may consider proper to assign to such director(s), officers(s), or employee(s), who are qualified and competent to administer trust business, and it may designate and appoint such committees of director(s) or officer(s) as it deems advisable to supervise the trust business.

- (2) No trust business shall be accepted without the prior approval of the board of directors, or of the director(s), officer(s), or committee(s) to whom the board of directors may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of each account. Upon the acceptance of an account for which the state trust entity has investment responsibility, a review of the assets shall be made. The board of directors shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in each account that the state trust entity has investment responsibilities for are

reviewed to determine the advisability of retaining or disposing of such assets.

(c) All officers and employees taking part in the administration of trust business shall be adequately bonded.

(d) Every state trust entity shall designate, employ, or retain competent legal counsel who shall be readily available to advise on the trust business it conducts.

(e) Negotiable and tangible assets held by the state trust entity in its own vaults shall be placed in the joint custody of at least two or more bonded officers or employees designated by the board of directors.

(f) Funds held by a state trust entity in a fiduciary capacity awaiting investment or distribution shall be invested, pursuant to the provisions of G.S. 53-163.1.

(g) Trust business investments by a state trust entity in its own depository accounts shall be secured in the manner and to the extent required by G.S. 53-163.1 and G.S. 53-163.3.

History Note: Authority G.S. 53-163.1; 53-163.3; 53-356; 53-366; 53C-2-5; 53C-4-6;
Eff. February 1, 1976;
Amended Eff. April 1, 2015; May 1, 1992; September 26, 1979.

04 NCAC 03D .0303 BOOKS AND RECORDS

Books and Records. Each state trust entity shall keep the following:

- (1) a separate and distinct set of books and records showing all receipts and disbursements of funds, receipts, purchases and sales of assets, and other transactions engaged in, in connection with trust business; and showing at all times the ownership of all moneys, funds, investments and property in that connection held by the state trust entity;
- (2) files containing the original instruments creating each trust or authenticated copies; and
- (3) a permanent record of minutes for each committee, showing its actions. All minutes shall be signed by the committee's chairman and its secretary.

History Note: Authority G.S. 53-366; 53-367; 53C-2-5; 53-320(a);
Eff. February 1, 1976;
Amended Eff. April 1, 2015; May 1, 1992; September 26, 1979.

04 NCAC 03D .0304 COLLECTIVE INVESTMENT

(a) Funds held for trust business accounts by a state trust entity may be invested collectively in one or more collective investment funds to the extent permissible for the accounts. Such funds shall be organized and administered in accordance with the provisions of 12 C.F.R. 9.18.

(b) 12 C.F.R. 9.18 is herein incorporated by reference, including all subsequent amendments and editions, and may be accessed at the U.S. Printing Office website at http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8

at no cost at the time of adoption of this Rule. However, any reference in the regulation to "Comptroller of Currency" shall, for the purpose of state trust entities, be deemed to refer to the "Commissioner of Banks."

History Note: Authority G.S. 53-163.7; 53-366; 53C-2-5;
Eff. February 1, 1976;
Amended Eff. April 1, 2015; May 1, 1992; November 1, 1982;
September 26, 1979.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13F .1003 MEDICATION LABELS

(a) Labeling of prescription legend medications, except for medications prepared for a resident's leave of absence in accordance with Rule .1010(d)(4) of this Section, shall be legible and include the following information:

- (1) the name of the resident for whom the medication is prescribed;
- (2) the most recent date of issuance;
- (3) the name of the prescriber;
- (4) the name and concentration of the medication, quantity dispensed, and prescription serial number;
- (5) unabbreviated directions for use stated;
- (6) a statement of generic equivalency shall be indicated if a brand other than the brand prescribed is dispensed;
- (7) the expiration date, unless dispensed in a single unit or unit dose package that already has an expiration date;
- (8) auxiliary information as required of the medication;
- (9) the name, address, and telephone number of the dispensing pharmacy; and
- (10) the name or initials of the dispensing pharmacist.

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

(c) The facility shall assure any changes in directions of a resident's medication by the prescriber are on the container at the refilling of the medication by the pharmacist or dispensing practitioner. The facility shall have a procedure for identifying direction changes until the container is correctly labeled in accordance with Paragraph (a) of this Rule. No person other than a licensed pharmacist or dispensing practitioner shall alter a prescription label.

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

obstruct any of the information on the container. Facility staff may label or write the resident's name on the container.

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

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

Eff. July 1, 2005;

Amended Eff. April 1, 2015.

10A NCAC 13F .1010 PHARMACEUTICAL SERVICES

(a) An adult care home shall allow the residents the right to choose a pharmacy provider as long as the pharmacy provides services that are in accordance with requirements of this Section and all applicable state and federal regulations and the facility's medication management policies and procedures.

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

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

(d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility. The facility shall have written policies and procedures for a resident's temporary leave of absence. The policies and procedures shall facilitate safe administration by assuring that upon receipt of the medication for a leave of absence the resident or the person accompanying the resident is able to identify the medication, dosage, and administration time for each medication provided for the temporary leave of absence. The policies and procedures shall include at least the following provisions:

- (1) The amount of resident's medications provided shall be sufficient and necessary to cover the duration of the resident's absence. For the purposes of this Rule, sufficient and necessary means the amount of medication to be administered during the leave of absence or only a current dose pack, card, or container if the current dose pack, card, or container has enough medication for the planned absence;
- (2) Written and verbal instructions for each medication to be released for the resident's absence shall be provided to the resident or the person accompanying the resident upon the medication's release from the facility and shall include at least:
 - (A) the name and strength of the medication;
 - (B) the directions for administration as prescribed by the resident's physician;

(C) any cautionary information from the original prescription package if the information is not on the container released for the leave of absence;

(3) The resident's medication shall be provided in a capped or closed container that will protect the medications from contamination and spillage; and

(4) Labeling of each of the resident's individual medication containers for the leave of absence shall be legible, include at least the name of the resident and the name and strength of the medication, and be affixed to each container.

The facility shall maintain documentation in the resident's record of medications provided for the resident's leave of absence, including the quantity released from the facility and the quantity returned to the facility. The documentation of the quantities of medications released from and returned to the facility for a resident's leave of absence shall be verified by signature of the facility staff and resident or the person accompanying the resident upon the medications' release from and return to the facility.

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

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

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

Eff. July 1, 2005;

Amended Eff. April 1, 2015.

10A NCAC 13G .1003 MEDICATION LABELS

(a) Labeling of prescription legend medications, except for medications prepared for a resident's leave of absence in accordance with Rule .1010(d)(4) of this Section, shall be legible and include the following information:

- (1) the name of the resident for whom the medication is prescribed;
- (2) the most recent date of issuance;
- (3) the name of the prescriber;
- (4) the name and concentration of the medication, quantity dispensed, and prescription serial number;
- (5) unabbreviated directions for use stated;
- (6) a statement of generic equivalency shall be indicated if a brand other than the brand prescribed is dispensed;
- (7) the expiration date, unless dispensed in a single unit or unit dose package that already has an expiration date;
- (8) auxiliary information as required of the medication;
- (9) the name, address, and telephone number of the dispensing pharmacy; and

(10) the name or initials of the dispensing pharmacist.

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

(c) The facility shall assure any changes in directions of a resident's medication by the prescriber are on the container at the refilling of the medication by the pharmacist or dispensing practitioner. The facility shall have a procedure for identifying direction changes until the container is correctly labeled in accordance with Paragraph (a) of this Rule. No person other than a licensed pharmacist or dispensing practitioner shall alter a prescription label.

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

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

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

*Temporary Adoption Eff. December 1, 1999;
Eff. July 1, 2000;*

Amended Eff. April 1, 2015.

10A NCAC 13G .1010 PHARMACEUTICAL SERVICES

(a) A family care home shall allow the residents the right to choose a pharmacy provider as long as the pharmacy provides services that are in accordance with requirements of this Section and all applicable state and federal regulations and the facility's medication management policies and procedures.

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

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

(d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility. The facility shall have written policies and procedures for a resident's temporary leave of absence. The policies and procedures shall facilitate safe administration by assuring that upon receipt of the medication for a leave of absence the resident or the person accompanying the resident is able to identify the medication, dosage, and administration time for each medication provided for the

temporary leave of absence. The policies and procedures shall include at least the following provisions:

- (1) The amount of resident's medications provided shall be sufficient and necessary to cover the duration of the resident's absence. For the purposes of this Rule, sufficient and necessary means the amount of medication to be administered during the leave of absence or only a current dose pack, card, or container if the current dose pack, card, or container has enough medication for the planned absence;
- (2) Written and verbal instructions for each medication to be released for the resident's absence shall be provided to the resident or the person accompanying the resident upon the medication's release from the facility and shall include at least:
 - (A) the name and strength of the medication;
 - (B) the directions for administration as prescribed by the resident's physician;
 - (C) any cautionary information from the original prescription package if the information is not on the container released for the leave of absence;
- (3) The resident's medications shall be provided in a capped or closed container that will protect the medications from contamination and spillage; and
- (4) Labeling of each of the resident's individual medication containers for the leave of absence shall be legible, include at least the name of the resident and the name and strength of the medication, and be affixed to each container.

The facility shall maintain documentation in the resident's record of medications provided for the resident's leave of absence, including the quantity released from the facility and the quantity returned to the facility. The documentation of the quantities of medications released from and returned to the facility for a resident's leave of absence shall be verified by signature of the facility staff and resident or the person accompanying the resident upon the medications' release from and return to the facility.

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

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

Eff. July 1, 2005;

Amended Eff. April 1, 2015.

10A NCAC 13H .0101 GROUP HOMES;

DEVELOPMENTALLY DISABLED ADULTS

10A NCAC 13H .0102 GROUP HOMES FOR

DEVELOPMENTALLY DISABLED ADULTS

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

10A NCAC 13H .0104 DEFINITIONS

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

Eff. January 1, 1978;

Amended Eff. July 1, 1990; February 1, 1986;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0201 REGULATION
10A NCAC 13H .0202 THE CO-ADMINISTRATOR
10A NCAC 13H .0203 RELIEF PERSON-IN-CHARGE

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

Eff. January 1, 1978;

Amended Eff. April 1, 1987; November 1, 1984;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0301 THE HOME MANAGER IN
PRIVATE NON-PROFIT HOMES
10A NCAC 13H .0302 CHANGE OF MANAGER

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

Eff. January 1, 1978;

Amended Eff. July 1, 1990; April 1, 1987; November 1, 1984;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0401 PERSONNEL REQUIREMENTS
10A NCAC 13H .0402 QUALIFICATIONS OF OTHER
STAFF AND FAMILY MEMBERS LIVING IN
10A NCAC 13H .0403 QUALIFICATIONS OF RELIEF
PERSON-IN-CHARGE
10A NCAC 13H .0404 RESPONSIBILITIES OF RELIEF
PERON-IN-CHARGE
10A NCAC 13H .0405 QUALIFICATIONS OF OTHER
STAFF NOT LIVING IN
10A NACA 13H .0406 HEALTH REQUIREMENTS
10A NACA 13H .0407 GENERAL PERSONNEL
REQUIREMENTS

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

Eff. January 1, 1978;

Amended Eff. July 1, 1990; September 1, 1987; April 1, 1987;

February 1, 1986; November 1, 1984; AARC Objection Lodged
January 1, 1991;

Amended Eff. May 1, 1992; August 1, 1991;

Temporary Amendment Eff. January 1, 2000; December 1, 1999;

Amended Eff. July 1, 2000;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0408 STAFF COMPETENCY AND
TRAINING
10A NCAC 13H .0409 TRAINING PROGRAM
CONTENT AND APPROVAL

History Note: Authority G.S. 131D-2; 131D-4.3; 143B-153;
Temporary Adoption Eff. January 1, 1996;

Eff. May 1, 1997;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0410 QUALIFICATIONS OF
MEDICATION STAFF
10A NCAC 13H .0411 MEDICATION
ADMINISTRATION COMPETENCY EVALUATION

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

Temporary Adoption Eff. January 1, 2000; December 1, 1999;

Eff. July 1, 2000;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0501 LOCATION
10A NCAC 13H .0502 CONSTRUCTION

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

Eff. January 1, 1978;

Amended Eff. March 1, 1991; February 1, 1986;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0601 LIVING AREAS
10A NCAC 13H .0602 DINING AREA
10A NCAC 13H .0603 KITCHEN
10A NCAC 13H .0604 BEDROOMS
10A NCAC 13H .0605 CLOSETS
10A NCAC 13H .0606 BATHROOMS
10A NCAC 13H .0607 STORAGE AREAS
10A NCAC 13H .0608 FLOORS
10A NCAC 13H .0609 LAUNDRY
10A NCAC 13H .0610 OUTSIDE ENTRANCES
10A NCAC 13H .0611 FIRE SAFETY REQUIREMENTS
10A NCAC 13H .0612 OTHER REQUIREMENTS
10A NCAC 13H .0613 HOUSEKEEPING AND
FURNISHINGS

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153;
143B-165; 168-1; 168-9; S.L. 1999-0334;

Eff. January 1, 1978;

Amended Eff. July 1, 1982;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. July 1, 2000;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0701 PERSONAL CARE
10A NCAC 13H .0702 HEALTH CARE
10A NCAC 13H .0703 FOOD SERVICE
10A NCAC 13H .0704 OTHER REGULATIONS

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

Eff. January 1, 1978;

Repealed Eff. April 1, 2015.

10A NCAC 13H .0801 INDIVIDUAL GOALS
10A NCAC 13H .0802 INDIVIDUAL RECORDS
10A NCAC 13H .0803 POLICIES AND PROCEDURES
10A NCAC 13H .0804 RESIDENT'S LIVING STATUS
10A NCAC 13H .0805 ACTIVITIES OUTSIDE THE HOME
10A NCAC 13H .0806 ACCIDENT PREVENTION
10A NCAC 13H .0807 PLAN FOR MEDICAL SERVICES
10A NCAC 13H .0808 PERSONAL SKILLS DEVELOPMENT

History Note: Authority G.S. 131D-2; 143B-153; 168-1; 168-9;
Eff. January 1, 1978;
Amended Eff. February 1, 1986;
Repealed Eff. April 1, 2015.

10A NCAC 13H .0901 ADMISSIONS
10A NCAC 13H .0902 MEDICAL REQUIREMENTS
10A NCAC 13H .0903 PERSONAL INFORMATION
10A NCAC 13H .0904 WRITTEN AGREEMENTS
10A NCAC 13H .0905 PLANS AT TIME OF ADMISSION
10A NCAC 13H .0906 PROCEDURES FOR TRANSFER
10A NCAC 13H .0907 PROCEDURES FOR DISCHARGE

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; 143B-165; 168-1; 168-9; S.L. 1999-0334;
Eff. January 1, 1978;
Amended Eff. July 1, 1990;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1001 PHYSICIANS
10A NCAC 13H .1002 PHYSICAL EXAMINATIONS
10A NCAC 13H .1003 MEDICATIONS

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-153; 143B-165; 168-1; 168-9; S.L. 1999-0334;
Eff. January 1, 1978;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1101 HANDLING FUNDS OF RESIDENTS
10A NCAC 13H .1102 REFUND POLICIES

History Note: Authority G.S. 131D-2; 143B-153; 168-1; 168-9;
Eff. January 1, 1978;
Amended Eff. July 1, 1990; February 1, 1986;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1201 RECORDS
10A NCAC 13H .1202 REPORTS

History Note: Authority G.S. 131D-2; 143B-153; 168-1; 168-9;
Eff. January 1, 1978;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1301 CAPACITY
10A NCAC 13H .1302 INCREASE IN CAPACITY

History Note: Authority G.S. 131D-2; 143B-153; 168-1; 168-9;
Eff. January 1, 1978;
Amended Eff. July 1990;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1401 APPLICATION FOR LICENSE
10A NCAC 13H .1402 NEW CONSTRUCTION: ADDITIONS AND RENOVATIONS

History Note: Authority G.S. 131D-2; 143B-153; 168-1; 168-9;
Eff. January 1, 1978;
Amended Eff. February 1, 1986;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1501 CURRENT LICENSE
10A NCAC 13H .1502 RENEWAL OF LICENSE
10A NCAC 13H .1503 TERMINATION OF LICENSE
10A NCAC 13H .1504 DENIAL OR REVOCATION OF LICENSE
10A NCAC 13H .1505 PROCEDURES FOR APPEAL

History Note: Authority G.S. 131D-2; 143B-153; 168-1; 168-9;
Eff. January 1, 1978;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1506 SUSPENSION OF ADMISSIONS

History Note: Authority G.S. 130-9.7(e);
Eff. January 1, 1982;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1601 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

History Note: Authority G.S. 131D-2; 131D-34; 143B-153;
Eff. December 1, 1993;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1602 RESIDENT ASSESSMENT
10A NCAC 13H .1603 RESIDENT CARE PLAN
10A NCAC 13H .1604 LICENSED HEALTH PROFESSIONAL SUPPORT
10A NCAC 13H .1605 COOPERATION WITH CASE MANAGERS

History Note: Authority G.S. 131D-2; 131D-4.3; 143B-153;
Temporary Adoption Eff. January 1, 1996;
Eff. May 1, 1997;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1606 HEALTH CARE PERSONNEL REGISTRY

History Note: Authority G.S. 131D-2; 131D-4.5; 131E-256;
 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 2000;
Eff. July 1, 2000;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1607 RESPITE CARE

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2000-50;
Temporary Adoption Eff. November 1, 2000;
Eff. July 18, 2002;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1701 DEFINITIONS

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

10A NCAC 13H .1703 CONDITIONS FOR LICENSE RENEWAL

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165;
 S.L. 1999-0113; S.L. 1999-0334;
Temporary Adoption Eff. December 1, 1999;
Eff. July 1, 2000;
Repealed Eff. April 1, 2015.

10A NCAC 13H .1901 DEFINITIONS

10A NCAC 13H .1902 SCOPE

10A NCAC 13H .1903 REPORTING REQUIREMENTS

History Note: Authority G.S. 131D-2; 131D-34.1;
Temporary Adoption Eff. May 1, 2001;
Eff. July 18, 2002;
Repealed Eff. April 1, 2015.

10A NCAC 43K .0101 DEFINITIONS

As used in this Section:

- (1) "Neonate" means any term infant less than 28 days of age or any preterm infant less than 28 days corrected age.
- (2) "Infant" means a person who is less than 365 days of age.
- (3) "Critical congenital heart defects" (CCHD) means heart conditions present at birth that are dependent on therapy to maintain patency of the ductus arteriosus for either adequate pulmonary or systemic blood flow and that require catheter

or surgical intervention in the first year of life. Critical congenital heart defects are associated with significant morbidity and mortality and may include hypoplastic left heart syndrome, pulmonary atresia, tetralogy of Fallot, total anomalous pulmonary venous return, transposition of the great arteries, tricuspid atresia, and truncus arteriosus.

- (4) "Medical facility" means a free-standing birthing center, licensed hospital, or licensed ambulatory surgery center where scheduled or emergency births occur or where inpatient neonatal services are provided.
- (5) "Pulse oximetry" means a non-invasive transcutaneous assessment of arterial oxygen saturation using near infrared spectroscopy. This screening test measures with high reliability and validity the percentage of hemoglobin that is oxygenated, also known as the blood oxygen saturation.
- (6) "Positive screening" means the final result is a failed or abnormal pulse oximetry screening for critical congenital heart defects for a neonate or infant using a screening protocol based on the most current American Academy of Pediatrics and American Heart Association (AAP/AHA) recommendations. This includes neonates or infants who have not yet been confirmed to have critical congenital heart defects or have other conditions to explain abnormal pulse oximetry results. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.
- (7) "Negative screening" means the final result is a passed or normal pulse oximetry screening for critical congenital heart defects for a neonate or infant using a screening protocol based on the most current AAP/AHA recommendations.
- (8) "Attending providers of the neonate or infant" means the health care providers, such as pediatricians, family physicians, physician assistants, midwives, nurse practitioners, neonatologists, and other specialty physicians, who perform neonatal and infant assessments and review positive and negative pulse oximetry screening results to perform an evaluation and to create a plan of care for the neonate or infant prior to discharge from the care of the health care provider. This includes health care providers who attend to neonates or

infants in hospitals, free-standing birthing centers, homes, or other locations.

*History Note: Authority G.S. 130A-125;
Temporary Adoption Eff. July 25, 2014;
Eff. April 1, 2015.*

10A NCAC 43K .0102 SCREENING REQUIREMENTS

(a) All medical facilities and attending providers of a neonate or infant shall assure the following:

- (1) Screening of every neonate for critical congenital heart defects (CCHD) using pulse oximetry shall be performed at 24 to 48 hours of age using a written protocol developed by the provider based upon and in accordance with the most current recommendations from the American Academy of Pediatrics and American Heart Association (AAP/AHA) which are incorporated by reference including subsequent amendments and editions, unless a diagnostic neonatal echocardiogram has been performed. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.
- (2) Screening of a neonate for CCHD who is born in a free-standing birthing center or home may occur as early as 6 hours of age but shall not occur later than 48 hours of age using the AAP/AHA recommendations.
- (3) Screening of neonates and infants in neonatal intensive care units for critical congenital heart defects using pulse oximetry screening shall be performed using a written protocol based on the AAP/AHA recommendations as soon as the neonate or infant is stable, as determined by the attending provider, and off oxygen and before discharge unless a diagnostic echocardiogram is performed on the neonate or infant after birth and prior to discharge from the medical facility.
- (4) Only U.S. Food and Drug Administration approved pulse oximetry equipment is used and maintained to screen the neonate or infant for the presence of critical congenital heart defects.

(b) Parents or guardians may object to the critical congenital heart defects screening at any time before the screening is performed in accordance with G.S. 130A-125.

(c) All medical facilities and attending providers of the neonate or infant shall have and implement a written protocol developed by the provider for evaluation and follow up of positive critical congenital heart defect screenings.

- (1) Evaluation and follow up of a positive screening for all neonates shall occur as soon as possible but no later than 24 hours of obtaining a positive screening result. Evaluation and follow-up shall be in accordance with the most current published recommendations from the American Academy of Pediatrics and American Heart Association (AAP/AHA) which is incorporated by reference including subsequent amendments and editions. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at:

<http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.

- (2) Attending providers of neonates and infants in neonatal intensive care units must have a written protocol developed by the provider for evaluation and follow up of positive screenings in place at their medical facility.
- (3) Options for neonatal or infant echocardiograms may include on-site, telemedicine, or by transfer or referral to an appropriate medical facility with the capacity to perform and interpret a neonatal or infant echocardiogram. Echocardiograms must be interpreted as recommended by the most current recommendations from the AAP/AHA, which are incorporated by reference including subsequent amendments and editions. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.

*History Note: Authority G.S. 130A-125;
Temporary Adoption Eff. July 25, 2014;
Eff. April 1, 2015.*

10A NCAC 43K .0103 REPORTING REQUIREMENTS

(a) All medical facilities and attending providers of neonates or infants performing critical congenital heart defect (CCHD) screening shall report the information described below about positive screenings to a statewide CCHD database maintained by the Perinatal Quality Collaborative of North Carolina (PQCNC). The following information must be reported by medical facilities and attending providers within 7 days of all positive screenings:

- (1) date and time of birth of the neonate or infant, gestational age, and the medical facility or birth location, and
- (2) age in hours at time of screening; all pulse oximetry saturation values, including initial, subsequent, and final screening results; final diagnosis if known; any known interventions and treatment, and any need for transport or transfer; and the location of the transfer or transport if known.

(b) Within two weeks of receiving a positive screening, PQCNC shall report the above information from the CCHD database to the NC Birth Defects Monitoring Program using a unique identifier generated by the CCHD database for the neonate or infant. The unique identifier shall be retained by the source medical facility or attending provider for help with identification of the neonate or infant.

(c) All medical facilities and attending providers of neonates or infants performing critical congenital heart defect screening shall report aggregate information described in Subparagraphs (e)(1) through (e)(7) of this Rule quarterly and no later than 15 days after the end of each quarter of the state fiscal year to a statewide CCHD database maintained by the Perinatal Quality Collaborative of North Carolina (PQCNC).

(d) PQCNC shall report the aggregate information described in Sub-paragraphs (e)(1) through (e)(7) to the NC Birth Defects Monitoring Program within 30 days after the end of each quarter of the state fiscal year.

(e) The required quarterly aggregate information from medical facilities and attending providers of neonates or infants reported to PQCNC and that PQCNC reports to the NC Birth Defects Monitoring Program shall include the total unduplicated counts of:

- (1) live births;
- (2) neonates and infants who were screened;
- (3) negative screenings;
- (4) positive screenings;
- (5) neonates or infants whose parents or guardians objected to the critical congenital heart defect screenings;
- (6) transfers into the medical facility, not previously screened; and
- (7) neonates and infants not screened and the reasons if known which include a diagnostic echocardiogram being performed after birth and prior to discharge, transfer out of the medical facility before screening, or death .

*History Note: Authority G.S. 130A-125;
Temporary Adoption Eff. July 25, 2014;
Eff. April 1, 2015.*

10A NCAC 48B .0103 ACCREDITATION REQUIREMENTS

(a) To receive an accreditation status of "accredited," a local health department must satisfy all of the accreditation standards

contained in this Subchapter. In order to satisfy the accreditation standards, the local health department shall satisfy activities under the standards according to the following proportions:

- (1) Standard 1. Agency core functions and essential services:
 - (A) The local health department must satisfy at least 26 of the 29 activities listed in the benchmarks contained in Sections .0200 and .0300 of this Subchapter;
 - (B) The local health department must satisfy at least 23 of the 26 activities listed in benchmarks contained in Sections .0400 through .0600 of this Subchapter;
 - (C) The local health department must satisfy at least 34 of 38 activities listed in the benchmarks contained in Sections .0700 through .1100 of this Subchapter;
- (2) Standard 2. Facilities and administrative services: The local health department must satisfy at least 24 of the 27 activities listed in the benchmarks contained in Section .1200 of this Subchapter; and
- (3) Standard 3. Board of health: The local health department must satisfy at least 24 of the 27 activities listed in the benchmarks contained in Section .1300 of this Subchapter.

(b) In order to satisfy an activity, the local health department must satisfy all of the requirements prescribed for that activity. Failure to complete any activity requirement associated with an activity means that the activity is not satisfied.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015; February 1, 2013.*

10A NCAC 48B .1301 BENCHMARK 34

(a) Benchmark: The local board of health shall exercise its authority to adopt and enforce rules necessary to protect and promote the public's health.

(b) Activities:

- (1) The local board of health shall have operating procedures which shall comply with state law.
- (2) The local board of health shall have access to legal counsel.
- (3) The local board of health shall follow the procedures for adopting rules in G.S. 130A-39.
- (4) The local board of health shall evaluate the need for the adoption or amendment of local rules or ordinances.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015.*

10A NCAC 48B .1304 BENCHMARK 37

(a) Benchmark: The local board of health shall assure the development, implementation, and evaluation of local health services and programs to protect and promote the public's health.

(b) Activities:

- (1) The local board of health or the consolidated human services director shall assure that a qualified local health director has been appointed in accordance with G.S. 130A-40 or G.S. 130A-40.1.
- (2) The local board of health shall approve policies for the administration of local public health programs.
- (3) The local board of health or the consolidated human services director shall describe and define the knowledge, skills, and abilities that must be met by the local health director, consistent with the requirements in G.S. 130A-40.
- (4) The local board of health or the consolidated human services director shall review and approve the job description of the local health director.
- (5) The supervisor shall conduct an annual performance review of the health director.
- (6) The local board of health or the consolidated human services director shall approve policies for the recruitment, retention and workforce development for agency staff.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015.*

10A NCAC 48B .1305 BENCHMARK 38

(a) Benchmark: The local board of health shall participate in the establishment of public health goals and objectives.

(b) Activities:

- (1) The local board of health shall annually review reports provided by the local health department on the community's health.
- (2) The local board of health or the advisory committee on health shall review community health assessment data and citizen input used to plan and monitor progress toward health-related goals.
- (3) The local board of health or the advisory committee on health shall assure that individuals, agencies, and organizations have the opportunity to participate in the development of goals, objectives and strategies for community health improvement.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015.*

10A NCAC 48B .1306 BENCHMARK 39

(a) Benchmark: The local board of health shall assure the availability of resources to implement the essential services described in G.S. 130A-34.1(e)(2).

(b) Activities:

- (1) The local board of health or the advisory committee on health shall communicate with the board of county commissioners, units of government and private foundations in support of local health department efforts to secure national, state and local financial resources.
- (2) The local board of health shall review fiscal reports to assure essential services of public health are being provided in accordance with local, state and federal requirements.
- (3) The local board of health shall annually review and approve the local health department budget and approve fees in accordance with G.S. 130A-39(g).
- (4) The local board of health or the advisory committee on health shall communicate with the board of county commissioners, units of government and private foundations in support of the development, implementation and evaluation of public health programs and a community health improvement process.
- (5) The local board of health shall assure that the proposed budget for the local health department meets maintenance of effort requirement in the consolidated agreement between the Division of Public Health and local health department.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015.*

10A NCAC 48B .1307 BENCHMARK 40

(a) Benchmark: The local board of health or the advisory committee on health shall advocate in the community on behalf of public health.

(b) Activities:

- (1) The local board of health or the advisory committee on health shall inform elected officials and community boards about community health issues.
- (2) The local board of health or the advisory committee on health shall communicate support for the enactment and retention of laws and rules and the development of public health interventions that protect health and ensure safety.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015.*

10A NCAC 48B .1308 BENCHMARK 41

(a) Benchmark: The local board of health or the advisory committee on health shall promote the development of public health partnerships.

(b) Activities:

- (1) The local board of health or the advisory committee on health shall take actions to foster community input regarding public health issues.
- (2) The local board of health or the advisory committee on health shall take actions to foster local health department partnership-building efforts and staff interactions with the community.
- (3) The local board of health or the advisory committee on health shall take actions to foster the coordination of resources to enhance partnerships and collaboration to achieve public health objectives.

*History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006;
Amended Eff. April 1, 2015.*

TITLE 19A - DEPARTMENT OF TRANSPORTATION

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

(a) The Division shall issue a driver's license to any person who passes the tests and meets the requirements listed below and is otherwise eligible under G.S. 20 to hold a license. Applicants for a driver's license are subject to the following tests and requirements:

- (1) Knowledge Examination. This is an automated computer test on knowledge of rules of the road. An audio component allows applicants with reading comprehension difficulties to listen to the test questions by use of earphones. Eighty percent of the questions shall be answered correctly in order to pass the knowledge examination. For the issuance of a remote renewal, the requirement of a knowledge examination shall be waived.
- (2) Road Signs. This is a test on knowledge of highway signs and their meanings. Applicants for a regular Class "C" license shall correctly identify nine of twelve road signs. Applicants for "A" or "B" licenses shall correctly identify all road signs. For the issuance of a remote renewal, the requirement of the road signs test shall be waived.
- (3) Visual Acuity Test. The applicant's visual acuity shall be 20/40 or better in either eye or both eyes together to receive an unrestricted license. A license is restricted to require

corrective lenses if acuity is less than 20/40 in either eye or both eyes together.

- (4) Road Test. The road test measures the applicant's ability to operate a motor vehicle safely in actual traffic situations. The required maneuvers are: quick stop, turnabout, backing, approach corner, right turns, left turns, traffic lights, use of vehicle operating equipment, starts, use of lanes, use of brakes, following, and paying attention. Approval or disapproval is determined by the driver license examiner based upon the applicant's ability to execute the required maneuvers. For the issuance of a remote renewal, the requirement of a road test shall be waived.
- (5) Remote Renewal. The renewal of a driver's license by mail, telephone, or electronic device. Applicants will find instructions for remote renewal on the Division of Motor Vehicles' Website at <http://www.ncdot.gov/dmv>. A driver's license issued by remote renewal expires in accordance with G.S. 20-7(f)(6)c.
- (6) Attestation. An applicant eligible to make application for a remote renewal shall truthfully attest to the following as part of the application for a remote renewal:
 - (A) The applicant is a resident of North Carolina and currently resides at the address listed on the license to be renewed;
 - (B) The license holder's name as it appears on the license to be renewed has not changed;
 - (C) All information provided during the application for a remote renewal has been provided truthfully;
 - (D) That the applicant knows of no change in his or her vision since the last time the applicant passed the visual acuity test in Subparagraph (a)(3) of this Rule that would impair the applicant's ability to safely drive a motor vehicle; and
 - (E) That no change in physical or mental abilities has occurred since the last issuance.
- (7) Photo Requirement. The requirement of a newly captured photo in G.S. 20-7(n)(4) shall be waived for an applicant eligible to make application for a remote renewal, providing the applicant has an existing DMV photo on file.
- (8) Upon completion of the remote renewal process, the license shall be renewed if all criteria in G.S. 20-7 are met. The applicant may use the current license for all legitimate driver license purposes until the license becomes invalid for some other reason, or receipt of the new license card.

(b) The tests contained in Paragraph (a) shall be administered as follows:

- (1) First time applicants. Applicants applying for a driver's license for the first time shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- (2) Renewals and licenses expired less than two years. Applicants seeking to renew a valid, unexpired North Carolina driver's license shall complete the road signs test and visual acuity test, unless the applicant is renewing remotely. Applicants possessing a previously issued North Carolina driver's license, expired less than two years, shall complete the road signs test and visual acuity test. An applicant shall attest during the application for a remote driver license renewal that the applicant knows of no change in his or her vision as set out in Part (a)(6)(D) of this Rule.
- (3) Applicants possessing a previously issued North Carolina driver's license expired greater than two years. Applicants shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- (4) Applicants with a driver's license issued by another State, which is valid and current, or expired less than two years. Applicants seeking to transfer their current driver's license from another state or applicants possessing a driver's license issued by another state that is expired less than two years shall complete the road signs test and visual acuity test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- (5) Applicants with a driver's license issued by another state, expired more than two years. Applicants shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test. Applicants in this Subparagraph are not eligible to apply for remote renewal.

History Note: Authority G.S. 20-2; 20-7(a),(c),(f); 20-39; S.L. 2014-100, s. 34.8(a), 34.8(b);
 Eff. July 1, 1978;
 Amended Eff. May 4, 2015; May 1, 2014; December 1, 1993; July 1, 1982; June 5, 1981.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED

A dental hygienist may be delegated appropriate functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0203, functions that may be delegated to a dental hygienist provided that a dentist has examined the patient and prescribed the procedure include:

- (1) Taking impressions for study models and opposing casts that will not be used for construction of permanent dental appliances, but may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) Inserting matrix bands and wedges;
- (4) Placing cavity bases and liners;
- (5) Placing and removing rubber dams;
- (6) Cementing temporary restorations using temporary cement;
- (7) Applying acid etch materials and rinses;
- (8) Applying bonding agents;
- (9) Removing periodontal dressings;
- (10) Removing sutures;
- (11) Placing and removing gingival retraction cord;
- (12) Removing excess cement;
- (13) Flushing, drying and temporarily closing root canals;
- (14) Placing and removing temporary restorations;
- (15) Placing and tying in or untying and removing orthodontic arch wires;
- (16) Inserting interdental spacers;
- (17) Fitting (sizing) orthodontic bands or brackets;
- (18) Applying dentin desensitizing solutions;
- (19) Performing periodontal screening;
- (20) Performing periodontal probing;
- (21) Performing subgingival exploration for or removal of hard or soft deposits;
- (22) Performing sulcular irrigation;
- (23) Applying resorbable sulcular antimicrobial or antibiotic agents;
- (24) Performing extra-oral adjustments that affect function, fit, or occlusion of any temporary restoration or appliance; and
- (25) Initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment and approval by the dentist.

History Note: Authority G.S. 90-221; 90-223(b); 90-233;
 Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. April 1, 2015; August 1, 2008; August 1, 2000; May 1, 1989; October 1, 1985; March 1, 1985.

21 NCAC 16H .0104 APPROVED EDUCATION AND TRAINING PROGRAMS

To be classified as a Dental Assistant II, an assistant shall meet one of the following criteria:

- (1) completion of:
 - (a) an ADA-accredited dental assisting program and current certification in CPR; or
 - (b) one academic year or longer in an ADA-accredited dental hygiene program, and current certification in CPR; or
- (2) completion of the Dental Assistant certification examination(s) administered by the Dental Assisting National Board and current certification in CPR; or
- (3) completion of:
 - (a) a 3-hour course in sterilization and infection control;
 - (b) a 3-hour course in dental office emergencies; and
 - (c) current certification in CPR.
 - (d) after completing Sub-Items (3)(b), (c), and (d) of this Rule, dental assistants may be trained in any dental delivery setting and allowed to perform the functions of a Dental Assistant II under the direct control and supervision of a licensed dentist, except as listed in Sub-Item 3(e) of this Rule.
 - (e) dental assistants may take radiographs after completing radiology training consistent with G.S. 90-29(c)(12).

History Note: Authority G.S. 90-29(c)(9);

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 2015; August 1, 2000; November 1, 1996; January 1, 1994; September 1, 1998; May 1, 1989; October 1, 1986.

21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

(a) A Dental Assistant II may perform all acts or procedures that may be performed by a Dental Assistant I. In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of such acts and functions, provided that the dentist first examined the patient and prescribed the procedure:

- (1) Take impressions for study models and opposing casts that will not be used for construction of dental appliances, but may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;

- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) Insert matrix bands and wedges;
- (4) Place cavity bases and liners;
- (5) Place and remove rubber dams;
- (6) Cement temporary restorations using temporary cement;
- (7) Apply acid etch materials and rinses;
- (8) Apply bonding agents;
- (9) Remove periodontal dressings;
- (10) Remove sutures;
- (11) Place and remove gingival retraction cord;
- (12) Remove excess cement;
- (13) Flush, dry, and temporarily close root canals;
- (14) Place and remove temporary restorations;
- (15) Place and tie in or untie and remove orthodontic arch wires;
- (16) Insert interdental spacers;
- (17) Fit (size) orthodontic bands or brackets;
- (18) Apply dentin desensitizing solutions;
- (19) Perform extra-oral adjustments that affect function, fit or occlusion of any restoration or appliance;
- (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and approval by the dentist; and
- (21) Polish the clinical crown, pursuant to Paragraph (b) of this Rule using only:
 - (A) a hand-held brush and appropriate polishing agents; or
 - (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached rubber cup or bristle brush, and appropriate polishing agents.

(b) A Dental Assistant II shall complete a course in coronal polishing identical to that taught in an ADA accredited dental assisting program, or by a licensed North Carolina hygienist or dentist lasting at least seven clock hours before using a slow speed handpiece with rubber cup or bristle brush attachment. The course shall include instruction on dental morphology, the periodontal complex, operation of handpieces, polish aids, and patient safety. A coronal polishing procedure shall not be represented to the patient as a prophylaxis and no coronal polishing procedure may be billed as a prophylaxis unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

History Note: Authority G.S. 90-29(c)(9); 90-41; 90-48;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 2015; January 1, 2014; September 1, 2009; September 1, 2008; August 1, 2000; October 1, 1996; January 1, 1994; May 1, 1989; October 1, 1985; March 1, 1985.

21 NCAC 16I .0101 APPLICATIONS

A renewal application shall be completed and received in the Board's office before midnight on January 31 of each year. Any renewal applications received after that date will require a late fee.

*History Note: Authority G.S. 90-227;
Eff. September 3, 1976;*

Readopted Eff. September 26, 1977;

*Amended Eff. April 1, 2015; February 1, 2008; April 1, 2003;
August 1, 1998; May 1, 1989.*

21 NCAC 16I .0102 CONTINUING EDUCATION REQUIRED

(a) As a condition of license renewal, each dental hygienist shall complete six clock hours of continuing education each calendar year. Any or all the hours may be acquired through self study courses. To count toward the mandatory continuing education requirement, self study courses shall be related to clinical patient care and offered by a board approved sponsor. The hygienist shall pass a test following the course and obtain a certificate of completion.

(b) Current certification in CPR is required in addition to the mandatory continuing education hours.

(c) A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis, depending upon the nature of the disabling condition, its impact on the hygienist's ability to complete continuing education, and the likely duration of the disability.

(d) If a licensee who has been exempted from continuing education requirements wishes to resume practice, the licensee shall complete continuing education courses in accordance with this Rule. The Board may require licensees who have not practiced dental hygiene for more than a year to undergo a clinical test before allowing the licensee to resume practice if there is evidence that the licensee suffers from addiction or a mental or physical condition that impairs the licensee's ability to practice hygiene competently.

*History Note: Authority G.S. 90-225.1; 90-229;
Eff. May 1, 1994;*

*Amended Eff. April 1, 2015; November 1, 2008; April 1, 2001;
August 1, 1998.*

21 NCAC 16I .0105 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION REQUIREMENT

(a) If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by Rules .0102 and .0104 of this Subchapter, the Board shall refuse to issue a renewal certificate for the year for which renewal is sought until the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. If the applicant applies for credit for continuing education hours or a reduction of

continuing education hours and fails to provide the required documentation upon request, the Board shall refuse to issue a certificate of renewal until the applicant meets the qualifications for credit.

(b) If an applicant fails to meet the qualifications for renewal, including completing the required hours of continuing education and delivering the required documentation to the Board's office before midnight on March 31 of each year, the license becomes void and the holder must petition the Board for reinstatement.

*History Note: Authority G.S. 90-225.1; 90-227;
Eff. May 1, 1994;*

Amended Eff. April 1, 2015; February 1, 2008; April 1, 2001.

21 NCAC 16I .0107 LICENSE VOID UPON FAILURE TO RENEW

If an application for a renewal certificate, accompanied by the renewal fee and the additional late filing fee, is not received in the Board's office before midnight on March 31 of each year, the license becomes void and the hygienist must petition the Board for reinstatement.

*History Note: Authority G.S. 90-227;
Eff. September 3, 1976;*

Readopted Eff. September 26, 1977;

Transferred and Recodified from 21 NCAC 16I .0003 Eff. May 1, 1994;

*Amended Eff. April 1, 2015; February 1, 2008; April 1, 2003;
August 1, 2002.*

21 NCAC 16I .0108 FORM OF CERTIFICATE

The certificate of renewal of license shall bear the original license number, the full name of the applicant, and the date of issuance.

*History Note: Authority G.S. 90-222; 90-223; 90-227;
Eff. September 3, 1976;*

Readopted Eff. September 26, 1977;

Amended Eff. May 1, 1991;

Transferred and Recodified from 21 NCAC 16I .0004 Eff. May 1, 1994;

Amended Eff. April 1, 2015.

21 NCAC 16I .0110 DEFINITIONS

The following definitions apply only to this Subchapter:

- (1) "Dental Board" -- the North Carolina State Board of Dental Examiners.
- (2) "Eligible licensees"-- all hygienists currently licensed by and in good standing with the North Carolina State Board of Dental Examiners who are serving in the armed forces of the United States and who are eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.
- (3) "Extension period" -- the time period disregarded pursuant to 26 U.S.C. 7508.
- (4) "Good standing" -- a hygienist whose license is not suspended or revoked and who is not practicing under any probationary terms.

History Note: Authority G.S. 90-222; 90-223; 93B-15;
Eff. April 1, 2010;
Amended Eff. April 1, 2015.

21 NCAC 16I .0111 EXEMPTIONS GRANTED

(a) Eligible licensees, as defined in Rule .0110 of this Section, are granted a waiver of their mandatory continuing education requirements for the period allowed pursuant to G.S. 105-249.2

(b) Eligible licensees are granted an extension for the period allowed pursuant to G.S. 105-249.2 in which to pay license renewal fees and comply with all other requirements imposed by the Dental Board as conditions for maintaining licensure.

History Note: Authority G.S. 90-222; 90-223; 93B-15;
Eff. April 1, 2010;
Amended Eff. April 1, 2015.

21 NCAC 16J .0101 PREMISES

(a) The premises of a dental facility shall be kept neat and clean and free of accumulated rubbish and any substances that create a public health or safety hazard.

(b) The premises shall be kept free of all insects and vermin.

(c) Water of a safe, sanitary quality shall be piped under pressure, to all equipment and fixtures where the use of water is required.

(d) All plumbing shall be in accordance with the local plumbing ordinances.

(e) Comfortable and sanitary conditions for patients and employees shall be maintained at all times.

(f) All liquid and human waste, including floor wash water, shall be disposed of through trapped drains into a public sanitary sewer system in localities where such system is available. In localities where a public sanitary system is not available, liquid and human waste shall be disposed of in a manner approved by the state Department of Environment and Natural Resources.

(g) There shall be functioning toilet facilities on the premises of every dental office. They shall conform to standards of the state Department of Environment and Natural Resources.

(h) No animals, except certified assistance animals required to assist disabled individuals, shall be allowed in any area of a dental office where clinical work is being performed.

History Note: Authority G.S. 90-41(a)(23); 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2015; May 1, 1989.

21 NCAC 16K .0103 INSTRUCTORS TO BE APPROVED

All dentists acting as instructors in dental school extension facilities shall be approved by that official of a North Carolina school of dentistry who is generally responsible for faculty appointments.

History Note: Authority G.S. 90-29(c)(4);
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2015; May 1, 1989.

21 NCAC 16K .0106 REPORTS TO BOARD

Every North Carolina school of dentistry shall keep the Board informed of the:

- (1) location and kind of patients seen at each dental school extension facility;
- (2) names of the students assigned there; and
- (3) names and qualifications of all instructors functioning therein.

History Note: Authority G.S. 90-29(c)(4);
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2015; May 1, 1989.

21 NCAC 16N .0502 REQUEST FOR HEARING

(a) Any individual who believes his or her rights, duties, or privileges have been affected by the Board's administrative action, but who has not received a notice of a right to an administrative hearing, may file a request for hearing.

(b) The individual shall submit a request to the Board's office, containing the following information:

- (1) Name and address of the petitioner;
- (2) A concise statement of the action taken by the Board which is challenged;
- (3) A concise statement of the way in which petitioner has been aggrieved; and
- (4) A clear and specific statement of request for a hearing.

History Note: Authority G.S. 150B-38;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; March 1, 1985;
November 20, 1980.

21 NCAC 16N .0504 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) The name, position, address and telephone number of a person at the office of the Board to contact for further information or discussion; and
- (2) A statement explaining that the Respondent may be represented by counsel, testify, offer evidence, and cross examine adverse witnesses at the hearing.

(b) If the Board determines that the public health, safety, or welfare requires such action, it may issue an order summarily suspending a license pursuant to G.S. 150B-3. Upon service of the order, the licensee to whom the order is directed shall immediately cease practicing in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

History Note: Authority G.S. 150B-3; 150B-38;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; April 1, 1988; October 1, 1986; November 20, 1980.

21 NCAC 16N .0505 WHO SHALL HEAR CONTESTED CASES

All administrative hearings shall be conducted by a panel consisting of a majority of Board members eligible to vote on the issue, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 150B-38; 150B-40;
Eff. August 25, 1997;
Amended Eff. April 1, 2015; March 1, 1988; October 1, 1986; November 20, 1980.

21 NCAC 16N .0506 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case shall file a written petition with the Board's office. The request shall bear the notation: PETITION TO INTERVENE IN THE CASE OF (NAME OF CASE).

(b) The petition shall include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner;
- (3) the name and citation of the hearing in which petitioner is seeking to intervene;
- (4) the grounds for intervention or a statement that no grounds exist;
- (5) any claim or defense in respect to which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

(c) The person desiring to intervene shall serve copies of the petition on all parties to the case.

(d) If the Board determines to allow intervention, it shall send written notice to the petitioner and all parties. In cases of discretionary intervention, such notification shall include a statement of any limitations of time, subject matter, evidence or whatever else the Board deems necessary that are imposed on the intervenor.

(e) If the Board decides to deny intervention it shall send written notice to the petitioner and all parties, stating the reasons for the denial.

History Note: Authority G.S. 150B-38;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; March 1, 1985; November 20, 1980.

21 NCAC 16N .0508 DISQUALIFICATION OF BOARD MEMBERS

(a) Self Disqualification. If a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (NAME OF CASE).

(c) Contents of Affidavit. The affidavit shall state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing. Any other affidavit shall be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. When a petition for disqualification is filed less than 10 days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. The petitioner shall have the opportunity to present evidence supporting his or her petition, and the petition and any evidence presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification:

- (1) The Board shall appoint a Board member to investigate the allegations of the affidavit.
- (2) The investigator shall report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) When a Board member is disqualified, the hearing shall continue with the remaining members sitting, provided that the remaining members still constitute a majority of the Board who are eligible to vote.
- (6) If a majority of the members of the Board who are eligible to vote are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 150B-38; 150B-40;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; October 1, 1986; November 20, 1980.

21 NCAC 16N .0603 SUBPOENAS

(a) A request for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall:

- (1) be made in writing to the Board;
- (2) identify any documents sought with specificity; and
- (3) include the full name and home or business address of all persons to be subpoenaed; and
- (4) if known, the date, time, and place for responding to the subpoena.

(b) The Board shall issue the requested subpoenas within three days of the receipt of the request.

(c) Subpoenas shall contain:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour and location of the hearing in which the witness is commanded to appear;
- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued; and
- (6) a return of service form.

(d) The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date the subpoena was delivered to the person directed to make service, the date service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(e) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in G.S. 1A-1.

(f) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a statement of all reasons why the subpoena should be revoked or modified. These reasons may include any basis sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(g) Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(h) The party who requested the subpoena, at such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with the filing of the response with the Board.

(i) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of a hearing, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(j) The majority of the Board members hearing the contested case shall rule on the challenge and issue a written decision to all parties and made a part of the record.

History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40

Eff. August 25, 1977;

Legislative Objection Lodged Eff. November 20, 1980;

Legislative Objection Removed Eff. March 19, 1981;

Amended Eff. April 1, 2015; May 1, 1989; March 1, 1988; October 1, 1986; March 1, 1985.

CHAPTER 23 – IRRIGATION CONTRACTORS' LICENSING BOARD

21 NCAC 23 .0206 CONDUCT OF HEARING

(a) Hearings in contested cases shall be conducted by a majority of the Board or referred to the Office of Administrative Hearings pursuant to G.S. 150B-40(e).

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

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

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

History Note: Authority G.S. 89G-5; 150B-38;

Eff. July 1, 2011;

Amended Eff. April 1, 2015.

21 NCAC 23 .0207 DECISION OF BOARD

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

(b) At the conclusion of the hearing and deliberations, the Board shall announce its findings of fact and conclusions of law. If the Board concludes that the hearing respondent has violated a provision of the rules in this Chapter or of G.S. 89G, it shall announce the nature and extent of any sanction it orders be imposed upon the hearing respondent. The Board shall then direct its legal counsel, the respondent's counsel, if represented, or such independent legal counsel as may be provided by the North Carolina Department of Justice for the purpose of advising the Board in the course of that hearing, to draft a proposed order consistent with its announcement. The order shall be drafted in accordance with G.S. 150B-42.

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

History Note: Authority G.S. 89G-5; 150B-38;

Eff. July 1, 2011;

Amended Eff. April 1, 2015.

21 NCAC 23 .0505 TRENCHING AND PIPING

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

- (b) An irrigation contractor shall protect the root systems of the trees on the site by not trenching across the established root systems of existing trees and shrubs.
- (c) When the irrigation contractor finds that it is necessary to trench into the root zone of an established plant, trenching shall be done so that the trench is at a right angle to the base of the tree or shrub.
- (d) An irrigation contractor shall cut damaged roots cleanly at right angles.
- (e) Piping in irrigation systems shall be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene (PE), and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.
- (f) The main line and lateral line piping shall be installed to provide a minimum of 12 inches between the top of the pipe and the natural grade.
- (g) The bottom of the trench shall be smooth and provide a flat bed on which to rest the pipe.
- (h) The irrigation contractor shall clean backfill material of any debris that may damage the pipe.
- (i) If a utility, man-made structure or roots create an unavoidable obstacle that makes the 12 inch depth coverage requirement impractical, the piping shall be installed inside a larger section of pipe for added protection.
- (j) When swing joints are used, the depth of the pipe shall allow the swing joint to operate as designed.
- (k) All trenches and holes created during installation of an irrigation system shall be backfilled and compacted to the final grade. The trench shall be compacted in lifts no greater than six inches to insure proper compaction.
- (l) All new irrigation systems that are installed using PVC shall be prepared according to manufacturer's recommendations prior to connection.
- (m) When the irrigation contractor uses PR 200 pipe, the manufacturer's directions shall be followed.
- (n) The irrigation contractor shall use the manufacturer's approved lubricant when assembling Bell and Gasket Pipe and Fittings.
- (o) The irrigation contractor shall use Teflon tape on all threaded fittings, wrapping the tape three times to insure a proper seal.
- (p) When the irrigation system uses reclaimed water, the irrigation contractor shall use purple pipe or mark the pipe with purple tape placed above all piping in the system. Tape shall be within six inches of the top of the pipe. The irrigation contractor shall use purple valve box covers and purple quick coupler flaps and place an eight inch by eight inch sign with purple background stating "RECLAIMED WATER-DO NOT DRINK," and "AGUA DE RECUPERION-NO BEBER."

*History Note: Authority G.S. 89G-5(15); 89G-5(16);
Eff. July 1, 2011;
Amended Eff. April 1, 2015.*

CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS

21 NCAC 48G .0109 CONTINUING COMPETENCE ACTIVITIES

(a) Continuing Education activities are eligible for points as follows:

- (1) A registered attendee at courses or conferences offered live in real time by approved providers earns one point for each contact hour. The maximum number of points allowed during any reporting period shall be 29. The maximum number of points allowed during any reporting period for an interactive course offered through electronic media shall be 15. Credit shall not be given for the same course or conference more than once during any reporting period. The licensee shall submit the Certificate of Attendance issued by the approved provider.
- (2) For registered participation in an academic course related to physical therapy offered for credit in a post-baccalaureate program unless the course is required for licensure, one semester hour earns 15 points, and the maximum number of points allowed during any reporting period shall be 29. The licensee shall obtain a letter grade of "C" or better, or "P" if offered on a pass/fail basis. Credit shall not be given for the same course more than one time. The licensee shall submit a transcript published by the approved provider or furnished by the academic institution.
- (3) For attendance or participation in an activity related to physical therapy for which no assessment is received, two contact hours earns one point. The maximum number of points allowed during any reporting period shall be five. Credit shall not be given for the same activity more than one time. The licensee shall submit a certificate of completion, or if that is not available, a summary of the objectives of the activity and the time spent in the activity.
- (4) For registered participation in a non-interactive course offered by an approved provider by videotape, satellite transmission, webcast, DVD, or other electronic media, one hour of participation earns one point. The maximum number of points allowed during any reporting period shall be 10. Credit shall not be given for the same course more than once during a reporting period. The licensee shall submit a certificate of completion provided by the course provider.
- (5) For participation in a study group consisting of at least three licensees conducted either live or in real time through electronic media, whose purpose is to advance the knowledge and skills of the participants related to the practice of physical therapy, two hours of participation in the study group earns one point. The maximum

number of points allowed during any reporting period shall be 10. The licensee shall submit a biography of each participant, a statement of the goals of the study group, attendance records for each participant, assignments for each participant and an analysis by each participant specifying the knowledge and skills enhanced by participating in the study group.

- (6) For participation in a self-designed home study program for the purpose of advancing the knowledge and skill of the participant related to the practice of physical therapy, three hours of home study earns one point. The maximum number of points allowed for home study during any reporting period shall be five. The licensee shall submit a description of the plans and objectives of the study, an analysis of the manner in which the plans and objectives were met, and a certification of the time spent on the project.
- (7) For participation in continuing education required by credentialed residencies and fellowships, one point shall be granted for each contact hour. The maximum number of points for each reporting period shall be 29. The licensee shall submit the certificate of attendance issued by the American Physical Therapy Association ("APTA") credentialed residency or fellowship.
- (8) For completion of a home study physical therapy program furnished by an approved provider, one hour of home study earns one point. The maximum number of points during any one reporting period allowed shall be 10. The licensee shall submit a certificate of completion issued by the approved provider.

(b) Points are awarded for advanced training as follows:

- (1) For fellowships conferred by organizations credentialed by the APTA in a specialty area of the practice of physical therapy, 10 points shall be awarded for each full year of clinical participation, up to a maximum of 20 points per reporting period for this activity. The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the fellowship program have been met.
- (2) For completion of a residency program in physical therapy offered by an APTA credentialed organization, 10 points shall be awarded for each full year of clinical participation, up to a maximum of 20 points per reporting period for this activity. The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the residency program have been met.
- (3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization ("ABPTS"),

20 points shall be awarded upon receipt of such certification or recertification during any reporting period. The licensee shall submit evidence from ABPTS that the certification or recertification has been granted.

- (4) For a physical therapist assistant, Advanced Proficiency designation by the APTA for the PTA earns 19 points per reporting period. The licensee shall submit evidence from APTA that the designation has been awarded.

(c) Achieving a passing score on the Federation's Practice Review Tool ("PRT") earns 10 points. Taking the PRT without achieving a passing score earns five points. The licensee shall submit the certificate of completion and performance report. Points shall be awarded only one time for any specific practice area.

(d) Clinical Education activities are eligible for points as follows:

- (1) For completion of a course offered by an approved provider for a licensee to become a Credentialed Clinical Instructor recognized by APTA, one course hour earns one point, and the maximum number of points awarded during any reporting period shall be 29. The licensee shall submit a credential certificate issued by the approved provider. Credit for completing the same course shall be given only once.
- (2) For enrollment in a course offered by APTA for a licensee to become a Credentialed Clinical Instructor Trainer, one course hour earns one point, and the maximum number of points awarded during any reporting period shall be 29. The licensee shall submit a Trainer certificate issued by APTA. Credit for completing the same course shall be given only once.
- (3) For serving as a Clinical Instructor for a physical therapist or physical therapist assistant student, resident, or fellow for a period of at least 80 hours, 40 hours of direct on-site supervision earns one point, and the maximum number of points awarded during any reporting period shall be eight. The licensee shall submit verification of the clinical affiliation agreement with the accredited educational program for the student supervised and a log showing the number of hours spent supervising the student.

(e) Presenting or teaching for an accredited physical therapy educational program; a transitional Doctor of Physical Therapy ("DPT") program; an accredited program for health care practitioners licensed under the provisions of Chapter 90 of the North Carolina General Statutes; or a state, national, or international workshop, seminar or professional health care conference earns two points for each hour of presentation or teaching. The licensee shall submit written materials advertising the presentation or teaching, or other evidence of the date, subject, goals and objectives of the presentation, and any written materials prepared by the licensee. A maximum of six points shall be allowed during any reporting period, and credit shall not be given

for teaching or presenting the same subject matter more than one time during any reporting period.

(f) Research and published books or articles shall be eligible to accumulate up to a maximum of 15 points as follows:

- (1) Submission of a request to a funding agency for a research grant as a Principal or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant that shall include the title, an abstract, the funding agency, and the grant period. Points shall be awarded only one time during any reporting period.
- (2) Having a research grant funded as a Principal Investigator or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant that shall include the title, an abstract, the funding agency, the grant period and documentation of the funding received in a given period. Points shall be awarded only one time during a reporting period.
- (3) Service as a Grants Reviewer earns one point for each two hours of grant review and a maximum of five points shall be allowed. The licensee shall submit a description of all grants reviewed and any reports generated in connection with the reviews, including the dates of service, the agency for whom the review was performed, and the hours spent on the grant review. Points shall be awarded only once for each grant reviewed during the reporting period.
- (4) The author or editor of a book published by a third party entity dealing with a subject related to the practice of physical therapy earns 10 points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (5) The author or editor of a chapter in a book published by a third party entity dealing with a subject related to the practice of physical therapy earns five points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (6) The author of a published peer-reviewed article relating to the practice of physical therapy earns 10 points. The licensee shall submit the article, names and employers of the reviewers, and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (7) The author of a published non peer-reviewed article or book-review or abstract relating to the practice of physical therapy earns four points. The licensee shall submit the article and a list of consulted resources. Each article, book-review, or abstract shall count one time only. A

maximum of four points shall be awarded during any reporting period.

- (8) The author of a published peer-reviewed abstract, book review, or peer-reviewed abstract for a poster or presentation related to the practice of physical therapy to a professional health care group earns five points for a presentation, up to a maximum of 15 points during any reporting period, and credit for the same poster or presentation shall not be awarded more than one time. The licensee shall submit a copy of the poster or presentation and a list of consulted resources.

(g) Clinical practice shall be eligible for points as follows:

- (1) For each year during the reporting period that a licensee is engaged in clinical practice for 1,750 hours or more, three points shall be awarded. The licensee shall submit certification from the employer(s) for whom the services were performed including year and hours worked or document practice hours as the owner of a practice.
- (2) For each year during the reporting period that a licensee is engaged in clinical practice for at least 1,000 hours but less than 1,750 hours, two points shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed including year and hours worked or document practice hours as the owner of a practice.
- (3) For each year during the reporting period that a licensee is engaged in clinical practice for at least 200 hours but less than 1,000 hours, one point shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed including year and hours worked or document practice hours as the owner of a practice.

(h) Professional Self-Assessment earns five points for completion of an approved Reflective Practice Exercise. This exercise shall be approved if it is a process for a licensee to evaluate current professional practice abilities, to establish goals to improve those abilities, to develop a plan to meet those goals, and to document that the objectives are being accomplished. The licensee shall submit evidence of completion of all elements of the Reflective Practice Exercise. Points shall be awarded only one time during any reporting period.

(i) Workplace Education shall be eligible for points as follows:

- (1) Presentation or attendance at an in-service session related to the practice of physical therapy, including health care issues related to the practice of physical therapy, shall be allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of attendance earns one point. One hour of presentation earns one point. A maximum of five points may be earned during any one

- reporting period. Credit for the same in-service shall not be granted more than one time.
- (2) Presentation or attendance at an in-service session devoted to general patient safety, emergency procedures, or governmental regulatory requirements shall be allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two contact hours of in-service are equivalent to one point, which shall be the maximum credit granted during any reporting period. Credit for the same in-service shall not be granted more than one time during any reporting period.
- (j) Professional Service shall be eligible for points as follows:
- (1) Participation in a national physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee, physical therapy services task force member, or delegate to a national assembly earns five points for each full year of participation, up to a maximum of 10 points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position, and a summary of the activities of the licensee.
- (2) Participation in a state physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee earns four points for each full year of participation, up to a maximum of eight points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position, and a summary of the activities of the licensee.
- (3) Participation in a local or regional physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy service committee earns two points for each full year of participation, up to a maximum of four points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position, and a summary of the activities of the licensee.
- (4) Participation as a member of a physical therapy professional organization committee involved with physical therapy services earns one point for each full year of participation, up to a maximum of two points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the committee, and a summary of the work of the committee.
- (5) Participation in unpaid volunteer service to the general public and healthcare professionals related to physical therapy earns one point for at least 20 hours spent on service activities during each year, up to a maximum of two points during any reporting period. The licensee shall submit published materials describing the service activity.
- (6) Membership in the APTA for one year earns one point. A point may be earned for each year of membership during the reporting period. The licensee shall submit proof of membership in the APTA.
- (7) Membership in an APTA Section for one year earns one-half point. The licensee shall submit proof of membership in the APTA Section. Points shall not be awarded for membership in more than one Section.
- (8) Selection by the Federation for participation as an item writer of exam questions for the National Physical Therapy Examination (NPTE) or by the American Board of Physical Therapy Specialties (ABPTS) earns five points for each year of participation. The licensee shall submit documentation of participation by the Federation or ABPTS.
- (9) Participation in clinical research, clinical trials, or research projects related to the practice of physical therapy earns 1 point for each hour of participation, up to a maximum of 10 hours per reporting period. The licensee shall submit a log of hours of participation including date, activity performed, location of the research, and primary investigator.
- (k) During each reporting period, every licensee shall complete a jurisprudence exercise provided by the Board. The jurisprudence exercise shall be available online at the Board's website, at <http://www.ncptboard.org> and a certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee. The maximum number of points allowed during a reporting period is three.
- History Note: Authority G.S. 90-270.26;
Eff. January 1, 2009;
Amended Eff. April 1, 2015; February 1, 2015; January 1, 2014.*
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CHAPTER 60 – BOARD OF REFRIGERATION EXAMINERS

21 NCAC 60 .0102 OFFICE OF BOARD

- (a) The Board's office and mailing address is located at 889 US 70 Highway West, Garner, North Carolina 27659.
- (b) The Board's website is <http://www.refrigerationboard.org>.

*History Note: Authority G.S. 87-54;
Eff. February 1, 1976;*

*Readopted Eff. April 17, 1978;
Amended Eff. April 1, 2015; September 1, 2011; August 1, 2004;
July 1, 2000; August 1, 1995; December 1, 1993; October 1, 1994.*

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01B .0350 TIME FRAME FOR RAISING ALLEGATION OF DISCRIMINATION

For cases arising before August 21, 2013, allegations of discrimination based on G.S. 126-16, G.S. 126-36, and G.S. 126-36.1 shall be raised within 30 days, either in a direct appeal to the Office of Administrative Hearings or within the departmental grievance procedure, of the date of the action that is alleged to be discriminatory. Failure to raise such an allegation within 30 days shall be cause to have such allegation dismissed.

*History Note: Authority G.S. 126-4; 126-34.01; 126-34.02; 126-38;
Eff. February 1, 1985;
Temporary Amendment Eff. May 23, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;
Amended Eff. April 1, 2015.*

25 NCAC 01B .0413 EXERCISE OF COMMISSION DISCRETION

The State Human Resources Commission shall weigh the facts and circumstances in each contested case, including factors of mitigation and justification, in making a decision in a contested case of whether disciplinary action was imposed for just cause.

*History Note: Authority G.S. 126-4(9);
Eff. August 1, 1980;
Amended Eff. May 1, 1989;
Temporary Amendment Eff. May 23, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;
Amended Eff. April 1, 2015.*

25 NCAC 01C .0402 PERMANENT AND TIME-LIMITED APPOINTMENT

(a) A permanent appointment is an appointment to a permanent established position. A permanent appointment shall be given when the following conditions have been met:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience requirements and completed 24 months of continuous employment in a position subject to the State Human Resources Act, or
- (3) a time-limited appointment extends beyond three years of continuous employment.

(b) A time-limited appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited position. If an employee is retained in a time-limited position beyond three years, the employee shall be designated as having a permanent appointment.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. October 1, 2004; August 1, 1995; January 1, 1989;
June 1, 1983; July 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;
Amended Eff. April 1, 2015.*

25 NCAC 01C .1004 REDUCTION IN FORCE

(a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position, or other material change in duties or organization. Retention of employees in classes affected shall be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on the diversity of the workforce, and length of service. No temporary, probationary, or trainee employees in their initial 24 months of training shall be retained where an employee with a permanent appointment shall be separated in the same or related class.

(b) Agency Responsibilities:

- (1) Each agency shall develop a written guideline for reduction in force that meets its particular needs with potential reductions being considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force policy located in Section 11 of the State Human Resources Manual on the Office of State Human Resources website at <http://www.oshr.nc.gov/Guide/Policies/policies.htm>. Each agency's guidelines shall be filed with the Office of State Human Resources as a public record; and
- (2) The employing agency shall notify the employee in writing of separation as soon as possible and in any case not less than 30 calendar days prior to the effective date of separation. The written notification shall include the reasons for the reduction in force, expected date of separation, the employee's eligibility for priority reemployment consideration, applicable appeal rights, and other benefits available.

(c) Appeals: An employee may appeal the reduction in force separation only on the grounds listed in the State Employee Grievance policy, located in Section seven of the State Human Resources Manual on the Office of State Human Resources website at <http://www.oshr.nc.gov/Guide/Policies/policies.htm>.

(d) The agency shall analyze any application of its reduction-in-force policy to determine its impact on equal employment opportunity in accordance with the Equal Employment Opportunities Commission's (EEOC) Uniform Guidelines on Employee Selection Procedures in the code of federal regulations at 29 C.F.R. part 1607, section 6A, which is hereby incorporated by reference including any subsequent amendments and editions. These guidelines are available for free on the EEOC website at <http://www.eeoc.gov/laws/regulations/index.cfm>.

(e) **Severance Salary Continuation:** Severance salary continuation shall be administered in accordance with 25 NCAC 01D .2701. Pursuant to G.S. 126-8.5, the Office of State Budget and Management is responsible for determining whether severance continuation is applicable. Prior approval shall be received from the Office of State Budget and Management before severance salary continuation is paid.

History Note: Authority G.S. 126-4(2);

Eff. February 1, 1976;

Amended Eff. May 1, 1980; January 1, 1980;

Emergency Amendment (a) Eff. March 16, 1981 for a Period of 77 Days to Expire on June 1, 1981;

Emergency Amendment (a) Made Permanent with Change Eff. April 8, 1981;

Amended Eff. December 1, 1995; March 1, 1994; November 1, 1990; March 1, 1987;

Recodified from 25 NCAC 01D .0504 Eff. December 29, 2003;

Amended Eff. October 1, 2009; March 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;

Amended Eff. April 1, 2015.

25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED

(a) An employee may be separated on the basis of unavailability when the employee remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant leave without pay.

(b) Prior to separation, the employing agency shall notify the employee, in writing, of the proposed separation, the efforts undertaken to avoid separation, and why the efforts were unsuccessful.

(c) The letter of separation to the employee shall state the specific reasons for the separation and set forth the employee's right of appeal. Such a separation is not a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable, that efforts were undertaken to avoid separation, and why the efforts were unsuccessful.

(d) **Definitions:**

(1) "Unavailability" is defined as:

(A) the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a

medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; or

(B) the employee's inability to return to all of the position's essential duties and work schedule due to other extenuating circumstances, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation.

(2) "Applicable leave credits and benefits" is defined as the sick, vacation, bonus, and compensatory leave that the employee chose to exhaust prior to going on leave without pay, but does not include short-term or long-term disability.

History Note: Authority G.S. 126-4(7a); 126-35;

Eff. November 1, 1989;

Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;

Amended Eff. January 1, 2007; October 1, 2004.

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;

Amended Eff. April 1, 2015.

25 NCAC 01D .0201 INITIAL EMPLOYMENT

(a) A new appointment is the initial employment of an individual to a position in State government.

(b) An employee entering into state service in a permanent or time-limited position shall be given a probationary or trainee appointment. The probationary and trainee appointment periods shall serve as an extension of the selection process and to determine whether the person meets satisfactory performance standards for the work for which employed. The employee shall earn all the benefits of an employee with a permanent appointment during this time.

(c) The duration of a probationary appointment shall be 24 months of either full-time or part-time employment. (This probationary period is not the same as the probationary period prescribed for criminal justice officers in 12 NCAC 05 .0401.) The duration of the trainee appointment is established for each regular classification to which a trainee appointment is made.

(d) The conditions of the probationary and trainee appointments shall be conveyed to the applicant prior to appointment. During the probationary or trainee period, the supervisor shall work with the employee in counseling and assisting the employee to achieve a satisfactory performance level; progress of the employee shall be reviewed during discussions between the employee and the supervisor. Following the probationary period, the employee shall be given a permanent appointment to the class when the supervisor, in consultation with other appropriate administrators, determines the employee's performance indicated capability to become a satisfactory performer and merits retention in the

position. If the determination is that the employee's performance indicates that the employee is not suited for the position and does not meet acceptable performance standards, the employee shall be separated from that position. Employees may be separated during a probationary appointment for causes related to performance of duties or unacceptable personal conduct. Employees in trainee appointments who are not career State employees may also be separated for causes related to performance of duties or unacceptable personal conduct. Except in cases of alleged discrimination, harassment, or retaliation, a separation of an employee in a trainee appointment who is not a career State employee may not be appealed through the agency grievance process as set forth in G.S. 126-34.01 and the Office of Administrative Hearings contested case process as set forth in G.S. 126-34.02.

History Note: Authority G.S. 126-1.1; 126-4; 126-34.01; 126-34.02;
Eff. February 1, 1976;
Amended Eff. August 1, 1995; December 1, 1988; January 1, 1979; December 1, 1978;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01E .0204 TOTAL STATE SERVICE DEFINED

(a) Total state service is the time of full-time or part-time (half-time or over) employment of an employee with a permanent, trainee, probationary, or time-limited appointment, whether subject to or exempt from the State Human Resources Act. If an employee appointed by this Rule is in pay status or on authorized military leave for one-half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period.

(b) Credit toward total state service shall be given for:

- (1) employment with other governmental units that are now state agencies
- (2) authorized military leave from any of the governmental units for which service credit is granted, provided the employee returns within the time limits outlined in the state military leave rules (see 25 NCAC 1E, Section .0800, Rules .0801 - .0819);
- (3) employment with the county cooperative extension service, community college system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year;
- (4) employment with a local mental health, public health, or social services department if such employment is subject to the provisions of the State Human Resources Act under G.S. 126-5(a)(2);
- (5) employment with a local emergency management agency in North Carolina that receives federal grant-in-aid funds; or

- (6) employment with the General Assembly, except for legislators, participants in the Legislative Intern Program, and pages.

History Note: Authority G.S. 126-4; 126-8;
Eff. February 1, 1976;
Amended Eff. April 1, 2015; July 1, 1995; January 1, 1989; January 1, 1983; March 1, 1978.

25 NCAC 01E .0901 APPROVED HOLIDAYS

In addition to Martin Luther King, Jr.'s Birthday and Veteran's Day, the following shall be designated as holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, and December 25 (Christmas) and the last business day before Christmas and the first business day after Christmas.

History Note: Authority G.S. 126-4(5); 126-4(5a);
Eff. February 1, 1976;
Amended Eff. January 1, 2004; February 1, 1995; December 1, 1988; October 1, 1977;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01E .1601 COMMUNITY SERVICE LEAVE PURPOSE

(a) A supervisor may approve Community Service Leave for employees as follows:

- (1) for parents for involvement with their child in the schools as defined in in Rule .1602 in this Subchapter;
- (2) for any employee to volunteer in the schools or in a Community Service Organization as defined in in Rule .1602 in this Subchapter; or
- (3) for any employee to volunteer in a Public University, Community College, or State agency as defined in Rule .1602 of this Subchapter provided that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.

(b) A supervisor may approve special provisions for volunteer work as follows:

- (1) tutoring and mentoring in public or non-public school as defined in Rule .1602 in this Subchapter; or
- (2) volunteering in a literacy program in a public school as defined in Rule .1602 in this Subchapter.

History Note: Authority G.S. 126-4;
Eff. April 1, 2001;
Amended Eff. April 1, 2015; August 1, 2010; October 1, 2004.

25 NCAC 01E .1602 DEFINITIONS

When used in this Section, these terms have the following meaning:

- (1) "School" - An elementary school, a middle school, a high school, or a child care program that is authorized to operate under the laws of the State of North Carolina.
- (2) "Public University" - A constituent institution of the University of North Carolina.
- (3) "Community College" - An educational institution that is a member of the North Carolina Community College System.
- (4) "State Agency" - A State government agency that is authorized to operate under the laws of the State of North Carolina.
- (5) "Child" - A son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.
- (6) "Community Service Organization" - A non-profit, non-partisan community organization that is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited by the State of North Carolina to serve citizens with special needs including children, youth, and the elderly.
- (7) "Community Service" - The act of supporting citizens of North Carolina through volunteer service.
- (8) "Volunteer" - A person who willingly chooses to perform hours of service for civic, charitable, or humanitarian reasons without promise or expectation of compensation for services provided.

History Note: Authority G.S. 126-4;
Eff. April 1, 2001;
Amended Eff. April 1, 2015; August 1, 2010.

25 NCAC 01E .1605 COMMUNITY SERVICE LEAVE ADMINISTRATION

Each agency shall administer the community service leave program as follows:

- (1) Employees must receive approval from their supervisor to use community service leave. The agency may require that the leave be taken at a time other than the one requested, based on the needs of the agency. The agency may require proof that community service leave taken is being utilized within the purpose of this Subchapter.
- (2) Leave shall only be requested and approved for community service that occurs during the employee's regularly scheduled hours of work. Agencies with shift employees regularly scheduled to work evening or night shift with a shift schedule in excess of eight hours may allow the use of community service leave in situations where the employee's participation in community service outside of the normal work

- (3) schedule significantly impacts the employee's normal sleep period.
- (3) Reasonable travel time may be included in approved time for community service, but only for the time that intersects the employee's regular work schedule.
- (4) If an employee transfers to another State agency, any balance of the community service leave not used shall be transferred to the new agency. Under the tutoring and mentoring or literacy leave option, the employee shall secure approval from the new supervisor to continue with that option prior to the transfer.
- (5) Leave not taken in a calendar year is forfeited; it shall not be carried over into the next calendar year.
- (6) Employees shall not be paid for this leave upon separation from State government.
- (7) The use of community service leave shall be reported separately from all other paid leave. Employees and supervisors are responsible for accurate reporting of the use of community service leave on the employee's time record.

History Note: Authority G.S. 126-4;
Eff. July 18, 2002;
Amended Eff. April 1, 2015.

25 NCAC 01E .1606 ADDITIONAL TIME FOR COMMUNITY SERVICE ACTIVITIES

History Note: Authority G.S. 126-4;
Eff. July 18, 2002;
Repealed Eff. April 1, 2015.

25 NCAC 01H .0633 SPECIAL APPLICANT CONSIDERATIONS RELATED TO PRIORITY

Priority consideration shall be given to the following applicants:

- (1) employees with career status who have received written notification of imminent separation due to reduction in force;
- (2) employees eligible pursuant to G.S. 126-5(e) who have been removed from exempt positions, for reasons other than cause;
- (3) employees eligible pursuant to G.S. 126-5(e) who have been removed from an exempt managerial position for a violation of G.S. 126-14.2;
- (4) employees returning from workers' compensation leave;
- (5) career State employees seeking promotions; and
- (6) eligible veterans as defined in G.S. 128-15(b)(3).

History Note: Authority G.S. 126-4(4); 128-15;
Eff. February 1, 2007;
Amended Eff. April 1, 2015.

25 NCAC 01H .0634 SELECTION OF APPLICANTS

(a) All agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence.

(b) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications as defined in Rule .0635 of this Section including selective criteria. "Selective criteria" are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants pursuant to G.S. 126-14.2. The individual selected for the position shall be from among the most qualified applicants.

(c) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.

(d) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

History Note: Authority G.S. 126-4(4); 126-14.2; 126-14.3; Eff. February 1, 2007; Amended Eff. April 1, 2015.

25 NCAC 01H .0636 EMPLOYMENT: E-VERIFY

(a) The Immigration Reform and Control Act (IRCA) requires that all U.S. employees be either United States citizens or aliens with proper work authorization from the Bureau of U.S. Citizenship and Immigration Services.

(b) All State agencies shall, no later than the third working day after the hire, verify the employment eligibility of all employees hired after November 6, 1986. Verification shall establish both identity and employment authorization and shall follow the requirements of the IRCA, using the E-verify program that is administered by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Verification Division, which is hereby incorporated by reference including any subsequent amendments and editions. Information on the E-verify program may be found on the U.S. Department of Homeland Security website at <http://www.uscis.gov/e-verify>.

History Note: Authority G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987; P.L. 101-649; Eff. February 1, 2007; Amended Eff. April 1, 2015.

25 NCAC 01H .0641 EMPLOYMENT OF RELATIVES

Members of an immediate family shall not be employed within the same agency if the employment results in one member supervising another member of the employee's immediate family, or if one member will occupy a position that has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This includes employment on a permanent, temporary, or contractual

basis. The term "immediate family" includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Rule. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position that requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

History Note: Authority G.S. 126-4(4); Eff. April 1, 2015.

25 NCAC 01H .0901 REDUCTION IN FORCE APPLICATION AND APPEAL

(a) The rules in this Section apply to employees notified of or separated due to a reduction in force.

(b) Priority consideration shall be provided to career State employees who have received written notification of imminent separation due to reduction in force. An employee who is separated from a time-limited position is not eligible for priority consideration unless the time-limited appointment extends beyond three years.

(c) A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe priority consideration was denied in violation of G.S. 126 in a selection decision, and who chooses to appeal shall appeal through the agency grievance process as set forth in G.S. 126-34.01 and the Office of Administrative Hearings contested case process as set forth in G.S. 126-34.02.

History Note: Authority G.S. 126-1A; 126-5(c)(2); 126-5(d)(1); 126-7.1; Eff. March 1, 1987; Amended Eff. December 1, 1995; March 1, 1994; June 1, 1992; March 1, 1991; Recodified from 25 NCAC 01D .0510 Eff. December 29, 2003; Amended Eff. February 1, 2007; Temporary Amendment Eff. May 23, 2014; Amended Eff. April 1, 2015.

25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY CONSIDERATION

Upon written notification of imminent separation through reduction in force (RIF), a career state employee shall receive priority consideration for positions at an equal or lower salary grade (or salary grade equivalency) for a period of 12 months pursuant to G.S. 126-7.1, unless the priority has been satisfied in accordance with this section. The following conditions apply:

- (1) For employees receiving notification of imminent separation from trainee or flat rate positions, the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade shall be the grade that has as its maximum a rate nearest to the flat rate salary of the eligible employee. For eligible employees in

- trainee status, the salary grade shall be the salary grade of the full class;
- (2) For employees receiving notification of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority consideration period shall then begin at the salary grade (or salary grade equivalency), or salary rate of the position held at the most recent notification of separation and shall expire 12 months from the most recent notification date;
 - (3) If after receiving formal notice of imminent reduction in force, an employee retires or applies for retirement prior to the separation date, an employee shall have no right to priority consideration;
 - (4) Employees notified of separation from permanent full-time positions shall have priority consideration for permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority consideration for permanent part-time positions only;
 - (5) Employees who have priority consideration at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as priority applicants until the selection process is complete;
 - (6) If an employee with priority consideration applies for a position but declines an interview or offer of the position, the employee loses priority if the position is at a salary grade (or salary grade equivalency), or salary rate equal to or greater than that held at the time of notification;
 - (7) If an employee with priority consideration is placed in another position prior to the separation due to reduction in force, the employee does not lose priority if the position is at a lower salary grade (or salary grade equivalency) or salary rate less than that held at the time of notification and if the position is at the same appointment status;
 - (8) An employee with priority consideration may accept a temporary position at any level and retain priority consideration;
 - (9) When priority has been granted for a lower salary grade (or salary grade equivalency) and salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) up to and including that held at the time of the notification of separation;
 - (10) An employee with priority consideration may accept employment outside State government or in a State position not subject to the State Human Resources Act and retain the priority consideration through the 12-month priority period;
 - (11) Priority consideration for an eligible employee is terminated when:
 - (a) an employee accepts a permanent or time-limited position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation;
 - (b) an employee accepts a permanent or time-limited position with the State equal to or greater than the employee's salary grade (or salary grade equivalency) of the full-time or part-time position held at the time of notification, in accord with Item (4) of this Rule;
 - (c) an employee accepts a career banded position at the same or higher competency level in the same banded classification as held at the time of notification;
 - (d) an employee accepts a career banded position in a different banded classification with the same or higher journey market rate than that held at the time of notification;
 - (e) an employee has received 12 months priority consideration; or
 - (f) an employee applies for retirement or retires from State employment
 - (12) Priority consideration for employees notified of or separated through reduction in force shall not include priority to any exempt positions;
 - (13) When an employee with priority consideration accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and
 - (14) An employee with priority consideration shall serve a new probationary period when there is a break in service, as defined in 25 NCAC 01D .0114.

History Note: Authority G.S. 126-4(6),(10); 126-7.1; Eff. March 1, 1987; Amended Eff. December 1, 1995; April 1, 1993; June 1, 1992; January 1, 1990; Recodified from 25 NCAC 01D .0511 Eff. December 29, 2003; Amended Eff. February 1, 2007; Temporary Amendment Eff. May 23, 2014; Amended Eff. April 1, 2015.

25 NCAC 01H .0904 AGENCY AND EMPLOYEE RESPONSIBILITIES

(a) The employing agency shall notify the employee of imminent separation in accordance with G.S. 126-7.1(b) and inform the employee of the priority consideration to be afforded.

(b) The agency shall notify the Office of State Human Resources when:

- (1) an employee is officially notified of reduction in force;
- (2) an eligible employee accepts a position that satisfies the priority consideration;
- (3) an eligible employee refuses an interview or an offer that would satisfy the priority consideration; or
- (4) other conditions that would satisfy or terminate an eligible employee's priority consideration under Rule .0902 of this Section are discovered.

History Note: Authority G.S. 126-4(6),(10); 126-7.1; Eff. March 1, 1987;
Amended Eff. December 1, 1995; June 1, 1992; November 1, 1988;
Recodified from 25 NCAC 01D .0515 Eff. December 29, 2003;
Amended Eff. November 1, 2011; February 1, 2007;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01H .0905 OFFICE OF STATE HUMAN RESOURCES RESPONSIBILITIES

The Office of State Human Resources shall maintain a list of employees notified of reduction in force that shall serve as a reference for agencies in determining priority consideration for reemployment.

History Note: Authority G.S. 126-4(6),(10); Eff. March 1, 1987;
Recodified from 25 NCAC 01D .0516 Eff. December 29, 2003;
Amended Eff. November 1, 2011; February 1, 2007;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01J .0603 APPEALS

(a) A career employee who has been demoted, suspended, or dismissed shall have 15 calendar days from the date of his or her receipt of written notice of such action to file an appeal with his department/university grievance procedure. If an employee does not appeal his or her dismissal through the agency grievance procedure within 15 days, then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-34.02.

(b) If an employee appeals his or her dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure.

(c) Grievances that allege discrimination, harassment, or retaliation shall follow the agency grievance process. Employees with grievances alleging discrimination, harassment, or retaliation

who do not follow the agency grievance process shall have no right to file a contested case with the Office of Administrative Hearings.

History Note: Authority G.S. 126-1A; 126-34.01; 126-34.02; 126-35; 150B, Article 3; 150B-23;
Eff. February 1, 1976;
Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984;
Temporary Amendment Eff. February 18, 1999;
Amended Eff. February 1, 2011; July 18, 2002;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01J .0610 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and assure that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning shall:

- (1) inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;
- (2) inform the employee of the specific issues that are the basis for the warning;
- (3) tell the employee what specific improvements, if applicable, shall be made to address these specific issues;
- (4) tell the employee the time frame allowed for making the required improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
- (5) tell the employee the consequences of failing to make the required improvements or corrections;

(b) A written warning shall be issued in accordance with the procedural requirements of this Section.

History Note: Authority G.S. 126-4; 126-34.02;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; November 1, 1990; January 1, 1989; September 1, 1988;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01J .0615 INVESTIGATORY LEAVE

(a) Investigatory leave with pay shall be used to temporarily remove an employee from work status. Placement on investigatory leave with pay shall not constitute a disciplinary action as defined in this Section, G.S. 126-34.02, or in G.S. 126-35. Management shall notify an employee in writing of the reasons for placement on investigatory leave not later than the second scheduled work day after the beginning of the placement. Investigatory leave with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Human Resources Director. The State Human Resources Director shall approve an extension of the period of investigatory leave with pay, for no more than an additional 30 calendar days, for one or more of the following reasons:

- (1) the matter is being investigated by law enforcement personnel, the investigation is not complete, and the agency is unable to complete its own independent investigation without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation;
- (2) a management individual who is necessary for resolution of the matter is unavailable; or
- (3) a person or persons whose information is necessary for resolution of the matter is/are unavailable.

(b) When an extension beyond the 30-day period is required, the agency shall advise the employee in writing of the extension, the length of the extension, and the reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings made during the investigation or return the employee to active work status. An agency shall not use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

(c) An agency may place an employee on investigatory leave only under the following circumstances:

- (1) to investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) to provide time within which to schedule and conduct a pre-disciplinary conference;
- (3) to avoid disruption of the work place and to protect the safety of persons or property; or
- (4) to facilitate a management directed referral or fitness for duty/risk evaluation to ensure the employee's safety and the safety of others and to obtain medical information regarding the employee's fitness to perform his or her essential job functions.

History Note: Authority G.S. 126-4; 126-25; 126-34.02; 126-35;

Eff. October 1, 1995;

Amended Eff. April 1, 2015; January 1, 2011; April 1, 2005.

25 NCAC 01J .0616 CREDENTIALS

(a) Classifications or positions required to be licensed, registered, or certified in accordance with North Carolina General Statutes shall be specified in the statement of essential qualifications or recruitment standards for classifications approved by the State Human Resources Commission. Employees in such classifications or positions shall obtain and maintain current, valid credentials.

(b) Failure to obtain or maintain the required credentials constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

(c) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:

- (1) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure, or certification information that was a requirement for the position, the employee shall be dismissed in accordance with Rule .0608 of this Section.
- (2) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.

(d) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.

History Note: Authority G.S. 126-4; 126-35;

Eff. April 1, 2015.

25 NCAC 01J .0617 DISCRIMINATION AND RETALIATION

Neither race, religion, color, national origin, sex, age, political affiliation, disability, or genetic information shall be considered in making any decisions about any term or condition of employment for any employees or applicants. Nor shall the fact that an employee or applicant has complained about discrimination or participated in a hearing, proceeding, or investigation of discrimination be considered when making any decisions about any term or condition of employment.

History Note: Authority G.S. 126-16; 126-17; 126-13.02;

Temporary Adoption Eff. February 28, 2014;

Temporary Adoption Expired December 12, 2014;

Eff. April 1, 2015.

25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARASSMENT AND RETALIATION

(a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment, including sexual harassment or retaliation based on opposition to unlawful workplace harassment of state employees or applicants. Every agency with employees subject to the State Human Resources Act shall develop strategies to ensure that work sites are free of unlawful workplace harassment, sexual harassment discrimination and retaliation.

(b) As used in this Rule:

- (1) "unlawful workplace harassment" means unsolicited and unwelcome speech or conduct based upon race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation that creates a hostile work environment or under circumstances involving quid pro quo."
- (2) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:
 - (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; and
 - (C) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (3) "retaliation" means adverse action taken against an individual for filing a discrimination charge; testifying; or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, disability, political affiliation or genetic information; or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

(c) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace harassment, sexual harassment or retaliation, and no personnel employment decisions shall be made on the basis of race, sex, religion, national origin, age, color, disability, political affiliation, or genetic information.

(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation.

(e) Coverage of this Rule includes:

- (1) applicants,
- (2) former employees, and
- (3) full-time and part-time employees with either a permanent, probationary, trainee, time-limited, or temporary appointment.

(f) Agency Workplace Harassment Prevention Strategies. Each agency head shall develop strategies to prevent unlawful workplace harassment, sexual harassment, or retaliation. These strategies shall include:

- (1) a commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment or retaliation;
- (2) training and other methods to prevent harassing or retaliating actions; and
- (3) a process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees.

Workplace harassment prevention strategies shall be included as part of the agency Equal Employment Opportunity (EEO) plan.

History Note: Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36;
Eff. December 1, 1980;
Amended Eff. November 1, 1988; April 1, 1983;
Temporary Amendment Eff. February 18, 1999;
Amended Eff. July 18, 2002;
Recodified from 25 NCAC 01C .0214 Eff. December 29, 2003;
Amended Eff. June 1, 2012;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015.

25 NCAC 01J .1201	GENERAL PROVISIONS
25 NCAC 01J .1202	AGENCY RESPONSIBILITIES
25 NCAC 01J .1203	AGENCY GRIEVANCE REPORTS
25 NCAC 01J .1204	DISCRIMINATION AND RETALIATION / SPECIAL PROVISIONS
25 NCAC 01J .1205	UNLAWFUL WORKPLACE HARASSMENT
25 NCAC 01J .1206	TIME LIMITS
25 NCAC 01J .1207	FINAL AGENCY ACTION
25 NCAC 01J .1208	LEAVE IN CONNECTION WITH GRIEVANCES

History Note: Authority G.S. 126-1.1; 126-4(9); 126-4(11); 126-4(17); 126-7.2; 126-16; 126-17; 126-25; 126-34.01; 126-34.02; 126-35; 150B-23(a);
Eff. March 1, 2005;
Temporary Repeal Eff. May 23, 2014;
Repealed Eff. April 1, 2015.

25 NCAC 01J .1301 MINIMUM PROCEDURAL REQUIREMENTS

History Note: Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34.01; 126-34.02; 126-35; 150B-23;
Eff. March 1, 2005;
Temporary Repeal Eff. May 23, 2014;
Repealed Eff. April 1, 2015.

25 NCAC 01J .1302 GENERAL AGENCY GRIEVANCE PROCEDURE REQUIREMENTS

(a) All agencies and universities shall adopt the Employee Grievance Policy, which shall be approved by the State Human Resources Commission, based on the standards in Paragraph (d) of this Rule.

(b) Grievances filed that are not in accordance with Subparagraph (d)(5) of this Rule shall be dismissed.

(c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled forfeits the right to proceed with the grievance process.

(d) An agency or university grievance process shall include the following:

- (1) a list of who may file a grievance;
- (2) a list of grounds for filing a grievance under the internal grievance process;
- (3) a list of grounds for which contested cases may be brought to the Office of Administrative Hearings after the conclusion of the grievance process in accordance with G.S. 126-34.02;
- (4) an informal process for attempting to resolve a grievable issue prior to the employee's filing a formal grievance;
- (5) a 30 day timeframe in which grievable issues must be raised in both the informal and formal grievance process, except for grievances covered by Rule .0603 of this Subchapter;
- (6) a 90 day timeframe in which the agency or university must complete the entire informal process and the process shall describe each step of the formal grievance process;
- (7) mediation shall serve as Step 1 of the formal grievance process. A description of the mediation process and timeframe to be followed in Step 1 shall state that a mediation agreement is legally binding and that if impasse occurs, the agency shall inform the grievant of the Step 2 grievance process and timeframe for filing;
- (8) a Hearing shall serve as Step 2 of the formal grievance process. A description of the hearing process and timeframe to be followed in Step 2 shall be provided, including that a grievant has the opportunity to present the grievance orally to a reviewer(s) outside the grievant's chain of command, meaning a hearing officer or hearing panel. The hearing officer or hearing panel chair shall draft a proposed recommendation with findings of fact for a final agency decision;
- (9) the process and timeframe for the proposed recommendation to be submitted to the Office of State Human Resources for review and approval;
- (10) the process and timeframe for issuance of a Final Agency Decision shall not exceed 90 calendar days of the initial filing of the grievance in the formal grievance process;

- (11) information about any applicable appeal rights to the Office of Administrative Hearings shall be included in the Final Agency Decision;
- (12) the responsibilities of all parties involved in the grievance process to include: grievant, respondent, hearing officer, hearing panel and chair, agency and university Human Resource Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and the Director of the Office of State Human Resources and designees; and
- (13) the manner in which changes in the grievance policies shall be communicated to employees.

History Note: Authority G.S. 126-34.01; 126-34.02; Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015.

25 NCAC 01J .1303 AGENCY AND UNIVERSITY GRIEVANCE REPORTS AND DATA ENTRY

(a) Every agency and university shall, as requested by the Office of State Human Resources, compile information on employee grievances.

(b) The Office of State Human Resources shall make reports to the State Human Resources Commission as necessary based upon the information supplied in agency reports.

(c) Every agency and university shall maintain all grievance data and enter grievance data by the last business day of the month in the State's HR and Payroll system or other applicable human resources information system.

History Note: Authority: G.S. 126-4(6),(9); Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015.

25 NCAC 01J .1305 OFFICE OF STATE HUMAN RESOURCES REVIEW AND APPROVAL OF FINAL AGENCY DECISION (FAD)

The Director of the Office of State Human Resources or his or her designee:

- (1) shall review every agency or university final agency decision (FAD);
- (2) shall establish criteria and standards for the content of a FAD; and
- (3) may approve as written or make recommendations for modifications or reversal to the agency.

History Note: Authority G.S. 126-34.01; 126-34.02; Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015.

25 NCAC 01J .1306 BACK PAY

In grievances filed on or after August 21, 2013:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.

- (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due if unemployment insurance benefits were not taxed when received by the employee.
- (4) All applicable state and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across the board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across the board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay shall be applied for on the appropriate Office of State Human Resources form, available on the Office of State Human

Resources website, www.oshr.nc.gov. The back pay application form requires the following information:

- (a) agency or university name;
- (b) division or department or school;
- (c) employee name;
- (d) social security number;
- (e) position classification;
- (f) position number; and
- (g) a notarized sworn statement verifying the following information for a total earnings calculation:
 - (i) gross earnings for back pay;
 - (ii) interim income, not including secondary employment approved prior to adverse action; and
 - (iii) unemployment compensation (untaxed).

- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available, suitable employment following separation from state government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

History Note: Authority G.S. 126-4(9); 126-34.01; 126 – 34.02;

Temporary Adoption Eff. May 23, 2014;

Eff. April 1, 2015.

25 NCAC 01J .1307 FRONT PAY

In grievances filed on or after August 21, 2013:

- (1) Front pay may be awarded in all cases in which front pay is warranted by law.
- (2) "Front pay" is the payment to an employee above his or her regular salary, the excess amount representing the difference between the employee's salary in his or her current position and a higher salary determined to be appropriate due to a finding of discrimination.
- (3) Front pay may also result from an order of reinstatement to a position of a particular level that the agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency is unable to hire, promote, or reinstate the employee to a position at the appropriate level and as warranted by law.
- (4) Front pay shall terminate upon acceptance or rejection of a position to which the employee has been determined to be entitled.
- (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion, or dismissal.
- (6) Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and

regular deductions for state and federal withholding taxes and the employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant.

(7) Shift pay and holiday premium pay shall not be available on front pay.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1308 LEAVE

- (a) An employee shall be credited on reinstatement with all vacation leave that would have been earned except for the interruption in employment.
- (b) An employee shall be credited on reinstatement with all sick leave that would have been earned except for the interruption in employment.
- (c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.
- (d) Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave that would have been earned except for the dismissal.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1309 HEALTH INSURANCE

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects reimbursement, the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement, but the employee may choose to purchase that retroactive coverage. It is the responsibility of the employee to provide proof of insurance or insured expenses incurred during the period of unemployment.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1310 INTEREST

The state shall not pay interest on any back pay award.

History Note: Authority 126-4(9);

*Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

25 NCAC 01J .1311 REINSTATEMENT

When an employee who was dismissed or demoted is reinstated, the employee shall return to employment in the same position, or a similar position at management's option, at the same salary grade or salary grade equivalency that the employee was employed prior to dismissal. The agency may reinstate an employee to a similar position assigned to a duty station that is in a different location than the prior assigned duty station. If the new duty station is 50 miles or more from the prior assigned duty station, then the agency may choose to pay moving and relocation expenses in accordance with Section 6.6 of the State Budget Manual located on the Office of State Budget and Management website at http://www.osbm.state.nc.us/files/pdf_files/BudgetManual.pdf, which is hereby incorporated by reference including any subsequent amendments and editions.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT

For grievances filed on or after August 21, 2013, reinstatement from dismissal, suspension, or demotion may be ordered only upon a finding of lack of substantive just cause (Rule .0604 of this Subchapter); discrimination, harassment, or retaliation prohibited by G.S. 126-16 and G.S. 126-34.02; or that an employee was dismissed, suspended, or demoted in violation of G.S. 126-34.02 because he or she was a whistleblower. For the purpose of this Rule, and in addition to those matters listed in Rule .0604 of this Subchapter, failure to issue the required number and kind of warnings or other disciplinary actions prior to dismissal for unsatisfactory job performance shall constitute a lack of substantive just cause.

History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1313 SUSPENSION WITHOUT PAY

For grievances filed on or after August 21, 2013, back pay shall be ordered in those cases in which it is determined that a suspension without pay lacked substantive just cause or was an act of discrimination, harassment, or retaliation prohibited by G.S. 126-16 or G.S. 126-34.02; or violated G.S. 126-34.02 because the employee was found to be whistleblower under Article 14 of Chapter 126 of the General Statutes.

History Note: Authority G.S. 126-4(6); 126-16; 126-34.02;
126-35;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1314 DISCRIMINATION, HARASSMENT, OR RETALIATION

For grievances filed on or after August 21, 2013, back pay, transfer, promotion, or other appropriate remedies, including corrective remedies, may be ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or G.S. 126-34.02 is found.

History Note: Authority G.S. 126-4(9); 126-16; 126.34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS

Voluntary programs and benefits are the choice of the employee and the employee's financial responsibility. Voluntary benefits and programs include 401K programs, voluntary health and life insurance programs, or deferred compensation. Volunteer programs and benefits shall not be addressed by any remedy under these Rules or G.S. 126. To the extent that retroactive coverage or membership is available, the grievant is responsible for initiating any necessary action against any third party to obtain such benefits.

History Note: Authority 126-4(9); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1316 REMEDIES FOR PROCEDURAL VIOLATIONS

(a) Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion, or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30 calendar days from the date the employee is given written notice of applicable appeal rights.

(b) Failure to give specific reasons for dismissal, demotion, or suspension without pay shall be deemed a procedural violation. Back pay, attorney's fees, or both may be awarded for such a violation. Back pay or attorney's fees, or both may be awarded for such a period of time as is appropriate under the law, considering all the circumstances.

(c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate in light of the purpose of pre-dismissal conferences, which is to provide notice to the employee and an opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1317 REMEDIES: SALARY ADJUSTMENTS

(a) No department, agency, or university may use within-grade or within-range salary adjustments as a method of resolving any grievance, contested case, or lawsuit without advance notice to the Office of State Human Resources and the written approval of the State Human Resources Director.

(b) Any within-grade or within-range salary adjustment proposed to be approved by the State Human Resources Director shall be in compliance with existing salary administration policies (see 25 NCAC 01D .0100 et. seq.) or have prior approval as an exception to or waiver from the policies in accordance with 25 NCAC 01A .0104.

History Note: Authority G.S. 126-4(2); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1318 CERTAIN REMEDIES NOT AVAILABLE

The following remedies shall not be awarded in appeals under G.S. 126:

- (1) compensatory;
- (2) punitive, except as allowed under G.S. 126-87;
- (3) exemplary; or
- (4) other special damages.

The only available relief is back pay, front pay, or other omitted benefits, along with attorney's fees in certain cases.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1319 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED

For grievances filed on or after August 21, 2013, attorney's fees may be awarded only in the following situations:

- (1) the grievant is reinstated;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated; or
- (3) the grievant prevails in a whistleblower grievance.

History Note: Authority G.S. 126-4(11); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.

25 NCAC 01J .1320 ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A SETTLEMENT

Attorney's fees may be paid as the result of a settlement in the grievance procedure, providing such fees are explicitly incorporated as a part of a settlement agreement signed by both parties.

History Note: Authority 126-4(11); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;

Eff. April 1, 2015.

25 NCAC 01J .1401 **MINIMUM PROCEDURAL REQUIREMENTS**
25 NCAC 01J .1402 **FLEXIBILITY**
25 NCAC 01J .1403 **INFORMAL MEETING WITH SUPERVISOR**
25 NCAC 01J .1404 **MEDIATION PROCEDURE**
25 NCAC 01J .1405 **CONCLUSION OF MEDIATION**
25 NCAC 01J .1406 **LIMITATIONS ON A MEDIATION AGREEMENT**
25 NCAC 01J .1407 **POST MEDIATION**

History Note: Authority G.S. 126-4(1); 126-4(6); 126-4(7); 126-4(9); 126-4(10); 126-4(17); 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382; Eff. March 1, 2005; Temporary Repeal Eff. May 23, 2014; Repealed Eff. April 1, 2015.

25 NCAC 01J .1408 **EMPLOYEE RESPONSIBILITIES FOR MEDIATION**
25 NCAC 01J .1409 **AGENCY RESPONSIBILITIES FOR MEDIATION**
25 NCAC 01J .1410 **OFFICE OF STATE PERSONNEL RESPONSIBILITIES**

History Note: Authority G.S. 126-4(6); 126-4(9); 126-4(10); 126-34-01; 126-34.02; Eff. March 1, 2005; Temporary Repeal Eff. May 23, 2014; Repealed Eff. April 1, 2015.

25 NCAC 01J .1411 **AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION AND GRIEVANCE POLICY**
25 NCAC 01J .1412 **OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE MEDIATION AND GRIEVANCE PROCESS**

History Note: Authority G.S. 126-4(9); 126-4(10); 126-34.1(a); S.L. 2013-382; Eff. March 1, 2005; Temporary Repeal Eff. May 23, 2014; Repealed Eff. April 1, 2015.

This Section contains information for the meeting of the Rules Review Commission May 21, 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

May 21, 2015 June 16, 2015
July 16, 2015 August 20, 2015

AGENDA**RULES REVIEW COMMISSION****THURSDAY, MAY 21, 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. Building Code Council – 2012 NC Residential Code, Sections R101.2, R202, and R324, 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 March 23, 2015 and April 20, 2015
 - Social Services Commission (Hammond)
 - Justice Academy (Reeder)
 - Environmental Management Commission (Reeder)
 - Board of Chiropractic Examiners (Reeder)
 - Board of Dental Examiners (May)
 - Board of Dietetics/Nutrition (Reeder)
 - Board of Refrigeration Examiners (Reeder)
 - Building Code Council (Hammond)
- V. Existing Rules Review
 - 1. 07 NCAC 04 – Department of Cultural Resources (Reeder)
 - 2. 15A NCAC 08 – Water Pollution Systems Operators Certification Commission (Hammond)
 - 3. 15A NCAC 18D - Water Treatment Facility Operators Certification Board (Reeder)
 - 4. 17 NCAC 03 – Department of Revenue (Reeder)
 - 5. 17 NCAC 06 – Department of Revenue (Reeder)

- VI. Commission Business
- Next meeting: Tuesday, June 16, 2015
-

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

SOCIAL SERVICES COMMISSION

The rules in Chapter 73 concern controlled substances.

The rules in Subchapter 73A concern work first substance abuse screening and testing.

<u>Scope and Purpose</u>	10A	NCAC	73A	.0101
Adopt/*				
<u>Definitions</u>	10A	NCAC	73A	.0102
Adopt/*				
<u>Drug Testing</u>	10A	NCAC	73A	.0103
Adopt/*				
<u>Drug Testing Requirements</u>	10A	NCAC	73A	.0104
Adopt/*				
<u>Techniques and Methods</u>	10A	NCAC	73A	.0105
Adopt/*				
<u>Confidentiality</u>	10A	NCAC	73A	.0106
Adopt/*				
<u>Reasonable Accommodation</u>	10A	NCAC	73A	.0107
Adopt/*				
<u>Notices</u>	10A	NCAC	73A	.0108
Adopt/*				

JUSTICE ACADEMY

The rules in Chapter 6 are from the North Carolina Justice Academy.

The rules in Subchapter 6A concern organization and rules including general provisions (.0100); purpose (.0200); organization (.0300); course availability (.0400); student costs (.0500); student conduct (.0600); building use (.0700); and student awards and certificates (.0800).

<u>Firearms</u>	12	NCAC	06A	.0603
Amend/*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 02N concern underground storage tanks including general considerations (.0100); program scope and interim prohibition (.0200); UST systems: design, construction, installation, and notification (.0300); general operating requirements (.0400); release detection (.0500); release reporting, investigation, and confirmation (.0600); release response and corrective action for UST systems containing petroleum or hazardous substances (.0700); out-of-service UST systems and closure (.0800); and performance standards for UST system or UST system component installation or replacement completed on or after November 1, 2007 (.0900).

<u>Implementation Schedule for Performance Standards for New...</u>	15A	NCAC	02N	.0304
Amend/*				

<u>Tanks</u>	15A	NCAC	02N	.0903
Amend/*				
<u>Piping</u>	15A	NCAC	02N	.0904
Amend/*				

CHIROPRACTIC EXAMINERS, BOARD OF

The rules in Chapter 10 include organization of the Board (.0100); the practice of chiropractic (.0200); rules of unethical conduct (.0300); rule-making procedures (.0400); investigation of complaints (.0500); contested cases and hearings in contested cases (.0600-.0700); and miscellaneous provisions (.0800).

<u>Renewal of License</u>	21	NCAC	10	.0205
Amend/*				
<u>Individual-Study Continuing Education</u>	21	NCAC	10	.0210
Amend/*				

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16R concern continuing education requirements of dentists (.0100 and .0200).

<u>Applications</u>	21	NCAC	16R	.0101
Amend/*				
<u>Fee for Late Filing and Duplicate License</u>	21	NCAC	16R	.0102
Amend/*				
<u>Continuing Education Required</u>	21	NCAC	16R	.0103
Repeal/*				
<u>Approved Courses and Sponsors</u>	21	NCAC	16R	.0104
Repeal/*				
<u>Reporting of Continuing Education</u>	21	NCAC	16R	.0105
Repeal/*				
<u>Variances and Exemptions from and Credit for Continuing E...</u>	21	NCAC	16R	.0106
Repeal/*				
<u>Penalty/Non-Compliance/Continuing Education</u>	21	NCAC	16R	.0107
Repeal/*				
<u>License Void Upon Failure to Timely Renew</u>	21	NCAC	16R	.0108
Adopt/*				
<u>Form of Certificate of Renewal</u>	21	NCAC	16R	.0109
Adopt/*				
<u>Renewal Certificate Must Be Displayed</u>	21	NCAC	16R	.0110
Adopt/*				
<u>Continuing Education Required</u>	21	NCAC	16R	.0201
Adopt/*				
<u>Approved Courses and Sponsors</u>	21	NCAC	16R	.0202
Adopt/*				
<u>Reporting Continuing Education</u>	21	NCAC	16R	.0203
Adopt/*				
<u>Variances and Exemption from and Credit for Continuing E...</u>	21	NCAC	16R	.0204
Adopt/*				
<u>Penalty/Non-Compliance/Continuing</u>	21	NCAC	16R	.0205
Adopt/*				
<u>Definitions</u>	21	NCAC	16R	.0206
Adopt/*				

The rules in Subchapter 16S concern the caring dental professionals program general provisions (.0100) and guidelines for program elements (.0200).

<u>Definitions</u>	21	NCAC	16S	.0101
Amend/*				
<u>Board Agreements with Peer Review Organizations</u>	21	NCAC	16S	.0102
Amend/*				
<u>Confidentiality</u>	21	NCAC	16S	.0202
Amend/*				
<u>Intervention and Referral</u>	21	NCAC	16S	.0203
Amend/*				

The rules in Subchapter 16T concern patient records.

<u>Record Content</u>	21	NCAC	16T	.0101
Amend/*				
<u>Transfer of Records Upon Request</u>	21	NCAC	16T	.0102
Amend/*				

The rules in Subchapter 16U concern investigations including procedures (.0100); and complaints (.0200).

<u>Secretary-Treasurer</u>	21	NCAC	16U	.0101
Amend/*				
<u>Investigative Panel</u>	21	NCAC	16U	.0102
Amend/*				
<u>Reports from the Controlled Substance Reporting System</u>	21	NCAC	16U	.0103
Adopt/*				
<u>Processing</u>	21	NCAC	16U	.0201
Amend/*				
<u>Pre-Hearing Conferences</u>	21	NCAC	16U	.0203
Amend/*				
<u>Settlement Conferences</u>	21	NCAC	16U	.0204
Amend/*				

The rules in Subchapter 16V concern unprofessional conduct.

<u>Definition: Unprofessional Conduct by a Dentist</u>	21	NCAC	16V	.0101
Amend/*				
<u>Definition: Unprofessional Conduct by a Dental Hygienist</u>	21	NCAC	16V	.0102
Amend/*				

The rules in Subchapter 16W concern public health hygienists.

<u>Direction Defined</u>	21	NCAC	16W	.0101
Amend/*				
<u>Training for Public Health Hygienists</u>	21	NCAC	16W	.0102
Amend/*				

The rules in Subchapter 16Y concern permitting intern dentists.

<u>Eligibility Requirements</u> Amend/*	21	NCAC	16Y	.0101
<u>Application</u> Amend/*	21	NCAC	16Y	.0102
<u>Employment</u> Amend/*	21	NCAC	16Y	.0103
<u>Direction and Supervision</u> Amend/*	21	NCAC	16Y	.0104

The rules in Subchapter 16Z concern limited supervision of dental hygienists.

<u>Eligibility to Practice Hygiene Outside Direct Supervision</u> Amend/*	21	NCAC	16Z	.0101
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DIETETICS/NUTRITION, BOARD OF

The rules in Chapter 17 are from the Board of Dietetics/Nutrition. The rules cover the general provisions of licensure (.0100); weight control programs (.0200); dietetic/nutrition students or trainees (.0300); and unlicensed individuals and those who aid in the practice of dietetics/nutrition (.0400).

<u>Declaratory Rulings</u> Adopt/*	21	NCAC	17	.0119
<u>Petitions for Adoption, Amendment or Repeal of Rules</u> Adopt/*	21	NCAC	17	.0120
<u>Rule Making Notice</u> Adopt/*	21	NCAC	17	.0121

REFRIGERATION EXAMINERS, BOARD OF

The rules in Chapter 60 are from the Board of Refrigeration Examiners and concern organization and definitions (.0100); examinations (.0200); licenses and fees (.0300); disciplinary action (.1100); and continuing education.

<u>Office of the Board</u> Amend/*	21	NCAC	60	.0102
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BUILDING CODE COUNCIL

<u>2011 NC Electrical Code/Special Occupancies</u> Amend/*	230.2 (B)
<u>2012 NC Energy Conservation Code/Air Exchange Rate</u> Amend/*	Table 405.5.2(1)
<u>2012 NC Fire Code/Hookah or Water Pipe Use</u> Amend/*	310.9
<u>2012 NC Fire Code/Solar Photovoltaic Power Systems</u> Amend/*	605.11
<u>2012 NC Plumbing Code/Liquid-type, Trowel-applied, Load-..</u> Amend/*	417.5.2.6
<u>2012 NC Plumbing Code/Heel- or side-inlet quarter bends</u> Amend/*	706.4
<u>2012 NC Residential Code/Width</u> Amend/*	R311.7.1

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>
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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	
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Marcus L. Bellamy T/A Bellas Grill v. ABC Commission	14 ABC 03485	07/24/14	
Kelvin M. Williams, dba Da Wave v. ABC Commission	14 ABC 04723	09/12/14	
ABC Commission v. Prescott Elliot Urban Environments LLC T/A Marquis Market	14 ABC 04798	10/02/14	
ABC Commission v. Noa Noa LLC T/A Noa Noa	14 ABC 05891	11/20/14	
M & K Investments Inc. v. ABC Commission	14 ABC 06199	11/24/14	
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Carl John Perkinson v. Department of Public Safety	14 CPS 02245	06/24/14	
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Shamika Mack v. NC Department of Public Safety Victim Services	14 CPS 05567	01/30/15	29:21 NCR 2518
Mitchell Kent Wilson v. NC Crime Victims Compensation Commission	14 CPS 05569	11/06/14	
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Rodger L. Ackerson v. Janice W. Carmichael, NC Crime Victims Compensation Commission	14 CPS 06627	10/14/14	
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AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare	13 DHR 08874	01/06/14	29:02 NCR 202
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
8/11/2014 12:51 PM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 16643

Carolina Behavioral Care, PA, <p align="center">v.</p> N.C. Department of Health and Human Services, Division of Medical Assistance, Respondent.	Petitioner, Respondent.
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**ORDER
OF
SUMMARY JUDGMENT**

THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Petitioner's Motion for Partial Summary Judgment filed with the Office of Administrative Hearings ("OAH") on June 5, 2014. This matter was previously scheduled for a contested case hearing on May 12, 2014; however, that hearing was converted into an informal settlement conference. The Parties made some progress toward settlement; however, final resolution was not achieved as is set forth in the Joint Status Report filed by the parties with OAH on May 20, 2014. It was discussed between the parties and the undersigned at the settlement conference that Petitioner would file the Motion for Summary Judgment currently under consideration. Respondent has not filed a response.

UNDISPUTED FACTS

1. There are three post-payment audits at issue herein.
2. In *PI Case Number 2012-1160* the Agency sent its Tentative Notice of Overpayment ("TNO") to Petitioner on February 15, 2013. The TNO contained an extrapolated amount of \$322,706.00 which Respondent contends is the amount of Medicaid overpayment to Petitioner.
3. In *PI Case Number 2012-1030* the Agency sent its Tentative Notice of Overpayment ("TNO") to Petitioner on July 10, 2013. The TNO contained an extrapolated amount of \$108,785.00 which Respondent contends is the amount of Medicaid overpayment to Petitioner.
4. In *PI Case Number 2012-1029* the Agency sent its Tentative Notice of Overpayment ("TNO") to Petitioner on July 10, 2013. The TNO contained an extrapolated amount of \$57,835.00 which Respondent contends is the amount of Medicaid overpayment to Petitioner.

5. Each of the TNOs contained both the notice as required and an extrapolated amount of purported overpayment which Respondent seeks to recover.

Having considered the submissions of the parties as well as matters of record appropriate for consideration, this Tribunal concludes as a matter of law as follows:

CONCLUSIONS OF LAW

1. Respondent's Program Integrity Unit and its authorized agents, PCG, conduct post-payment reviews of Medicaid paid claims to identify program abuse and overpayments in accordance with 42 USC § 1396a, 42 CFR 455 & 456, and 10A NCAC 22F.

ISSUE 1

2. The first issue to be addressed is whether Respondent DMA violated N.C. Gen. Stat. § 108C-5(i) by failing to provide Petitioner proper notice prior to extrapolation? This issue has been addressed by the undersigned in prior orders, and this order is consistent with those prior orders.
3. N.C. Gen. Stat. § 108C-5 describes the process Respondent or its agent must follow in seeking recoupment of any overpaid Medicaid funds from a Medicaid provider. N.C. Gen. Stat. § 108C-5(k) states:

The Department, prior to conducting audits that result in the extrapolation of results, shall identify to the provider the matters to be reviewed and specifically list the clinical, including, but not limited to, assessment of medical necessity, coding, authorization, or other matters reviewed and the time periods reviewed. (Emphasis added)

4. N.C. Gen. Stat. § 108C-5(i) provides:

Prior to extrapolating the results of any audits, the Department shall demonstrate and inform the provider that (i) the provider failed to substantially comply with the requirements of State or federal law or regulation or (ii) the Department has credible allegation of fraud concerning the provider. (Emphasis added)

5. In this case, there are no allegations that Petitioner committed any fraud.

6. N.C. Gen. Stat. § 108C-5(p) provides:

The provider shall have no less than 30 days from the date of the receipt of the Department's notice of tentative audit results to provide additional documentation not provided to the Department during any audit.

7. Reading N.C. Gen. Stat. § 108C-5 in its entirety, and in context with the applicable provisions of 42 CFR 455 & 456, and 10A NCAC 22F, N.C. Gen. Stat. § 108C-5 requires Respondent to demonstrate and to inform Petitioner that Petitioner "failed to substantially comply" with the applicable State and Federal law or regulation before Respondent extrapolates the results of any audits. The purpose of N.C. Gen. Stat. § 108C-5(i) is to allow the provider time to submit additional documentation to Respondent before an extrapolation of any overpayment.
8. In this case, there is no genuine issue of material fact that Respondent violated N.C. Gen. Stat. § 108C-5(i) when it simultaneously notified Petitioner in each of the three TNOs that Petitioner failed to substantially comply with the State and federal requirements, and that Petitioner owed an extrapolated overpayment amount in each case based on such audit findings.
9. The problem is that the TNO was issued with an extrapolated amount in the same notice. Such is not in accord with N.C. Gen. Stat. § 108C-5 which establishes procedures which must take place prior to the extrapolation. In this instance, the notice and the extrapolated amount were set out simultaneously.
10. By Respondent violating the procedural requirements of N.C. Gen. Stat. § 108C-5(i), the extrapolated recoupment amounts sought to be recovered set out in the TNOs of \$322,706.00, \$108,785.00, and \$57,835.00 respectively are invalid and void. It is the extrapolated amounts which are void and not the entire TNO. Petitioner is entitled to summary judgment as matter of law as to that issue, and Respondent may not recoup those extrapolated recoupment/overpayment amounts from Petitioner.
11. N.C. Gen. Stat. § 108C-5(p) gives the provider 30 days from the notice (TNO) in which to provide additional documentation. Therefore, any extrapolation performed thirty days after the TNO is not in violation of this provision and could be given consideration.
12. Petitioner's motion for Summary Judgment is ALLOWED as to any extrapolation amounts given simultaneously with the TNO or performed within thirty days of the TNO. Petitioner's motion for Summary Judgment is DENIED as to any subsequent extrapolations conducted by the Respondent 30 days after the TNO, and any such extrapolations and alleged overpayments may be introduced by the Respondent at the contested case hearing of this matter and sought to be recovered.

ISSUE 2

13. The second issue to be addressed is whether the Respondent has relied upon an unpromulgated rule in order to extrapolate amounts considered to be overpayments.
14. The standard at issue herein is the Agency's reliance on a standard wherein the provider is deemed to have been in non-compliance with federal and/or state law or regulation if the provider's claims reviewed has five percent (5%) or more in error. There apparently

is no question that this standard has not been properly promulgated as a rule as required by Article 2A of Chapter 150B of the North Carolina General Statutes.

15. Application of an un-promulgated rule as a standard is error. However, in this instance, there is not sufficient information as to how it was applied to this Petitioner, what actual rate of error the Petitioner's claims may have had, and whether or not a test of reasonableness would be appropriate in the absence of an appropriate rule. Therefore, judgment is reserved as to this issue alone.

ISSUE 3

16. Issue Three is closely akin to Issue five in that it deals with the validity of the consent forms signed by either the recipient or his/her caretaker.
17. In Issue Three the Petitioner relies principally on N.C. Gen. Stat. § 90-21.13 which states there is a presumption of validity in consent forms under certain circumstances. Petitioner thus contends that it is error for Respondent to seek recoupment of overpayment based on the validity of the consent forms. Further Petitioner contends that Respondent has the burden of proof and cannot prevail.
18. 10A NCAC 22F .0107 provides that all providers "shall keep and maintain all Medicaid financial, medical, or other records necessary to fully disclose the nature and extent of services furnished to Medicaid recipients and claimed for reimbursement."
19. Thus in post payment reviews, the burden is on the provider to produce certain documentation to validate that the provider has indeed complied with state and federal requirements. While the ultimate burden of proof is on Respondent in the contested case hearing, provider cannot rest on its laurels in at least the initial phases of the post payment reviews. A blanket assertion which in essence would make all consents valid without any further showing is not supported.
20. It is not completely clear to what extent if any signatures are completely missing, or signatures not dated, or if the information is missing as set out in Issue Five.
21. Even if there is a presumption of validity of the signatures, the provider should produce what information they have and be given an opportunity to correct any deficiencies in accord with N.C. Gen. Stat § 108C-5(o).
22. There remains a genuine issue of material fact as to this issue and therefore Petitioner's Motion for Summary Judgment is DENIED as to this issue.

ISSUE 4

23. The fourth issue is whether or not the Respondent applied inapplicable Clinical Coverage Policy and/or rules.

24. There seems to be no question that the Clinical Policy used in performing the audits in question was not in effect at the time the services were performed and Petitioner paid from Medicaid monies.
25. N.C. Gen. Stat. § 108C-5(i) requires Respondent to inform providers that they have "failed to substantially comply with the requirements of State or federal law or regulation." It would seem that proper notice would require a statement in particularity of which state and/or federal laws or regulations have been violated. Arguably, N.C. Gen. Stat. § 108C-5(i) does not require the Respondent to the TNO to specify upon what authority Respondent is relying; however, that may be an argument for another day. It is clear that applying the wrong Clinical Coverage Policy is plain error without regard to any notice given.
26. Likewise, without regard to the timing of the reference to rules 10A NCAC 27G .0205 and .0206, those rules do not apply to the providers at issue herein.
27. As to this issue there is no genuine issue of material fact and therefore Petitioner's Motion for Summary Judgment is ALLOWED as to this issue.

ISSUE 5

28. Issue Five is closely akin to Issue Three in that it deals with the validity of the consent forms signed by either the recipient or his/her caretaker.
29. N.C. Gen. Stat § 108C-5(o) allows the provider to make corrections of clerical, scrivener, computer errors and the like prior to the final audit. Petitioner contends that such errors were made in transferring its records to an electronic format when parts of some files were not copied leaving off signatures and/or dates.
30. As stated above and in accord with 10A NCAC 22F .0107, in post payment reviews, the burden is on the provider to produce certain documentation to validate that the provider has indeed complied with state and federal requirements. While the ultimate burden of proof is on Respondent in the contested case hearing, provider cannot rest on its laurels in at least the initial phases of the post payment reviews.
31. Even if there is a presumption of validity of the signatures, and even if there clerical and/or computer errors, the provider should produce what information they have and be given an opportunity to correct any deficiencies in accord with N.C. Gen. Stat § 108C-5(o).
32. There remains a genuine issue of material fact as to this issue and therefore as to this issue, Petitioner's Motion for Summary Judgment is DENIED.

FINAL DECISION

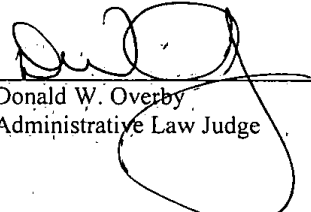
Based upon the foregoing Conclusions of Law, Summary Judgment is **ALLOWED IN PART** and **DENIED IN PART** for the Petitioner as to Issue 1; as to Issue 2, judgment is reserved; as to Issues 3 and 5, Summary Judgment is **DENIED** without prejudice; and as to Issue 4, Summary Judgment is **ALLOWED**.

NOTICE

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with 26 N.C. Admin. Code 03.0120, and the Rules of Civil Procedure, N.C. Gen. Stat. § 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of the Superior Court within 30 days of receipt of the Petitioner for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 11th day of August, 2014.


Donald W. Overby
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA 2015 NOV -2 11 10 38 IN THE OFFICE OF
COUNTY OF WAKE Office of ADMINISTRATIVE HEARINGS
Administrative Hearing 13EHR18253

<p>WASCO LLC Petitioner and DYNA-DIGGR LLC Intervenor v. NC DEPT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WASTE MANAGEMENT Respondent</p>	<p>FINAL DECISION GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT</p>
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This matter is before the undersigned on the *Motion for Summary Judgment* filed September 25, 2014 by the Respondent North Carolina Department of Environment and Natural Resources, Division of Waste Management, acting by and through its Hazardous Waste Section (hereinafter "the Section"), pursuant to N.C.G.S. § 1A-1, Rule 56, and 26 NCAC 03 .0115(a), seeking entry of a Final Decision pursuant to N.C.G.S. § 150B-34. Upon due consideration of the submissions of the parties and the applicable statutes, regulations, and legal precedents, the following dispositive Order is entered.

Statement of the Case

Petitioner seeks to be relieved of the obligation to provide control and remediation at a hazardous waste site in Swannanoa. The pit at the former Asheville Dyeing and Finishing Plant site once held an underground storage tank for waste *perchloroethylene* ("PCE"), a suspected carcinogen, and contains significant residual contaminated soil and groundwater today.

The entity currently constituted as WASCO LLC ("WASCO"), began its involvement with the site in 1995. *See*, Respondent's Exhibits to the *Motion for Summary Judgment*, tab G, section 3, page 364, and tab B, section 12, page 67 (hereinafter, "R Ex p 364 & 67.") The Section sent the letter that triggered the filing of this contested case to the Petitioner and the Intervenor on August 16, 2013 (*see*, R Ex p 23). The letter concerned the requirements of the State Hazardous Waste Program, and asserted, in relevant part, that WASCO was an "operator," and consequently required to obtain a post-closure permit, or an "Administrative Order on Consent" ("AOC") in lieu of the post-closure permit, pointedly noting that, "If an agreement ... cannot be reached, the Section always has the option of issuing a Compliance Order with Administrative Penalty for violation of 40 C.F.R. § 270.1(c) and associated post-closure regulations." Petitioner's recalcitrance represented a stark departure from its past relationship with the Respondent. *See, e.g.*, a draft Administrative Order on Consent submitted by

Petitioner's then-counsel, together with a list of 42 reports of remediation and containment work performed by Petitioner's contractors. R Ex p 46-56.

WASCO filed a Petition commencing this contested case in the Office of Administrative Hearings on September 27, 2013, alleging that the Section's characterization of WASCO as an "operator" in this context deprived WASCO of property or otherwise substantially prejudiced its rights and violated the North Carolina Administrative Procedure Act ("NCAPA"), N.C.G.S. § 150B-23(a). As the current owner of the property, and facially liable as such under the applicable environmental statutes, Dyna-Diggr LLC ("Dyna-Diggr") was permitted to intervene on December 12, 2013.

Respondent recounts that WASCO served its first set of discovery requests on January 6, 2014, and that, to date, the Section has responded to two (2) sets of Requests for Admission (212 requests in total), two (2) sets of Requests for Production of Documents (110 requests in total), and one (1) set of Interrogatories; has produced various business records, including over 11,000 pages of emails; and, has provided WASCO with electronic access to its public file.

The Section's *Motion for Summary Judgment* was filed with over 1,200 pages of exhibits. WASCO moved for and received a 30-day extension of the usual 10-day period to file a Response to the Motion. On October 21, 2014, WASCO filed a second motion for an extension of time, supported by a 12-page brief with five attachments totaling approximately 50 pages, including an *Affidavit of WASCO's Counsel Dan Biederman*; followed by an *Amendment and Supplement of Affidavit of WASCO's Counsel Dan Biederman* (approximately 30 pages), including legal arguments concerning key question of the proper statutory interpretation of the term "operator." Petitioner argued that it needed to take, transcribe, and review the Section's Rule 30(b)(6) deposition(s) before responding to the motion. On October 22, 2014, the Section filed a Reply opposing WASCO's motion and moved to stay discovery pending resolution of the summary judgment motion.

WASCO's only outstanding discovery request is a *Notice to Depose* the Section per N.C. Gen. Stat. § 1A-1, Rule 30(b)(6). This was projected to entail taking the depositions of four Section employees concerning their personal knowledge about the parties' activities concerning the hazardous waste site. (Their Affidavits appear at R Ex p 1178-95.) Petitioner argued that the parties had discussed taking these depositions in early December, before the December 5, 2014 discovery deadline, but asked that the additional time to respond to the Motion be extended to 45 days following receipt of the transcripts -- which Respondent contended would extend the time for non-moving party's response to a total of 117 days from the date the motion was filed.

In consideration of the breadth of completed discovery; the probability that "the facts which would have raised a genuine issue of material fact were within the defendant's knowledge," based on the theory of Respondent's motion, *Gebb v. Gebb*, 67 N.C. App. 104, 108, 312 S.E.2d 691, 694 (1984); the opportunity Petitioner had to identify any such material facts in its Response; and, the unjustifiable delay and imposition on Respondent of further discovery in light of these circumstances, the undersigned denied Petitioner's request for additional months to respond, and granted Respondent's request for a stay of discovery until the summary judgment Motion was resolved, in an Order entered on October 28, 2014.

On November 7, 2014, WASCO responded to the Section's *Motion for Summary Judgment* in detail, appending seven affidavits with numerous attachments, and requested a hearing on the motion. Following opportunities for the parties to suggest language for this Order, the motion is determined in accordance with 26 NCAC 03 .0115(b).

Statement of the Undisputed Facts

This contested case concerns real property located at 850 Warren Wilson Road, Swannanoa, North Carolina, 28778, which was assigned the United States Environmental Protection Agency ("EPA") Identification Number NCD 070 619 663 ("the Facility").

A pit at the Facility once contained an underground storage tank for waste perchloroethylene ("PCE"), a dry cleaning solvent. The pit was closed as a landfill in 1992 with contaminated soil left in place. Significant groundwater contamination remains today.

Petitioner initially became involved with the Facility in 1999. At the time, it was known as United States Filter Corporation or USFilter. WASCO later changed its name to Water Applications & Systems Corporation, and then was converted to the limited partnership with the name WASCO, LLC.

On June 15, 1998, the Petitioner -- then known as United States Filter Corporation -- acquired Culligan Water Technologies, Inc. (hereinafter, "Culligan"). (R Ex p 362) In its March 31, 1998 Form 10-K filing with the Securities and Exchange Commission, Petitioner disclosed that:

In 1995, Culligan purchased an equity interest in Anvil Holdings Inc. As a result of this transaction, Culligan assumed certain environmental liabilities associated with soil and groundwater contamination at Anvil Knitwear's Asheville Dyeing and Finishing Plant (the "Plant") in Swannanoa, North Carolina. Since 1990, Culligan has delineated and monitored the contamination pursuant to an Administrative Consent Order entered into with the North Carolina Department of Environment, Health and Natural Resources relating to the closure of an underground storage tank at the site. Groundwater testing at the plant and two adjoining properties has shown levels of a cleaning solvent believed to be from the Plant that are above action levels under state guidelines. The company has begun remediation of the contamination. The company currently estimates the cost of future site remediation will range from \$1.0 million to \$1.8 million and that it has sufficient reserves for the site cleanup.

(R Ex p 364). Culligan assumed responsibility for the environmental operations at the Facility in a Guaranty Agreement in favor of the property's buyer, Anvil Knitwear, Inc., in return for \$9 million (R Ex p 352), exchanged for stock in Anvil Holdings, Inc. (R Ex p 335), as a part of a transaction in which Winston Mills, Inc. and McGregor Corporation, both wholly owned by Astrum International Corp., sold "all of [their] assets comprising their Anvil Knitwear division"

to Anvil Knitwear, Inc. and Anvil Holdings, Inc., including the Facility in Swannanoa. (See deed from Winston Mills to Anvil Knitwear, Inc. (R Ex p 249), which includes an environmental “exception.”) Astrum was a co-guarantor with Culligan and, in effect, guaranteed Culligan’s performance under the Guaranty Agreement. (R Ex p 352)

Three months later, Culligan, as “a subsidiary of Astrum International Corp.,” executed a *Corporate Guarantee for Closure or Post-Closure Care* to the United States Environmental Protection Agency (“EPA”) declaring that, “For value received from the operator, guarantor [Culligan] guarantees to EPA that in the event the operator fails to perform post-closure care of the [Facility] ... the guarantor shall do so or establish a trust fund” to defray the expense of “post-closure care” of the Facility. (See Exhibit B to Dyna-Diggr’s *Motion to Intervene*.) The operator was identified as “Winston Mills, Inc. ... which is a subsidiary of Astrum International Corp.”

To assure payment for the obligations it assumed with its acquisition of Culligan, Petitioner entered into a “Trust Agreement” (conforming with 40 C.F.R. § 264.143, with North Carolina modifications) with Petitioner as the “Grantor,” and Wells Fargo Bank, N.A. as “Trustee,” to “establish a trust fund ... for the benefit of DENR.” It recites that:

... [T]he Department of Environmental and Natural Resources, “DENR,” an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of facility[.]

(R Ex p 409) In Section 4, “Payment for Closure and Post-Closure Care,” the Trust Agreement provides that

The Trustee shall make payments from the fund as the Secretary of the Department of Environmental and Natural Resources (the “Secretary”) shall direct, in writing, to provide for the payment of the cost of closure and/or post-closure care of facilities covered by this agreement.

(R Ex p 410). The agreement further provides that, “this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Secretary, or by the Trustee and the Secretary, if the Grantor ceases to exist.” (R Ex p 413) The location of the subject property, and the estimated costs, are listed. That amount -- adjusted to \$443,769.98 by June 27, 2013 -- is guaranteed by a Letter of Credit. (R Ex p 524)

The Trust Agreement defines the “Grantor” as “the owner or operator who enters into this agreement and any successors or assigns of the Grantor.” (R Ex p 409)

Between 1999 and the present, WASCO has supplied and maintained post-closure financial assurance for the Facility. WASCO or its employees and the Section have communicated directly concerning financial assurance and other matters related to the Facility’s

environmental compliance. WASCO is named as an operator in EPA forms submitted to the Section in 2004, 2006, and 2008.

Between 2004 and the filing of the instant contested case, WASCO has hired and paid for the work of Mineral Springs Environmental, P.C. ("Mineral Springs") concerning the Facility, including operation and maintenance of air sparge/soil vapor extraction systems, groundwater sampling, preparation of reports and their submission to the Section, project management, assessment activities, and payment of utility bills. WASCO has been in communication with Mineral Springs concerning the aforementioned work and has edited draft documents.

The site was transferred to Intervenor Dyna-Diggr, LLC on December 18, 2007. (R Ex p 249) WASCO continued to maintain the Facility's financial assurance, pay for remediation costs including sampling and reporting, and use Mineral Springs as an environmental consultant in communications with the Section following Dyna-Diggr's purchase of the Facility.

Regulatory Framework

The "State Hazardous Waste Program" consists of the North Carolina Solid Waste Management Act ("the Act"), contained in N.C. Gen. Stat. Chap. 130A, Art. 9, §130A-290, *et seq.*, and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code ("the Rules"), which the Department has been authorized to operate in lieu of the federal program under the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 - 6992k.

The regulation cited in the letter, 40 C.F.R. § 270.1, which "establish provisions for the [Federal] Hazardous Waste Permit Program," is adopted by reference at 15A NCAC 13A .0113(a), and enables approved States to implement and enforce "basic EPA [Environmental Protection Agency] permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements," that are "part of a regulatory scheme implementing RCRA," 42 U.S.C. 6091 *et seq.*, including entering into "enforceable documents for post-closure care" of hazardous waste sites, which may include a "remedial action" pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1976 ("CERCLA"), as amended RCRA, commonly known as the "Superfund" legislation.

The Act instructs the Department to "cooperate . . . with . . . the federal government . . . in the formulation and carrying out of a solid waste management program," including a program for the management of hazardous waste "designed to protect the public health, safety, and welfare; [and to] preserve the environment." N.C.G.S. § 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program, which the Department "shall enforce." N.C.G.S. § 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference. The authority to enforce the State Hazardous Waste Program has been delegated to the Director of the Division of Waste Management. The Director has issued a sub-delegation of this authority to the Chief of the Section.

"Operator"

The State Hazardous Waste Program requires that "operators . . . of landfills" obtain post-closure permits. 40 C.F.R. § 270.1(c) (adopted by reference at 15A NCAC 13A .0113(a)). Here,

the former waste-PCE tank at the Facility is a “landfill,” within the meaning of the regulation. WASCO’s Petition was occasioned by the Section’s proposed agreement with other responsible parties concerning post-closure care of the facility, but WASCO’s position that it is not in the position of an “operator” has implications for all of its responsibilities for the Facility.

The material facts necessary to the legal determination of whether Petitioner has the responsibilities of an “operator,” within the meaning of the applicable laws and regulations, are not in dispute.

WASCO’s post-closure operator liability for the Facility is a matter of statutory construction -- a question of law. As a matter of law, the parties dispute whether the definition of “operator” in N.C.G.S. § 130A-290(a)(21) or the definitions in 40 C.F.R. §§ 260.10, 270.2 (adopted by reference at 15A NCAC 13A .0102(b), .0113(a)) apply. Viewing the evidence in the light most favorable to WASCO, it is not necessary for the undersigned to resolve this issue. The result is the same under either definition. While the parties have identified no North Carolina case law interpreting the meaning of the term “operator” under the State Hazardous Waste Program, guidance from the EPA, case law from other jurisdictions—including a unanimous opinion of the Supreme Court, and the undisputed facts related to WASCO’s more than 14 years of involvement with the Facility support the Section’s characterization of WASCO as a post-closure “operator.”

Respondent relies primarily on the United States Supreme Court’s decision in *United States v. Bestfoods*, 524 U.S. 51, 118 S. Ct. 1876, 141 L. Ed. 2d 43 (1998). That case, the Court began by noting the simplistic statutory definition of “operator” as “any person owning or operating such [CERCLA regulated] facility.” “Here of course we may again rue the uselessness of CERCLA’s definition of a facility’s ‘operator’ as ‘any person ...operating’ the facility, 42 U.S.C.A. § 9601(20)(A)(ii), which leads us to do the best we can to give the term its ‘ordinary or natural meaning.’” The Court concluded with a broad, comprehensive contextual reading of the term applicable beyond the specific facts of the case before it.

[U]nder CERCLA, an **operator is simply someone who directs the workings of, manages, or conducts the affairs of a facility.** To sharpen the definition for purposes of CERCLA’s concern with environmental contamination, and operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or **decisions about compliance with environmental regulations.**

(Emphasis mine.) *United States v. Bestfoods*, 524 U.S. 51, 66-67, 118 S. Ct. 1876, 1887, 141 L. Ed. 2d 43 (1998). This understanding of the term “operator” conforms with Congress’ declared “national policy ... that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated” and that “[w]aste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.” The utility of this application of “operator” is emphasized elsewhere in *Bestfoods* by the observation that, “even a saboteur who sneaks into the facility at night to discharge its poisons out of malice” could not escape operator liability “[u]nder the plain language of” 42 U.S.C. § 9607(a)(2). *Id.*, at 524 U.S. 51, 65, 118 S. Ct. 1876, 1886, 141 L. Ed. 2d 43.

Petitioner proposes a series of refinements to the definition of “operator” or its application that would exclude it. But it is difficult to believe that such exceptions could be carved out for a corporate entity that voluntarily took on the responsibility of operating the facility in return for value received. It is notable that, for some years, even the States were not afforded the protections of the 11th Amendment from Superfund claims. *See, Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 13-14, 109 S. Ct. 2273, 2281, 105 L. Ed. 2d 1 (1989), overruled by *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 66, 116 S. Ct. 1114, 1128, 134 L. Ed. 2d 252 (1996).

It is noted that, in light of the substantial discovery completed, the detailed arguments raised by WASCO in its Response and accompanying Affidavits - including WASCO’s alternative request for summary judgment in its favor - and because the putative issues of material fact raised by WASCO do not bear on the determinative legal issue, it appears that WASCO has not been prejudiced by not having the Rule 30(b)(6) depositions it proposed to take prior to its response to the present motion.

FINAL DECISION


Respondent is entitled to judgment as a matter of law, and consequently, the Petition must be, and hereby is, DISMISSED. N.C. Gen. Stat. §§ 150B-34(e); 1A-1, Rule 56.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision.** In conformity with the Office of Administrative Hearings’ rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 2nd day of January, 2015.


 Hon. J. Randolph Ward
 Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF PERSON

Filed
2014 JAN 30 PM 3:25
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 12712

Larry Joel Williams
Petitioner

vs.

Person County Department of
Social Services
Respondent

Office of
Administrative Hearings

FINAL DECISION

On December 16, 2013, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina. On December 30, 2013, the undersigned issued an Order ruling that Respondent proved by a preponderance of the evidence that (1) it had just cause to discharge Petitioner from employment, and (2) Petitioner failed to prove that Respondent discriminated against him when Respondent terminated Petitioner's employment. On January 10, 2014, Respondent filed a proposed Decision with the Office of Administrative Hearings.

APPEARANCES

For Petitioner: Larry Joel Williams, *Pro Se*, 5121 Kenwood Road, Durham
NC 27712

For Respondent: C. Ronald Aycock, Person County Attorney, 1200 Park Drive
Raleigh, NC 27605

ISSUE

1. Whether Respondent had just cause to discharge Petitioner from employment?
2. Whether Respondent discriminated, or retaliated against Petitioner for filing prior grievances when Respondent terminated Petitioner from employment?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. 126-35
Person County Personnel Policy, Article IX, Sections 4 & 5

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 and 2

For Respondent: 1, 2A, 2B, 2C, 2D, 3, 4

WITNESSES

For Petitioner: Larry Joel Williams

For Respondent: Carlton Paylor, Carole Thomas, and Angie Warren

FINDINGS OF FACT

Procedural Background

1. On March 25, 2013, Respondent dismissed Petitioner from employment for engaging in "unacceptable personal conduct by failing to perform critical job duties [which] resulted in children [being] left in life-threatening situations" in four cases in which Petitioner was the case manager. (Respondent's Exhibit 1)
2. Petitioner appealed his termination through Respondent's internal grievance process.
3. On April 12, 2013, Respondent's Interim Director upheld Respondent's decision to terminate Petitioner from employment. (Respondent's Exhibit 1)
4. On May 15, 2013, Petitioner appealed his dismissal from employment by filing a petition for a contested case hearing with the Office of Administrative Hearings.

Adjudicated Facts

5. On January 6, 2012, Respondent issued Petitioner a written warning for failing to complete work within the time frames established in work standards by untimely filing his "day sheets" or "green sheets" with Respondent.
6. Green sheets are the monthly records that each employee must complete to document the work that employee performs daily. Respondent sends the employees' monthly green sheets to the appropriate agency to justify their time and receive reimbursement for their work. If Respondent doesn't send these sheets, they'll be reimbursed only for an estimate of their work.
7. Along with the written warning, Respondent also issued a corrective action plan to Petitioner, and implemented greater supervision over Petitioner.

8. In January 2013, Petitioner filed a complaint with the EEOC alleging that Respondent's disciplinary action in 2012 constituted harassment. Following its investigation, the EEOC took no agency action on that matter, and issued Petitioner a "right to sue" letter.

Case No. 1

9. On February 26, 2013, Petitioner investigated a case assigned to him, and visited the home of a family with three children under the age of 10 years. After the home visit, Petitioner rated the home as being safe for children.

10. An intern accompanied Petitioner on the February 26, 2013 home visit. After the intern complained to Respondent about the condition of the home, another social worker visited the home with Petitioner on March 12, 2013. That social worker rated the home "unsafe" for children. There were roaches in the home, and feces on the toilet. The wood floor was flimsy when the coworker walked on it. There was a broken window, and a hole in the ceiling that was not leaking on the second visit. The other social worker took photographs of the home's condition. Those photographs revealed the unsanitary and unsafe living conditions of the home. (See Respondent's Exhibits 2A, 2B, 2C, and 2D)

11. Petitioner stated the conditions of the home were similar during each visit to the home. Petitioner admitted to Respondent that the home was very filthy, and congested. Petitioner claimed he was told, during the first home visit, that the kids lived at the grandmother's home.

12. During the second home visit, the mother confirmed that her kids stayed at the home from time to time. DSS ruled the home unsafe for kids, and removed the children from the family. Respondent received phone calls and complaints from the mother, grandmother, and mother's treating psychiatrist that Petitioner showed a lack of professionalism during Petitioner's contacts with them.

13. At hearing, DSS Director Carlton Paylor opined that Petitioner should have called his supervisor, and removed the children from the home immediately after visiting the home.

14. Carol Thomas was Petitioner's immediate CPS supervisor. Thomas recalled that Petitioner rated the home in this case as safe for children to reside. Thomas opined that Petitioner should have verified through contacts that the kids of this family were staying elsewhere. The second social worker stated that the kids told her "right off" that they were clearly staying in the home [depicted in Respondent's Exhibits 2A-2D]. Thomas opined that the home conditions depicted in Respondent's Exhibits 2A-2D are not what Petitioner described to her. If she had been with Petitioner at the second visit of this home, Thomas would have told them that no child would stay here another night.

Case No. 2

15. On September 30, 2011, this case was assigned to Petitioner after being transferred from Alamance County DSS. The family in this case had four children, ages 2 to 8 years old. Petitioner's August 14, 2012 documentation indicated that the children of this family were residing in Graham, NC.

16. Although Petitioner's supervisors advised him to close this case or transfer it to Alamance County DSS, he did not close this case. When Petitioner failed to close this case, Alamance County DSS had no idea that the family had moved to Alamance County, and needed services. As a result, the family did not receive CPS services for more than a year.

17. After Alamance County DSS received the notice, more than a year later, that the family had moved to Alamance County, Alamance County DSS removed the children from the family, and assumed custody of the children.

18. On February 21, 2013, Alamance County DSS requested the records for this case from Petitioner as they had received a new report on the family. Person County DSS records showed that Petitioner still had an open case on this family, even though the Person County DSS records also showed that Petitioner had verified, on November 2, 2012, that the family had moved from Person County, and the children were enrolled in Alamance County Schools. Yet, according to Alamance County DSS Program Manager, Alamance County was unaware that Person County had an "open" case on this family.

19. On March 19, 2013, the Alamance County DSS Program Manager requested Person County DSS Program Manager Judi Akers assist them in obtaining the family's records as they had not received any response from Petitioner.

20. The children in this family were listed on the "90 Day No Services" list at Person County DSS for at least three months as Petitioner had not provided services to this family for at least that period.

Case No. 3

21. On April 16, 2012, Petitioner was assigned this case involving a family with three children. Petitioner was aware that the father had a history of drugs, and thought the mother, who was pregnant, was on drugs. The youngest child, born February 16, 2013, tested positive for oxycodone and methadone at birth, while the middle child, 2 years old, tested positive for oxycodone when removed from the home by DSS.

22. Petitioner developed a case plan for this family to follow, monitored the family, and knew that the family only performed some of its case plan. At hearing, Petitioner acknowledged that Person County DSS' policy required a social worker to file

a petition for custody with the Court if a family failed to follow a case plan for six months. He acknowledged that he did not follow that policy when he failed to take this case Court after the family failed to follow its DSS case plan. Petitioner claimed he did not file a petition for custody, because neither Thomas, his supervisor, nor Program Manager Akers recommended that he file a petition in Court for DSS to obtain custody of a family's children.

23. The preponderance of the evidence at hearing showed that Petitioner kept this case open for more than six months without "measurable progress, a positive drug screening, and no court involvement." (Respondent Exhibit 1)

Case No. 4

24. In September 2011, Petitioner was assigned this case involving a family with a newborn who tested positive for marijuana and cocaine at birth. The mother claimed she did not have a substance abuse problem, and only sold drugs to buy items that the baby might need. Petitioner had a case open on the other children in the family from April 16, 2011 until March 13, 2013, and failed to taking the case to Court after the family failed to follow its case plan. In six weeks after another social worker took over this case, all four kids in this family were brought into DSS custody.

25. Petitioner violated the CPS In-Home Services policy by keeping case number 4 open for more than six months without providing services, or taking this case to Court for Court involvement.

Analysis

26. As a Child Protective Services social worker, Petitioner's job was to protect the children of each family he was assigned, monitor their safety, and remove them from dangerous situations. At hearing, Ms. Thomas opined that no family should live under Child Protective Services. The social worker should work quickly to identify issues in the home, develop a case plan, and help correct the identified issues, or take action in Court. If there is no documented progress with the family after six months, then the social worker should file a petition for Court intervention.

27. A preponderance of the evidence in this case showed that Petitioner did not sufficiently advise his supervisor of the severity of the four above-cited cases. Carol Thomas learned, after the fact, that Petitioner often minimized information about cases in that the [actual] "picture" of a case often turned out differently than what Petitioner portrayed to her about a case.

a. In case number 1, the preponderance of the evidence proved that Petitioner failed to follow Respondent's policy by failing to verify where the children were living, and failing to ensure the living conditions of the children's home was sanitary, and safe.

b. In case number 2, a preponderance of the evidence established that Petitioner failed to follow Respondent's policy regarding transfer of cases. Specifically, Respondent's policy required Petitioner notify a new county of residence when a family, who is receiving CPS In-Home Services from Person County DSS, moves to another county. That policy also required Petitioner request the new county of residence provide CPS In-Home Services to the family. Petitioner failed to follow such policy when he failed to notify Alamance County DSS that a family had moved to Graham in Alamance County, failed to provide services to the family for at least 3-5 months, and failed to close the case.

c. In case number 3, a preponderance of the evidence showed that Petitioner (1) failed to ensure that the pregnant mother of this family received prenatal care, and (2) failed to aggressively pursue drug interventions with this pregnant mother. The result was a newborn and a toddler tested positive for drugs.

d. In case number 4, the preponderance of the evidence proved that Petitioner kept a case open from February 2011 until March 2013, but failed to take the case to Court after the family failed to follow the DSS case plan.

28. Respondent proved by a preponderance of the evidence that it had just cause to dismissal Petitioner from employment for failing to take action to protect and safeguard children, as required by his position, in four cases in a six week period from February 18, 2013 until March 25, 2013.

29. Petitioner failed to prove by a preponderance of the evidence that Respondent discriminated against him, based on his color, when it terminated Petitioner from employment.

30. Petitioner failed to prove by a preponderance of the evidence that Respondent retaliated against him, by terminating him from employment, for filing a grievance with the EEOC regarding Respondent's January 2012 disciplinary action against Petitioner.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.

2. 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.

3. In 2006, Respondent adopted personnel rules and regulations governing personnel management for all county employees under the authority of N.C.G.S. § 153A, Article 5 and N.C.G.S. § 126 of the North Carolina General Statutes. (Respondent's Exhibit 4) As such, Respondent's Personnel Policy governed the personnel action against Petitioner in this contested case.

4. Respondent's Personnel Policy, Article IX, titled "UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT," provides in pertinent part as follows

Section 4. Disciplinary Action for Detrimental Personal Conduct

With the approval of the Department Head, Human Resource Director, and County Manager or Hiring Authority, an employee may be placed on disciplinary suspension (without pay), demoted, or **dismissed without prior warning for causes relating to personal conduct detrimental to County service in order to: a) avoid undue disruption of work; (or) b) to protect the safety of persons or property;** . . .

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior of such a serious detrimental nature that the functioning of the County may be or has been impaired; **the safety of persons or property may be or have been threatened;...**"

(Emphasis added; Respondent's Exhibit 4, pp. 40-42)

5. In this case, Respondent proved by a preponderance of evidence that Petitioner engaged in "detrimental personal conduct," as defined in Section 5, Article IX of Respondent's Personnel Policy, by failing to perform critical job duties ensuring the safety of children. Petitioner's conduct was detrimental to County service as Petitioner's failure to perform his duties to protect the subject children resulted in children being left in life-threatening situations in their homes.

6. Respondent proved by a preponderance of the evidence that it had just cause to discharge Petitioner from employment.

7. Petitioner failed to prove that Respondent discriminated against him, based on his color, when it terminated him from employment. Petitioner also failed to prove that Respondent retaliated against Petitioner, for filing a grievance against Respondent in 2013, when Respondent terminated Petitioner from employment.

FINAL DECISION

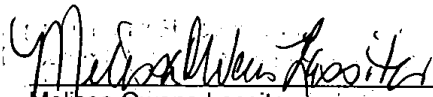
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **UPHOLDS** Respondent's termination of Petitioner from employment.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County, or in the Superior Court of the county in which the party resides. The appealing party must file the petition **within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision**. In conformity with 26 N.C.A.C. 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail, as indicated by the date on the Certificate of Service attached to this Final Decision.**

N.C. Gen. Stat. §150B-46 describes the contents of the Petition, and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This 30th day of January, 2014.


Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
1/30/2015 12:18 PM

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14CPS05567

Shamika Mack Petitioner v. N C Department of Public Safety Victim Services Respondent	FINAL DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on November 14, 2014 in Fayetteville. Following review of the Parties' written submissions, this Final Decision was prepared.

APPEARANCES

For Petitioner: Shamika Mack, Petitioner, *Pro Se*
Fayetteville, N.C.

For Respondent: Yvonne B. Ricci
Assistant Attorney General
N.C. Department of Justice
Raleigh, N.C.

WITNESSES

For Respondent: Aurelya Randle
Detention Officer Micah Patterson
Deputy Phillip D. Rogers
Lieutenant Roberto Reyes
Antonette Douglas

EXHIBITS

Petitioner: None

Respondent: Cumberland Co. Sheriff's Office Investigation Report (R. Ex. 1)

ISSUES

Whether the victim engaged in contributory misconduct within the meaning of N.C. Gen. Stat. § 15B-11(b)(2) which was a proximate cause of his death.

STATUTES

N.C. Gen. Stat. §§ 150B-1; 15B-2; 15B-2 (2) c. & d.; 15B-2 (12a); 15B-4 (d); 15B-11(b)(2)

UPON DUE CONSIDERATION of the submissions and arguments of counsel, the documents and other exhibits admitted, and the sworn testimony of each of the witnesses, considering their opportunity to see, hear, know, and recall the relevant facts and occurrences; any interests they may have; and whether their testimony is reasonable and consistent with other credible evidence; and assessing the greater weight of the evidence from the record as a whole, in light of the applicable law, now therefore, based upon the preponderance of the credible evidence, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Petitioner Shamika Mack, the Claimant in an application for victim's compensation benefits, is the daughter of the decedent victim, Christopher Lloyd Williams (hereinafter, "the victim" or "Mr. Williams"). She appeared at the hearing with the victim's next of kin and other relations, with apparent authority to speak on behalf of the victim's survivors. Additionally, Petitioner had assisted with the victim's final expenses, unrelated to Petitioner's employment, business, or profession.
2. Respondent is the N.C. Department of Crime Control and Public Safety, Division of Victim Compensation Services. Respondent is created under N.C. Gen. Stat. § 15B-1 *et seq.* and is charged with administering the North Carolina Crime Victims Compensation Fund in North Carolina. On May 19, 2014, Respondent denied Petitioner's claim for victim's compensation, based upon an investigation concluding that the "victim engaged in misconduct that contributed to the circumstances which resulted in the injury from which this claim for compensation arises," citing N.C. Gen. Stat. § 15B-11(b). Petitioner/Claimant timely filed her Petition for a contested case hearing on July 15, 2014.
3. At the hearing and in its subsequent written submission, Respondent specifically relied on N.C. Gen. Stat. § 15B-11(b)(2) as the basis for its denial of Petitioner's claim. The statute provides, in pertinent part:

(b) A claim may be denied or an award of compensation may be reduced if:

* * *

(2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

(b1) The Commission or Director [Respondent] . . . shall exercise discretion in determining whether to deny a claim under subsection (b) of this section. In exercising discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. **The Commission or Director [Respondent] shall deny claims upon a finding that there was contributory misconduct that is a proximate cause of becoming a victim.** However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim.

(Emphasis added.)

4. In the early morning hours of February 26, 2014, the victim was at his residence at 5035 Doc Bennett Road in Fayetteville, where he and his “girlfriend,” Ms. Aurelya Randle, had lived together since 2003. During most of that period, Ms. Randle’s son, Derrick Randle, also lived in this home. The victim and Ms. Randle were in bed together, and Mr. Williams had been drinking heavily. Investigators later found two empty pint-size liquor bottles in the room, and a toxicology report verified that the victim was intoxicated at the time of the incident. Mr. Williams became upset with Ms. Randle and began choking her. There had been choking incidents in the past, but the ferocity of this assault and her inability to calm him frightened Ms. Randle to an unusual degree, and she described him as seeming possessed. Her son, who had been sleeping in a bedroom across the hall, heard Ms. Randle’s screams for help and came into their bedroom with his handgun. Derrick Randle told Mr. Williams to let go of his mother, and the assault stopped.
5. Mr. Randle remained concerned, however, that there might be further difficulty with Mr. Williams. He went into the front yard of the residence with his cell phone and called his sister to request that she get their brother to come to the residence and help Mr. Randle control the situation. He then reentered the house to talk to his mother alone, asking her why she put up with Mr. Williams’ abusive behavior. Ms. Randle testified that their conversation was interrupted by Mr. Williams coming down the hall, cursing and calling her son names. She recounted that Mr. Williams said to Mr. Randle, “Do you want to hurt me, you SOB,” to which he replied, “No, I do not want to hurt you. I just don’t want you to hurt my mother; she is all that I got.” The victim then shoved Ms. Randle, and she fell over a chair. She ran down the hall looking for her mobile phone to call for help. Mr. Williams blocked Mr. Randle from leaving the room, yelling at him repeatedly, “You want to shoot me mother f---r, shoot me!” while Mr. Randle denied wanting to hurt him. When Mr. Williams came at him “aggressively” and tried to grab him, Mr. Randle shot the victim three times in the chest.

6. Following the shooting, Mr. Randle went to the home of a neighbor, who contacted law enforcement. When a Deputy Sheriff arrived at the scene, Mr. Randle left his gun in the house, came outside, and surrendered, telling the Deputy that he had acted in self-defense. He was charged with felonious involuntary manslaughter and as of the date of this hearing, remained in jail awaiting trial. The victim died at Cape Fear Valley Medical Center of his gunshot wounds. Ms. Randle received medical treatment for the injuries she sustained during the victim's assaults.
7. When interviewed by the law enforcement officers, Derrick Randle creditably alleged that he felt threatened by the victim's aggressive advance towards him and, as a result, fired his weapon at the victim, resulting in the victim's death. This evidence could support a finding that Mr. Randle acted in self-defense and in defense of his mother. However, the facts that Mr. Randle left his mother with Mr. Williams and left the house shortly before the fatal confrontation; that Mr. Williams was impaired; and that Mr. Randle shot the victim three times in the chest could support a finding that Mr. Randle used excessive force and, thus, should be held criminally liable for the victim's death. Respondent reasonably concluded that the act of Derrick Randle firing his weapon at the victim was criminally injurious conduct, i.e., conduct that by its nature posed a substantial threat of causing personal injury or death, and is punishable by fine or imprisonment.
8. Based on the foregoing relevant evidence, specifically the victim's assault on Mr. Randle's mother and subsequent physical threats to Mr. Randle while he held a handgun, Respondent reasonably concluded that the victim's misconduct would foreseeably provoke the use of force against the victim and was a proximate cause of his fatal injury.
9. To the extent that portions of the following Conclusions of Law include findings of fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include conclusions of law, such are incorporated by reference into these Conclusions of Law.
2. Petitioner Shamika Mack is a proper Claimant within the meaning of N.C. Gen. Stat. § 15B-2 (2) c. & d.
3. Respondent has the authority and responsibility under Chapter 15B of the North Carolina General Statutes to investigate and award or deny claims for compensation by victims of crime or their surviving dependents and to reimburse those who have provided benefits to such victims or dependents, other than in the course or scope of their employment, business, or profession, pursuant to the North Carolina Crime Victims Compensation Act, § 15B-1 *et seq.*

4. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 15B-10 (d); 150B-1(e).
5. Subject to the availability of appropriated funds, compensation for victims of criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met. N.C. Gen. Stat. § 15B-4(a). "Substantial evidence" is "[r]elevant evidence that a reasonable mind might accept as adequate to support a conclusion." N.C. Gen. Stat. §§ 15B-2 (12a); 150B-2 (8c).
6. The law of "perfect self-defense" applies to force resulting in death, if four elements existed: (1) it appeared to defendant and he believed it to be necessary to kill the deceased in order to save himself or another from death or great bodily harm; (2) that a person of ordinary firmness would reasonably develop this belief, based on the circumstances as they appeared to the defendant at the time; (3) that defendant was not the aggressor and did not willingly enter into the fight without legal excuse or provocation; and, (4) defendant did not use more force than was necessary or reasonably appeared to him to be necessary under the circumstances to protect himself or others from death or great bodily harm. However, if the defendant satisfies the first two elements but, although without intent to murder, was the aggressor causing the fight, or defendant used excessive force, he has only the "imperfect right of self-defense," and is guilty of at least voluntary manslaughter. *State v. Norris*, 303 N.C. 526, 530, 279 S.E.2d 570, 572-73 (1981); *State v. Blue*, 356 N.C. 79, 89, 565 S.E.2d 133, 139 (2002); *State v. Moore*, 363 N.C. 793, 797, 688 S.E.2d 447, 450 (2010).
7. To award victims compensation, it must be found that the victim's injury resulted from "criminally injurious conduct," defined as "[c]onduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death[]." Respondent did not err in finding that the victim, Christopher Williams, died as a proximate cause of criminally injurious conduct. N.C. Gen. Stat. § 15B-2; 15B-4 (5); *State v. Blue*, 356 N.C. 79, 89, 565 S.E.2d 133, 139 (2002).
8. A claim may be denied or reduced if the victim was engaged in "contributory misconduct." N.C. Gen. Stat. § 15B-11(b)(2). "[W]here a claimant's injuries are a direct result of the criminally injurious conduct of another, the claimant's own misconduct must have been a proximate cause of those injuries in order for the Commission to deny or reduce a claim under [this] statute." Misconduct includes unlawful conduct -- including assaults -- as a matter of law. *Evans v. N.C. Dept. of Crime Control & Public Safety*, 101 N.C. App. 108, 117, 398 S.E.2d 880, 885 (1990).
9. Respondent "shall deny claims upon a finding that there was contributory misconduct that is a proximate cause of becoming a victim." N.C. Gen. Stat. § 15B-11(b1). "Proximate cause" can be found if the victim was involved at the time of his injury in actions or activities of the nature that would cause a person of ordinary prudence to foresee that "consequences of [a] generally injurious nature" were a "probable" result under the circumstances. *Evans*, 101 N.C. App. at 117, 398 S.E.2d at 885; *McCrimmon v. Crime victims Compensation Com'n*, 121 N.C.App. 144, 149, 465 S.E.2d 28, 31 (1995).

10. The victim's contributory misconduct was a proximate cause of his injury, and consequently, victim's compensation must be denied. N.C. Gen. Stat. § 15B-11 (b1).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

FINAL DECISION

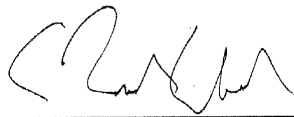
Respondent's decision to deny Petitioner's claim for Crime Victims Compensation must be, and hereby is, **AFFIRMED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within thirty (30) days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, North Carolina 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 Superior Court within thirty (30) days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 30th day of January, 2015.



J. Randolph Ward
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
2/25/2015 10:55 AM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DHR03558

<p>ALAMANCE REGIONAL MEDICAL CENTER, <i>et al.</i> PETITIONER,</p> <p>V.</p> <p>NC DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE RESPONDENT.</p>	<p>FINAL DECISION ORDER ON SUMMARY JUDGMENT</p>
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THIS MATTER came before the Honorable J. Randall May, Administrative Law Judge presiding, on December 5, 2014 for consideration of *Petitioners' Motion for Summary Judgment* (filed September 25, 2014), and *Respondent's Cross Motion for Summary Judgment and Response to Petitioners' Motion for Summary Judgment* (filed October 10, 2014).

Based upon careful consideration of the parties' respective motions, supporting papers, arguments, and other matters of record, it is HEREBY ORDERED as follows:

ISSUE PRESENTED

Whether Respondent violated the standards of N.C.G.S. § 150B-23(a) when it interpreted and applied The Hospital Provider Assessment Act, N.C.G.S. § 108A-120 *et seq.* and State Medicaid Plan Amendment 11-003 to exclude (remove) the Provider Assessment as an allowable cost from Petitioners' 2012 cost reports.

FINDINGS OF FACT

The Undersigned finds that the following material facts are undisputed.

1. Petitioners are 28 hospitals or health care systems operating in North Carolina and enrolled in the North Carolina Medicaid program.
2. Respondent, the North Carolina Department of Health and Human Services ("DHHS"), is an agency of the executive branch of the government of the State of North Carolina. The Division of Medical Assistance ("DMA") is a division of DHHS. DMA is responsible for administering and managing the State Medicaid plan and program.

3. Cost settlement is an accounting reconciliation process. Through cost settlement, DMA reconciles interim Medicaid payments made to a hospital against the hospital's actual, allowable, certified Medicaid costs. Following cost settlement, DMA is able to calculate a reimbursement amount which is due to (or due from) the hospital.

4. The Hospital Provider Assessment Act became law in 2011. *See* N.C.G.S. § 108A-120 *et seq.* (the "Act"). Section 108A-126 of the Act directed the Department to file a State Plan Amendment with the Centers for Medicare and Medicaid Services ("CMS"). The amendment was to incorporate the Provider Assessment and distribution provisions consistent with the provisions of the Act. *Id.*

5. Respondent submitted an Affidavit from James B. Flowers, Chief of the DMA Audit Section, which explained the drafting of the State Plan Amendment. That testimony was not disputed.

6. In pertinent part Mr. Flowers' Affidavit stated that in 2011, DMA worked closely with interested stakeholders including hospital groups to develop the proposed State Plan Amendment. As the language was drafted, DMA participated in weekly telephone calls with the North Carolina Hospital Association. In at least two calls, the parties discussed the Provider Assessment/cost settlement provision. During those calls, DMA explained its position that the Provider Assessments would "not be subject to cost settlement" on hospitals' annual cost reports.

7. Also during these discussions, DMA confirmed to the Association that the Provider Assessment would be treated as an allowable cost of the hospitals for other purposes, outside of cost settlement. Specifically, DMA explained that it would treat Provider Assessments as allowable costs in the following contexts: (1) for the calculation of the Disproportionate Share Hospital ("DSH")/Medicaid Reimbursement initiative annual payment plan; and (2) for the annual DSH independent audit. In contrast, DMA explained to the Hospital Association that Provider Assessments would not be an allowable cost for purposes of cost settlement.

8. The Hospital Association representatives did not disagree with DMA's interpretation of the draft language in 2011. That provision states that "[a]ssessments collected under this section are considered an allowable cost and are not subject to cost settlement." *See* State Plan Amendment, 11-003. Based upon this mutual understanding of this language, DMA submitted the State Plan Amendment to CMS for approval.

9. Each Petitioner submitted a 2012 cost report to DMA. Each Petitioner's cost report included a line item pertaining to the Provider Assessment.

10. DMA, through its auditing team, reviewed Petitioners' 2012 cost reports for cost settlement. Following the review, and as part of the cost settlement process, DMA excluded (removed) the Provider Assessment from each of the cost reports. DMA took this action based upon the applicable language in the State Plan Amendment.

11. Petitioners disagreed with DMA's decision and action to exclude the Provider Assessment from cost settlement. Petitioners requested and participated in a DMA Administrative Conference on April 1, 2014. Following that conference, the Administrative Hearing Officer issued a decision dated April 15, 2014. The Hearing Officer's decision agreed with and upheld DMA's removal of the Provider Assessment from Petitioners' cost reports.

12. On May 13, 2014, Petitioners appealed to the Office of Administrative Hearings. The parties have filed cross motions for summary judgment on the proper interpretation of the applicable law.

13. There are no material facts that are genuinely disputed.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate where there is no genuine dispute of any material fact and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56; *Azar v. The Presbyterian Hosp. et al*, 191 N.C. App. 367; 663 S.E.2d 450 (2008).

2. North Carolina law presumes that the agencies have properly performed their duties. *In re Broad & Gales Creek Community Ass'n*, 300 N.C. 267, 280, 266 S.E.2d 645, 654 (1980); *In re Land & Mineral Co.*, 49 N.C. App. 529, 531, 272 S.E.2d 6, 7 (1980) (stating that "official acts of a public agency . . . are presumed to be made in good faith and in accordance with law").

3. Petitioners assert that DMA has acted in violation of N.C.G.S. § 150B-23(a). Administrative agency decisions may be reversed as arbitrary and capricious only if they are "patently in bad faith" or "whimsical" in the sense that "they indicate a lack of fair and careful consideration," or "fail to indicate 'any course of reasoning and the exercise of judgment.'" *ACT-UP Triangle v. Comm'n for Health Servs.*, 345 N.C. 699, 707, 483 S.E.2d 388, 393 (1997) (quotations omitted).

4. A long-standing rule of statutory construction declares that a facially clear and unambiguous statute requires no interpretation. *Taylor v. City of Lenoir*, 129 N.C. App. 174, 179, 497 S.E.2d 715, 719 (1998). A law that speaks directly and in detail to a particular situation will be construed as controlling over a more general provision, absent clear legislative intent to the contrary. *Whittington v. North Carolina Dep't of Human Res.*, 100 N.C. App. 603, 606, 398 S.E.2d 40, 42 (1990) (citing *Food Stores v. Board of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966)).

5. The Hospital Provider Assessment Act, N.C.G.S. § 108A-120 *et seq.* became law in 2011. The Act requires certain hospital providers to pay funds to the state (hereafter, the "Provider Assessment"). These funds provide revenue to Medicaid "to improve funding for payments for hospital services provided to Medicaid and uninsured patients." *Id.*; *see also* § 108A-124 (use of Provider Assessment proceeds). Section 108A-122(b) provides

that the Provider Assessment “may be included as allowable costs of a hospital for purposes of any applicable Medicaid reimbursement formula.”

6. State Plan Amendment 11-003 provides that:

[a]ssessments collected under this section are considered an allowable cost and are not subject to cost settlement.

See State Medicaid Plan, Attachment 4.19A, Page 10, Paragraph (e.2(2)); Attachment 4.19A, Page 13b, Paragraph (i); Attachment 4.19A, Page 13c, Paragraph (j); Attachment 4.19B, Section 2, Paragraph 2.a.1, Equity Enhanced Payments.

7. On March 26, 2012, the Center for Medicaid Services (“CMS”) granted approval of State Plan Amendment 11-003 with an effective date of January 1, 2011. Because it has been approved by CMS, the State Plan amendment has the full force and effect of rules promulgated under Article 2A of the Administrative Procedure Act. *See* N.C.G.S. § 108A-54.1B(d).

8. The Court finds that the language in the State Plan Amendment is precisely on point and dispositive of the parties’ dispute. The Court further finds that this language is clear and unambiguous as applied to the undisputed facts presented here. *Taylor*, 129 N.C. App. at 179, 497 S.E.2d at 719 (1998) (a long-standing rule of statutory construction declares that a facially clear and unambiguous statute requires no interpretation).

9. The State Plan Amendment makes explicitly clear that the referenced “[a]ssessments ... are not subject to cost settlement.” The phrase “[n]ot subject to cost settlement” can only mean that Provider Assessments are to be excluded from, and may not properly be included as part of, Petitioners’ cost reports. That is the proper interpretation of the State Plan Amendment.

10. Petitioners argue that N.C.G.S. § 108A-122(b) requires that the Provider Assessment must be an allowable cost for purposes of cost settlement. However, Section 122(b) does not address cost settlement at all. It never uses the words “cost settlement.” Instead, this section addresses the use of the Provider Assessment “for purposes of any applicable Medicaid reimbursement formula.” *Id.* The use of the limiting modifier “**any applicable** Medicaid reimbursement formula” is significant. *Id.* (emphasis added). The statute itself does not include any such formulas. Therefore, the reference to “any applicable Medicaid reimbursement formula” is properly read as a reference to the State Plan Amendment, 11-003, which does set forth such provisions. As noted above, one of those provisions is precisely on point and is dispositive of this dispute: that “[a]ssessments ... are not subject to cost settlement.”

11. Under *Whittington*, 100 N.C. App. at 606, 398 S.E.2d at 42, and the traditional rules of statutory construction, the State Plan Amendment controls because it is more specific than Section 122(b) on the question presented.

12. Petitioners have offered an interpretation that attempts to give the phrase “not subject to cost settlement” its opposite meaning. Petitioners’ interpretation is not consistent with the plain meaning of the State Plan Amendment or statute, and is rejected.

13. DMA’s interpretation of the State Plan Amendment and Act is consistent with the plain meaning of these provisions. It is consistent with the interpretation DMA articulated to the Hospital Association during telephone calls in 2011. It is consistent with its current practice of treating the Provider Assessment as an allowable cost for *certain* purposes (*i.e.*, calculation of the Disproportionate Share Hospital(“DSH”)/Medicaid Reimbursement initiative annual payment plan, and for the annual DSH independent audit), but not treating it as an allowable cost for purposes of cost settlement.

14. DMA’s action in excluding the Provider Assessment line item from each Petitioners’ cost report was consistent with the State Plan Amendment and Act.

15. DMA’s actions were not taken in violation of the standards of N.C.G.S. § 150B-23(a). Specifically, based upon the undisputed evidence of record, DMA did not deprive Petitioners of property; did not order Petitioners to pay a fine or civil penalty; and did not substantially prejudice Petitioners’ rights. Further, DMA did not exceed its authority or jurisdiction; did not act erroneously; did not fail to use proper procedure; did not act arbitrarily or capriciously; and did not fail to act as required by law or rule.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby DENIES Petitioners’ motion for summary judgment, and GRANTS Respondent’s cross motion for summary judgment.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

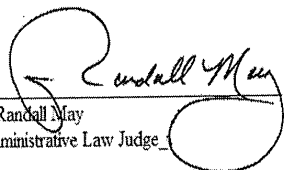
Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision. In conformity with the Office of Administrative Hearings’ Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the

Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 25th day of February, 2015.


J. Randall May
Administrative Law Judge

On this date mailed to:

CURTIS B VENABLE
OTT CONE & REDPATH, PA
P.O. BOX 3016
ASHEVILLE NC 28802
ATTORNEY FOR PETITIONER

MICHAEL T WOOD
SPECIAL DEPUTY ATTORNEY GENERAL
N.C. DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 25th day of February, 2015.


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