

NORTH CAROLINA REGISTER

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September 1, 2015

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

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2015 – December 2015

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

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Crop Seed Improvement intends to repeal the rule cited as 02 NCAC 29B .0103.

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

Proposed Effective Date: January 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than September 16, 2015 to Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1007.

Reason for Proposed Action: The membership of the Board of Crop Seed Improvements is provided in statute (N.C. Gen. Stat. 106-270). It consists of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of NCDACS, and the President of the North Carolina Crop Improvement Association. None of the members of the Board of Crop Seed Improvement are attorneys or have expertise in handling legal appeal proceedings. It is felt in the best interest of the Board and all interested parties that any appeal from the Commissioner's decision be through the regular appeal process.

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone 919-707-3013, email tina.hlabse@ncagr.gov

Comment period ends: November 2, 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 29 - BOARD OF CROP SEED IMPROVEMENT

SUBCHAPTER 29B - DUTIES

02 NCAC 29B .0103 APPEAL BOARD

~~The board serves as an appeal board to an applicant for restorations of tobacco varieties, hybrid corn varieties, or coded blends of any crops which have been denied.~~

Authority G.S. 106-276.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Agriculture intends to amend rules cited as 02 NCAC 48C .0113 and .0115.

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

Proposed Effective Date: January 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than September 16, 2015 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: Currently, these two rules provide for an appeal to the Board of Crop Seed Improvement if the Commissioner refuses to accept for recording any flue-cured variety of tobacco or any blend. The Department is seeking to

remove this provision from both rules and instead let any appeal from the Commissioner's decision handled under the normal appeal process from a final agency decision.

The membership of the Board of Crop Seed Improvement is provided in statute (N.C. Gen. Stat. 106-270). It consists of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of NCDACS, and the President of the North Carolina Crop Improvement Association. None of the members of the board of Crop Seed Improvement are attorneys or have expertise in handling legal appeal proceedings. It is felt in the best interest of the Board and all interested parties that any appeal from the Commissioner's decision be through the regular appeal process.

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone 919-707-3013, email tina.hlabse@ncagr.gov.

Comment period ends: November 2, 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 48 - PLANT INDUSTRY

SUBCHAPTER 48C - SEEDS

02 NCAC 48C .0113 RECORDING FLUE-CURED VARIETIES

(a) It shall be the duty of the Commissioner to accept annually for the purpose of recording only the flue-cured tobacco varieties

which have been declared by the Tobacco Seed Committee (as identified in 02 NCAC 48C .0016) to have been correctly identified as carrying the true characteristics of the variety, based on the evidence presented by each grower of each variety being recorded. The recording must be made prior to December 1 preceding each growing season, using the same designation for each variety which was used when the variety was first sold, offered, or exposed for sale or recorded officially with an agency responsible for the enforcement of a state seed law.

(b) The Commissioner shall refuse to accept for recording any flue-cured tobacco variety, by any grower or distributor, which has not been declared by the Tobacco Seed Committee to be correctly identified. Nothing in this Rule shall be interpreted to prohibit two or more persons recording a variety if the same designation is used for the variety by all persons recording. Provided, that the grower of seed of a variety that is refused recording may appeal to the Board of Crop Seed Improvement. Notice of such appeal shall be given to the chairman of said board, including such evidence and pertinent documents bearing on the appeal.

Authority G.S. 106-277.15.

02 NCAC 48C .0115 RECORDING BLENDS

(a) It shall be the duty of the Commissioner of Agriculture to accept for the purpose of recording any combination of varieties identified with a "blend" designation as identified in Section 106-277.2(40), North Carolina Seed Law.

(b) The request for recording will be supported by an affidavit stating the component varieties and research information which shows an advantage of the "blend" over the singular use of either component variety. Each lot of seeds offered under the same blend designation shall always be made up in the same percentage of each variety.

(c) A two-pound planting sample will be provided upon recording and may be requested annually by the Commissioner from each producer of a blend, as long as the blend is being offered or exposed for sale.

(d) Any request for the recording of a "blend" which is refused may be appealed to the Board of Seed Crop Improvement. Notice of such appeal shall be given to the chairman of said board, including such evidence and pertinent documents bearing on the appeal.

Authority G.S. 106-277.15.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 10B .2005.

Link to agency website pursuant to G.S. 150B-19.1(c): http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards

Proposed Effective Date: January 1, 2016

Public Hearing:

Date: October 19, 2015

Time: 10:00 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC 27562

Reason for Proposed Action: To set out the in-service training requirements for 2016.

Comments may be submitted to: Julia A. Lohman, P.O. Box 629, Raleigh, NC 27562, phone (919)-662-4370, fax (919)-662-4516, email jlohman@ncdoj.gov

Comment period ends: November 2, 2015

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the

lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of credits assigned to the number of hours, regardless of the amount of time the student spends completing the course where each hour shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The 2014 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- Legal Update;
Juvenile Minority Sensitivity Training: A Juvenile What Now;
Officer Safety: The First Five Minutes;
Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
Any topic areas of the Sheriff's choosing.

(c) The 2014 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- Surviving In Custody Death;
Detention Officer Intelligence Update; and
Any topic areas of the Sheriff's or Department Head's choosing.

(d) The 2014 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- Hitting the Wall: Avoiding Complacency;
Customer Service and the 911 Professional; and
Any topic areas of the Sheriff's or Department Head's choosing.

(e)(b) The 2015 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- Legal Update;
Juvenile Minority Sensitivity Training: What does it have to do with me?;
Domestic Violence: Teen Dating Violence;
Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
Any topic areas of the Sheriff's choosing.

~~(c)~~ The 2015 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
- (2) Documenting the Incident;
- (3) Emotional Survival for Detention Officers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

~~(d)~~ The 2015 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Crisis Negotiation;
- (2) Interpersonal Communications: Team Building;
- (3) Emotional Survival;
- (4) Tactical Dispatch; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2016 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: The Color of Justice;
- (3) Human Trafficking Awareness;
- (4) NC Firearms Laws: Citizens with Guns;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(f) The 2016 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Career Survival: Stop! Think About What You Are Doing;
- (2) Communicable Diseases;
- (3) Detention Intelligence Update;
- (4) Understanding PREA; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2016 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Communicating Effectively with Crisis Callers;
- (2) Becoming a Leader in the Communications Center;
- (3) Handling Suicidal Callers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

cited as 25 NCAC 01O .0107 - .0115, .0207 - .0211; and repeal the rules cited as 25 NCAC 01O .0101 - .0106.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.oshr.nc.gov/Guide/SPC/rulemaking.htm>

Proposed Effective Date: *March 1, 2016*

Public Hearing:

Date: *October 8, 2015*

Time: *2:00p.m.*

Location: *Learning and Development Center, Coastal Conference Room, 101 West Peace Street, Raleigh, NC 27603*

Reason for Proposed Action: *The North Carolina General Assembly repealed the existing performance management (PM) statutes through ratification of H.B. 950 (Session Law 2012-142, Section 25.2C.(b)) and ordered a comprehensive review of the public employee compensation plans to include review of the performance management programs (S.L. 2012-142 and Session Law 2011-145, Section 29.20). The legislation required recommendations for the design of an effective employee performance evaluation system, including the identification of effective employee performance measures and information systems to track and monitor employee performance. The Legislative Services Commission never awarded a contract for this comprehensive review. In the meantime, the Office of State Human Resources (OSHR) led the effort to comply with the State Auditor's recommendations and received authority through the passage of H.B. 834 (Session Law 2013-382) to develop criteria and standards for performance management and employee evaluations. It was determined that OSHA would lead the efforts to overhaul three primary areas related to PM: policy/rules, process, and technology.*

Comments may be submitted to: *Maggie A. Craven, 1331 Mail Service Center, Raleigh, NC 27699, phone 919-807-4805, email Maggie.Craven@nc.gov*

Comment period ends: *November 2, 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.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to adopt the rules

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

- ~~(2) A procedure for addressing employee performance that falls below expectations;~~
- ~~(3) A procedure for encouraging and facilitating employee development;~~
- ~~(4) Training in managing performance and administering the system; and~~
- ~~(5) A procedure for resolving performance pay disputes.~~

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

Authority G.S. 126-4; 126-7.

SUBCHAPTER 010 - PERFORMANCE MANAGEMENT SYSTEM

25 NCAC 010 .0104 RATING SCALE

~~The annual performance appraisal shall use a five level rating scale for reporting overall performance. A rating at the midpoint of the scale shall indicate that an employee's performance has met expectations. Alternative rating scales are permissible provided they are convertible to a five level scale. Performance based awards and salary increases shall be distributed in accordance with G.S. 126-7.~~

Authority G.S. 126-4; 126-7.

SECTION .0100 - GENERAL PROVISIONS

25 NCAC 010 .0101 POLICY

~~Each agency shall have an operative performance management system as provided in 25 NCAC 010 .0102 .0106 and that has been approved by the State Human Resources Commission for compliance with these Rules. The State Human Resources Director shall use the standards identified in the rules in this Section:~~

- ~~(1) to help agencies establish, administer and revise their performance management systems; and~~
- ~~(2) to review and approve any substantive changes to an agency's performance management system based on their compliance with the rules in this Section.~~

Authority G.S. 126-4; 126-7.

25 NCAC 010 .0105 DISPUTE RESOLUTION

~~Employee disputes concerning their performance appraisal or the amount of their performance based award shall be addressed in accordance with 25 NCAC 01J .0900.~~

Authority G.S. 126-4; 126-7.

25 NCAC 010 .0102 PURPOSE

~~The purposes of the performance management system are to ensure that:~~

- ~~(1) The work performed by employees accomplishes the work of the agency;~~
- ~~(2) Employees have an understanding of the quality and quantity of work expected from them;~~
- ~~(3) Employees receive ongoing information about how effectively they are performing relative to expectations;~~
- ~~(4) Awards and salary increases based on employee performance are distributed accordingly;~~
- ~~(5) Opportunities for employee development are identified; and~~
- ~~(6) Employee performance that does not meet expectations is addressed~~

Authority G.S. 126-4; 126-7.

25 NCAC 010 .0106 MONITORING, EVALUATING, REPORTING

~~(a) The Human Resources Director in each agency shall monitor the administration of the performance management system to determine that appraisal ratings are made accurately and that performance based salary increases and awards are distributed based on appraisals.~~

~~(b) Each agency shall evaluate its performance management system at least every three years to determine how effectively the system is meeting the purposes stated in 25 NCAC 010 .0102 and take actions to improve the system if necessary. Evaluation findings and any improvement actions shall be reported to the State Human Resources Director.~~

Authority G.S. 126-4; 126-7.

25 NCAC 010 .0103 COMPONENTS OF A PERFORMANCE MANAGEMENT SYSTEM

~~An operative performance management system shall consist of:~~

- ~~(1) A process for communicating employee performance expectations, maintaining ongoing performance dialogue, and conducting annual performance appraisals;~~

25 NCAC 010 .0107 PERFORMANCE MANAGEMENT POLICY

It is the policy of North Carolina State Government to provide a performance management system which evaluates employees' accomplishments and behaviors related to goals and organizational values to achieve organizational mission, goals, and business objectives. An integrated performance management system enables employees to develop and enhance individual performance while contributing to the achievement of organizational mission, goals, and business objectives. Each agency shall implement the Performance Management Policy as approved by the State Human Resources Commission.

Authority G.S. 126-4.

**25 NCAC 010 .0108 PERFORMANCE
MANAGEMENT COVERED EMPLOYEES**

(a) Rules in this Subchapter apply to the following:

- (1) probationary, trainee, time-limited and permanent employees; and
- (2) employees appointed to exempt policy-making positions, exempt managerial positions, confidential secretary, confidential assistant, and all chief deputy positions.

(b) Rules in this Subchapter do not apply to temporary employees.

Authority G.S. 126-4.

**25 NCAC 010 .0109 PERFORMANCE
MANAGEMENT DEFINITIONS**

The following definitions apply to all rules in this Subchapter:

- (1) "Annual Performance Evaluation" means the comprehensive review of the employee's performance, relative to the goals throughout the entire performance cycle. The annual performance evaluation contains a final overall rating.
- (2) "Calibration Session" means a confidential discussion between same-level managers or supervisors facilitated by the next-level manager, supervisor or designated Human Resources representative, to evaluate work distribution, goal alignment, goal validity, results, and final ratings.
- (3) "Coaching Session" means either a documented formal or undocumented informal conversation between a manager or supervisor and employee to provide feedback and reinforce desired work actions and behavior.
- (4) "Counseling Session" means a formal documented conversation between a manager or supervisor and an employee to provide specific feedback and initiate a Performance Improvement Plan to develop a strategy for an employee to raise his or her performance to a minimum of "Meets Expectation."
- (5) "Goals" means organizational, division, work unit, and individual level outcomes which support the strategic mission of the organization. All goals must be relevant to agency goals/mission.
- (6) "Individual Development Plan" means the process used to identify areas of development so an employee will have the skills, knowledge and abilities he or she needs to meet the organization's goals and objectives, and is given an opportunity to develop competencies that will allow him or her to be successful in the future.

- (7) "Interim Review" means a formal discussion and documentation of such at the mid-point of the performance cycle between a manager or supervisor and an employee to review the employee's progress and make any necessary adjustments, including the initiation of an Individual Development Plan or a Performance Improvement Plan if necessary.
- (8) "Permanent Employee" means an employee who is in a permanent position and has attained career status by being continuously employed by the State in a position subject to the State Human Resources Act for the immediate 24 preceding months.
- (9) "Performance Expectation(s)" means a goal, value, or both, defining outcomes and behaviors that are documented on a performance plan to identify results to be accomplished and how the work should be accomplished.
- (10) "Performance Improvement Plan" means a written document issued to an employee by a manager or supervisor which provides specific instructions to the employee about the action(s) the employee shall take to improve performance or conduct deficiencies to the "Meets Expectations" level of performance. A performance improvement plan is issued to an employee who maintains employment and is issued a written warning or other progressive disciplinary action, such as suspension without pay or demotion.
- (11) "Performance Plan" means a description of the goals and values to be accomplished by the employee within the performance cycle, with emphasis on the goals and results to be achieved and how those results will be measured.
- (12) "Position Description" means a statement or set of duties and responsibilities that represents the major functions of a job which must be performed to meet the agency's needs.
- (13) "Probationary Employee" means an employee who is in a permanent position but has not attained career status by being continuously employed by the State in a position subject to the State Human Resources Act for the immediate 24 preceding months.
- (14) "Satisfactory Performance" means performance for which the employee consistently meets expectations and occasionally exceeds expectations.
- (15) "Time-Limited Employee" means an employee who is in a time-limited position and is not eligible for career status.
- (16) "Values" means qualitative behavioral attributes that document how work actions should be accomplished. Values reflect core organizational beliefs that guide and motivate

actions supporting the accomplishment of the agency mission and goals.

Authority G.S. 126-4.

25 NCAC 010 .0110 PERFORMANCE CYCLE

(a) The standard State government performance cycle is from July 1 through June 30, with the exception of the constituent institutions of the University of North Carolina who will have a standard performance cycle from April 1 through March 31.

(b) The annual performance evaluation shall be completed, approved, discussed with employees, and entered into the system of record within 60 calendar days of the cycle end date.

(c) The State Human Resources Director may change the dates of the standard performance cycle; however, all covered employees shall be notified a minimum of 60 calendar days prior to the start of the new performance cycle.

Authority G.S. 126-4.

25 NCAC 010 .0111 DOCUMENTATION OF PERFORMANCE

(a) The Office of State Human Resources shall provide a standard evaluation template, individual development plan template, and Performance Improvement Plan template to be utilized by all agencies, universities and individuals covered by this Subchapter.

(b) The State Human Resources Director shall publish and communicate the standardized templates a minimum of 90 calendar days prior to the start of the performance cycle.

Authority G.S. 126-4.

25 NCAC 010 .0112 PERFORMANCE MANAGEMENT RESOURCES AND TRAINING

Each agency and university shall:

(1) designate a person as its performance management coordinator, with responsibility for coordinating the development, implementation, and ongoing administration of performance management within the organization.

(2) provide performance management training, made available by the Office of State Human Resources, to all newly hired or promoted managers or supervisors, to be successfully completed within the first three months of the manager's or supervisor's new role;

(3) provide annual refresher training, made available by the Office of State Human Resources, to all employees.

Authority G.S. 126-4.

25 NCAC 010 .0113 CONFIDENTIALITY AND RECORDS RETENTION

(a) Performance evaluations are confidential documents under G.S. 126-22.

(b) To promote communication and coordination, agency management may make some version of performance plans visible internally; however, any information shared during calibration sessions shall be treated as confidential and shall not be shared outside of the calibration session.

(c) A breach of confidentiality shall be considered personal misconduct and may result in disciplinary action up to and including dismissal.

(d) Annual performance evaluations and supporting documentation shall be securely retained for at least three years, and then maintained according to the applicable records retention schedule.

Authority G.S. 126-4.

25 NCAC 010 .0114 PERFORMANCE MANAGEMENT COMPLIANCE

(a) The Office of State Human Resources shall monitor and evaluate performance management records and data to ensure agency compliance.

(b) If an employee believes his or her manager or supervisor is failing to adhere to the performance management processes, the employee should notify the next-level manager or supervisor or the agency's Human Resources office.

(c) The failure of a manager or supervisor to carry out the performance management process in accordance with this Subchapter shall be addressed as a performance deficiency and shall result in one or more of the following:

(1) coaching from the next-level manager or supervisor to determine the cause(s) of the deficiency and implementation of a Performance Improvement Plan;

(2) participating in skills enhancement training;

(3) monitoring and documentation of manager or supervisor progress towards improving implementation of performance management;

or
(4) the issuing of appropriate disciplinary action, up to and including dismissal.

Authority G.S. 126-4.

25 NCAC 010 .0115 PERFORMANCE RATING DISPUTE

Career State employees or former career State employees may grieve an overall performance rating of "Does Not Meet Expectations" using the agency's or university's internal employee grievance process.

Authority G.S. 126-4.

SECTION .0200 - MANAGING AND EVALUATING PERFORMANCE

25 NCAC 010 .0207 FREQUENCY OF PERFORMANCE REVIEWS

Performance Reviews are required in the following instances:

- (1) For permanent State employees, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of the performance cycle. The manager or supervisor shall conduct an interim review at the mid-point of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the end of the performance cycle.
- (2) For probationary employees, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of employment. The manager or supervisor shall review the probationary employee's performance by conducting quarterly documented performance feedback discussions during the first 12 months of employment. If a probationary employee, at a minimum, "Meets Expectations" on all individual goals and individual values, at the end of the first performance cycle, then quarterly documented performance feedback discussions are no longer required. The manager or supervisor shall establish a performance plan for the probationary employee during the first 60 calendar days of the next performance cycle. The manager or supervisor shall conduct an interim review at the mid-point of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the end of the performance cycle. The probationary employee shall have been functioning under an issued performance plan for at least six months to receive his or her first performance review.
- (3) For trainee and time-limited employees, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of employment. The manager or supervisor shall review the trainee or time-limited employee's performance by conducting quarterly documented performance feedback discussions. The trainee or time-limited employee must have been functioning under an issued performance plan for at least six months to receive his or her first performance review. If the employee's performance indicates he or she is not suited for the position and cannot be expected to meet satisfactory performance standards, the employee shall be separated. If he or she meets satisfactory performance standards, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of the next performance cycle. The manager or supervisor shall conduct an interim review at the mid-point of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the end of the performance cycle.
- (4) When an employee transfers to another position within state government, a performance review shall be completed prior to the transfer. If the transfer occurs within 30 calendar days of the end of the interim review or annual performance evaluation, then a copy of the completed and signed interim review or the completed and signed annual performance evaluation shall be sent to the receiving manager or supervisor. If the transfer occurs more than 30 calendar days prior to the interim review or annual performance evaluation, the existing manager or supervisor shall provide written performance information accountable for ensuring continuity of performance documentation specific to the employee's achievement of established goals and values to the receiving manager or supervisor.
- (5) When there is a change in manager or supervisor, the existing manager or supervisor shall provide written performance information specific to the employee's achievement of established goals and values to the receiving manager or supervisor. If the change in manager or supervisor occurs within 30 calendar days of the annual performance evaluation, then the existing manager or supervisor shall complete the formal performance evaluation.
- (6) When an employee separates from state government, the manager or supervisor shall assess performance and assign a final overall performance rating, unless the employee's separation is due to a documented disciplinary action, retirement, disability, illness, or death. For an employee who is separated for any reason other than documented disciplinary action, retirement, disability, illness, or death, any final overall performance rating of "Does Not Meet Expectations" must be approved by the Human Resources Director or his or her designee.

Authority G.S. 126-4.

25 NCAC 010 .0208 PERFORMANCE PLANNING

- (a) Each employee shall have an annual Performance Plan to include at least three but not more than five strategically aligned critical individual goals, a description of how goals will be measured, and the level of performance required to meet expectations and values. Goals shall be written at the "Meets Expectation" level. The agency or university shall facilitate calibration discussions to systematically assess goal validity and ensure organizational consistency.
- (b) Within 90 calendar days of the onset of a performance management cycle, the Office of State Human Resources (OSHR)

will publish and communicate two to four organizational values, which will be standard for all employees subject to this Subchapter. Each agency or university may choose to add up to five additional organizational values, selected from a predefined list published and communicated by OSHR within 90 calendar days of the onset of the performance management cycle.

(c) Organizational values must be 50% of the total weight relative to overall performance. Individual agencies or universities may determine weight of specific goals; however, goal weight shall be no more than 50 percent of the total weight relative to overall performance.

(d) Managers/Supervisors shall hold a performance planning discussion with each employee and put a performance plan in place with each employee within 60 calendar days of:

- (1) the beginning of the performance management cycle;
- (2) the employee's entry into a position;
- (3) a new probationary, trainee or time-limited employee's date of employment; or
- (4) any significant change to the performance expectations of the current Performance Plan.

(e) Once signed by the manager or supervisor and next-level manager or supervisor, the employee shall review, sign, and date the performance plan. If the employee refuses to sign the performance plan, the manager or supervisor shall document, on the performance plan, the employee's refusal.

(f) Each employee shall have ready access to his or her performance plan either via paper or electronically.

Authority G.S. 126-4.

25 NCAC 010 .0209 PERFORMANCE FEEDBACK

(a) Throughout the performance cycle, the manager or supervisor must document and validate, based on direct observation or feedback from others, employee performance results and behaviors on a regular and consistent basis. In addition, the manager or supervisor must provide feedback to the employee, both positive and corrective, when appropriate. Both the manager or supervisor and employee should document activities and accomplishments related to goals and behaviors during the performance cycle.

(b) Managers or supervisors must conduct a minimum of three formal performance discussions annually, for each employee and timed accordingly as follows:

- (1) the initial planning discussion, at the beginning of the performance cycle;
- (2) an interim review at the performance cycle midpoint;
- (3) the annual performance evaluation, at the end of the performance cycle.

The formal discussions provide managers/supervisors and employees with an opportunity to discuss any changes in organizational priorities or employee development goals, review progress and, if necessary, revise performance plans, initiate individual development plans, or address performance problems and identify steps the employee should take to improve or adjust priorities through the remainder of the performance cycle. Additional formal and informal discussions shall also be

conducted as needed throughout the performance cycle to adjust cycle goals, document progression, or address fluctuating business requirements.

(c) All formal coaching sessions and formal performance discussions shall be documented.

Authority: G.S. 126-4.

25 NCAC 010 .0210 ADDRESSING POOR PERFORMANCE

If at any time during the performance cycle an employee is not meeting expectations, the manager or supervisor shall:

- (1) Conduct a documented coaching session to
 - (a) discuss ways to improve the employee's performance or behavior;
 - (b) see input from the employee about whether the performance issue can be corrected through a process change or if the employee needs to receive additional training on current procedures or processes;
 - (c) outline the steps to be taken to improve performance, including the specific timeframe for improvement;
 - (d) identify the consequences, including progressive corrective action, of failure to improve; and
 - (e) define a follow up date.

If performance improves to the "Meets Expectation" level during the defined timeframe and performance is maintained, no further action is necessary.

- (2) If employee performance or behavior does not improve to the "Meets Expectation" level during the designated timeframe discussed during the formal coaching session, the manager or supervisor shall consult his or her Human Resources representative, prepare a Performance Improvement Plan (PIP), and conduct and document a formal counseling session to review the PIP with the employee. The PIP documentation shall serve as the first written warning, and shall:

- (a) be in writing and state that it is a warning;
- (b) state the specific performance or behavior problem that is the reason for the warning;
- (c) state the specific steps to be taken to improve performance, including the specific timeframe for improvement;
- (d) state the consequences, including progressive disciplinary action, of failure to make the required improvements or corrections;
- (e) define a follow-up date(s);
- (f) tell the employee of any appeal rights provided by State law; and

- (g) discuss the Employee Assistance Program (EAP) when appropriate.
- (3) If performance improves to the "Meets Expectation" level during the designated timeframe and is maintained, no further action is necessary.
- (4) If performance does not improve to the "Meets Expectation" level during the designated timeframe outlined in the PIP and discussed during the formal counseling session, or if the performance or behavior fails to be maintained at the "Meets Expectations" level, the manager or supervisor shall begin the formal corrective disciplinary action process as outlined in 25 NCAC 01J .0613 and contact his or her Human Resources representative.
- (5) If an employee receives a performance-based disciplinary action during the performance cycle, corrects, and maintains performance at the "Meets Expectations" level, then the employee shall be considered to have met expectations for the performance expectation(s) associated with the disciplinary action.
- (6) If an employee receives a performance-based disciplinary action during the performance cycle, corrects, and maintains performance at the "Meets Expectations" level, the employee shall be considered to have met expectations for the goal or organizational value associated with the disciplinary action.
- (7) If the employee receives both a "Meets Expectations" for the goal or organizational value cited in the warning or other disciplinary action and a "Meets Expectations" in the overall performance evaluation rating, the performance-based disciplinary action becomes inactive.
- (8) If the written warning is based on the employee's failure to complete tasks listed in the job description or is based on the employee's failure to respond to a direct order from the manager or supervisor, but these warnings are not linked to the goals or organizational values of the performance plan, then the written warning shall remain active, according to the OSHR disciplinary policy.
- (9) At the conclusion of the performance cycle, if the employee has not successfully satisfied the terms of the PIP, or has an active performance-based disciplinary action, the employee shall be considered not to have met expectations during the current cycle for the performance expectation(s) associated with the disciplinary action.

25 NCAC 010 .0211 ANNUAL PERFORMANCE EVALUATION

(a) At the end of the performance cycle, the manager or supervisor shall evaluate employee performance relative to the three to five individual goals as well as the selected organizational values. Managers or supervisors shall use quantitative and qualitative information collected throughout the cycle and documented by various sources, including information documented by the employee, to determine the extent to which the employee's actual performance has met the expectations defined in the performance plan. The manager or supervisor shall evaluate performance based on the collected performance information and assign ratings to each goal and value to determine an overall annual performance evaluation rating. Agency or University Human Resources personnel shall facilitate calibration discussions to systematically assess rating validity and ensure organizational consistency.

(b) Each individual goal and value shall be rated using the standardized rating scale. The standardized rating scale will consist of three levels defined as follows:

(1) "Exceeds Expectations" means performance consistently exceeds documented expectations and measurements. The employee consistently does work going far beyond what is expected in terms such as quantity, quality, timeliness, cost, and customer satisfaction. Performance that "Exceeds Expectations" is due to the effort and skills of the employee. Performance is consistently characterized by exceptionally high quality work that requires little or no improvements or corrections. An employee at the "Exceeds Expectations" level repeatedly makes exceptional or unique contributions to the organization that are above the requirements of his/her duties and responsibilities. An employee performing at the "Exceeds Expectations" level should be readily recognized by their organization as an outstanding contributor to the organization's mission.

(2) "Meets Expectations" means performance consistently meets and occasionally exceeds the documented job expectations and measurements. The employee performs according to expectations. The employee does the job at the level expected for this position and consistently meets what is expected in terms such as quantity, quality, timeliness, cost and customer satisfaction. The performance is due to the employee's own effort and skills. An employee performing at the "Meets Expectations" level is dependable and makes valuable contributions to the organization. His or her judgments are sound, and he or she demonstrates knowledge and mastery of duties and responsibilities. Most employees should meet expectations in a functional, performing work unit.

Authority G.S. 126-4.

(3) "Does Not Meet Expectations" means performance does not meet job expectations and measurements and supervisory attempts to encourage performance improvement are unsuccessful. The employee is performing the job at an unsatisfactory performance level in terms such as quantity, quality, timeliness, cost, and customer satisfaction and performance improvement counseling by the manager or supervisor has not resulted in adequate employee performance improvement. Manager or supervisors are required to continue addressing performance issues with an employee with this rating level, documenting management efforts to encourage satisfactory performance, and documenting subsequent results on a Performance Improvement Plan. Failure to perform is due to the employee's lack of effort or skills. Performance counseling sessions shall be guided by next-level management or Human Resources, and may result in disciplinary action for the employee who fails to demonstrate improvement.

(c) The employee's final overall rating shall be based on results achieved relative to his or her individual goals and organizational values. The final overall rating must reflect both quantity and quality of job performance relative to established goals and identified values. A final overall rating of "Exceeds Expectations" shall be supported by appropriately documented results and accompanied by demonstrated adherence to organizational values. An employee who does not at least "Meet Expectations" on all organizational values shall not be awarded a final overall rating of "Exceeds Expectations," regardless of level of results achieved on goals. An employee who receives a "Does Not Meet" on any goal shall not be awarded an overall rating of "Exceeds Expectations," regardless of the level of results achieved or adherence to values.

(d) Upon completion of calibration, a final overall rating shall be assigned and entered into the appropriate system of record. Managers or supervisors shall not submit final overall ratings for employees unless an annual performance plan, supported by ongoing performance documentation, has been completed in compliance with this Subchapter.

Authority G.S. 126-4.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on July 16, 2015.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

PESTICIDE BOARD

<u>Soil and Growing Media Fumigation Examination Waiver</u>	02	NCAC 09L .0529*	29:16	NCR
<u>Certification Examination</u>	02	NCAC 09L .1103*	29:16	NCR
<u>Certification of Private Applicators</u>	02	NCAC 09L .1109*	29:16	NCR

CHILD CARE COMMISSION

<u>Emergency Preparedness and Response</u>	10A	NCAC 09 .0607*	n/a	G.S. 150B-21.5
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Specialized Driver Instructor Training</u>	12	NCAC 09B .0227	29:14	NCR
<u>Basic Training - Wildlife Enforcement Officers</u>	12	NCAC 09B .0228	29:11	NCR
<u>Basic Training - Juvenile Court Counselors and Chief Cour...</u>	12	NCAC 09B .0235*	29:14	NCR
<u>Basic Training - Juvenile Justice Officers</u>	12	NCAC 09B .0236*	29:14	NCR
<u>Terms and Conditions of Specialized Instructor Certification</u>	12	NCAC 09B .0305*	29:14	NCR
<u>Time Requirement for Completion of Training</u>	12	NCAC 09B .0401*	29:11	NCR
<u>Probationary Certification</u>	12	NCAC 09C .0303*	29:11	NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC 09E .0105	29:14	NCR

PHARMACY, BOARD OF

<u>Right to Refuse a Prescription</u>	21	NCAC 46 .1801*	29:20	NCR
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SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

<u>Definitions</u>	21	NCAC 68 .0101*	29:19	NCR
<u>Credentials by Endorsement or Reciprocity Based on Milita...</u>	21	NCAC 68 .0227*	29:19	NCR
<u>Substance Abuse Credential by Endorsement or Reciprocity ...</u>	21	NCAC 68 .0228*	29:19	NCR

STATE HUMAN RESOURCES COMMISSION

<u>Exempt Priority Consideration-Policy and Scope</u>	25	NCAC 01H .1001*	29:15	NCR
<u>Agency Responsibilities</u>	25	NCAC 01H .1003*	29:15	NCR
<u>Office of State Personnel Responsibilities</u>	25	NCAC 01H .1004	29:15	NCR
<u>Mandatory Right to a Position</u>	25	NCAC 01H .1005	29:15	NCR

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

**02 NCAC 09L .0529 SOIL AND GROWING MEDIA
FUMIGATION EXAMINATION WAIVER**

Prior to January 1, 2017, any pesticide applicator licensed in the classifications agricultural pest control: plant, forest pest control,

or ornamental and turf pest control who applies for the soil fumigation classification, and has completed the EPA-sponsored soil fumigation training and examination or the North Carolina In-State Soil Fumigation Training option and examination shall be eligible to receive the soil fumigation classification without having to pass the State's written examination. Training and examination dates may be found at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.

History Note: Authority G.S. 143-453(b); Eff. August 1, 2015.

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

- (a) An applicant for an initial private pesticide applicator's certification shall demonstrate by written examination his or her knowledge of pesticides and their usefulness and hazards; his or her competence to act as a private pesticide applicator; and his or her knowledge of the laws and rules governing the use and application of pesticides by private pesticide applicators. Passing grade shall be 70 percent or more.
- (b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator. Prior to January 1, 2017, any certified private applicator who applies for the soil and growing media certification and has completed the EPA-sponsored soil fumigation training and examination or the North Carolina In-State Soil Fumigation Training option and examination shall be eligible to receive the soil and growing media certification without having to pass the State's written soil and growing media fumigation examination.
- (c) Beginning on January 1, 2017, the passing grade on the soil and growing media fumigation examination, and the agricultural commodity fumigation examination shall be 70 percent or more.
- (d) Applicants may register for an examination at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.

History Note: Authority G.S. 143-440; Eff. December 1, 1976; Amended Eff. August 1, 2015; October 1, 2002; July 1, 1987; February 5, 1978.

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

The following subclassifications are hereby established for the certification of private pesticide applicators:

- (1) Soil and growing media fumigation – private pesticide applicators utilizing ground equipment applying restricted use fumigants to property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (2) Agricultural commodity fumigation – private pesticide applicators applying restricted use fumigants to agricultural commodities on property they own or lease, their employer's

property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

History Note: Authority G.S. 143-440; Eff. August 1, 2015.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0607 EMERGENCY PREPAREDNESS AND RESPONSE

- (a) For the purposes of this Rule, the Emergency Preparedness and Response in Child Care is a training approved by the Division on creating an Emergency Preparedness and Response Plan and practicing, responding to and recovering from emergencies in child care facilities.
- (b) Existing child care facilities shall have one person on staff who has completed the Emergency Preparedness and Response in Child Care training within two years from the effective date of this Rule and within four months of a trained person's last day of employment. New facilities must have a person on staff who has completed the Emergency Preparedness and Response in Child Care training within one year of the effective date of the initial license. Documentation of completion of the training shall be maintained in the individual's personnel file.
- (c) Upon completion of the Emergency Preparedness and Response in Child Care training, the trained staff shall develop the Emergency Preparedness and Response Plan. The Emergency Preparedness and Response Plan means a written plan that addresses how a child care facility will respond to both natural and man-made disasters, such as fire, tornado, flood, power failures, chemical spills, bomb threats, earthquakes, blizzards, nuclear disasters, or a dangerous person or persons in the vicinity, to ensure the safety and protection of the children and staff. This Plan must be on a template provided by the Division available at <https://rmp.nc.gov/portal/#>, and completed within four months of completion of the Emergency Preparedness and Response in Child Care training.
- (d) The Emergency Preparedness and Response Plan shall include:
 - (1) written procedures for accounting for all in attendance including:
 - (A) the location of the children, staff, volunteer and visitor attendance lists; and
 - (B) the name of the person(s) responsible for bringing the lists in the event of an emergency.
 - (2) a description for how and when children shall be transported;
 - (3) methods for communicating with parents and emergency personnel or law enforcement;
 - (4) a description of how children's nutritional and health needs will be met;
 - (5) the relocation and reunification process;

- (6) emergency telephone numbers;
- (7) evacuation diagrams showing how the staff, children, and any other individuals who may be present will evacuate during an emergency;
- (8) the date of the last revision of the plan;
- (9) specific considerations for non-mobile children and children with special needs; and
- (10) the location of a Ready to Go File. A Ready to Go File means a collection of information on children, staff and the facility, to utilize, if an evacuation occurs. The file shall include, but is not limited to, a copy of the Emergency Preparedness and Response Plan, contact information for individuals to pick-up children, each child's Application for Child Care, medication authorizations and instructions, any action plans for children with special health care needs, a list of any known food allergies of children and staff, staff contact information, Incident Report forms, an area map, and emergency telephone numbers.

(e) The trained staff shall review the Emergency Preparedness and Response Plan annually, or when information in the plan changes, to ensure all information is current.

(f) All staff shall review the center's Emergency Preparedness and Response Plan during orientation and on an annual basis with the trained staff. Documentation of the review shall be maintained at the center in the individual's personnel file or in a file designated for emergency preparedness and response plan documents.

(g) All substitutes and volunteers counted in ratio who are present shall be informed of the child care center's Emergency Preparedness and Response Plan and its location. Documentation of this notice shall be maintained in the individual personnel files.

History Note: Authority G.S. 110-85; Eff. July 1, 2015; Amended Eff. August 1, 2015.

- (B) a department head, certified school director, or in-service training coordinator, indicating the student may be utilized to instruct driver training in the "Law Enforcement Officer's Annual In-Service Training Program";

- (3) possess a valid operator driver's license; and
- (4) maintain a safe driving record where no more than four points have been assigned against the driving record within the past three years.

(d) Each specialized driver instructor training course shall include the following identified topic areas and instructional hours for each area:

(1)	Orientation	1 Hour
(2)	Lesson Plan Review (BLET)	4 Hours
(3)	General Mechanical Knowledge	2 Hours
(4)	Before - Operation Inspection	1 Hour
(5)	Laws of Natural Force & Operating Characteristics	2 Hours
(6)	Driver Practicum/Pre-Qualification	32 Hours
(7)	Legal and Operational Considerations for the Driver Instructor	4 Hours
(8)	Course Description Packet and Administrative Code Review	1 Hour
(9)	Course Review	1 Hour

(e) The "Specialized Driver Instructor Training Manual" as published by the North Carolina Justice Academy shall be the curriculum for specialized driver instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division
 North Carolina Department of Justice
 1700 Tryon Park Drive
 Post Office Drawer 149
 Raleigh, North Carolina 27610
 and may be obtained at the cost of printing and postage from the Academy at the following address:
 North Carolina Justice Academy
 Post Office Box 99
 Salemburg, North Carolina 28385

(f) Commission-certified schools that are certified to offer the "Specialized Driver Instructor Training" course are The North Carolina Justice Academy and The North Carolina State Highway Patrol Training Center.

History Note: Authority G.S. 17C-6; Eff. May 1, 1986; Amended Eff. August 1, 2015; January 1, 2015; February 1, 2013; August 1, 2006; February 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; February 1, 1991; March 1, 1990; July 1, 1989.

12 NCAC 09B .0228 BASIC TRAINING – WILDLIFE ENFORCEMENT OFFICERS

History Note: Authority G.S. 17C-6; 17C-10;

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0227 SPECIALIZED DRIVER INSTRUCTOR TRAINING

(a) The instructor training course required for specialized driver instructor certification shall consist of a minimum of 48 hours of instruction.

(b) Each specialized driver instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice driver instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

- (c) Each applicant for specialized driver instructor training shall:
- (1) have completed the criminal justice general instructor training course;
 - (2) present a written endorsement by either
 - (A) a certified school director indicating the student may be utilized to instruct

Eff. February 1, 1987;
Amended Eff. April 1, 2008; August 1, 2004; August 1, 2000;
August 1, 1995; July 1, 1991; July 1, 1989;
Repealed Eff. August 1, 2015.

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for Juvenile Court Counselors and Chief Court Counselors shall consist of a minimum of 154 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a Juvenile Court Counselor and a Chief Court Counselor.

(b) Each basic training course for Juvenile Court Counselors shall include training in the following topic areas:

- (1) Juvenile Justice Common Core:
 - (A) Juvenile Justice Overview 2 hours
 - (B) Basic Individual Counseling Skills 16 hours
 - (C) Interpersonal Communication Skills 8 hours
 - (D) Working with Families 3 hours
 - (E) Characteristics of Delinquents 3 hours
 - (F) Unlawful Workplace Harassment 2 hours
 - (G) Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace 2 hours
 - (H) Staff and Juvenile Relationships 4 hours
 - (I) Gang Awareness 4 hours
 - (J) Situational Awareness and Risk Assessment 4 hours
 - (K) Restraints, Controls and Defensive Techniques 28 hours
 - (L) Mechanical Restraints 4 hours
 - (M) Secure Transportation 4 hours
 - (N) Mental Health 8 hours
 - (O) CPR 4 hours
 - (P) First Aid 4 hours
 - (Q) Employee Fitness and Wellness 4 hours
 - Total Hours 104 hours
- (2) Juvenile Court Counselor Specific:
 - (A) Roles and Responsibilities 8 hours
 - (B) Juvenile Law 8 hours
 - (C) Intake 8 hours
 - (D) Risk and Needs Assessment 4 hours
 - (E) Report Writing and Documentation 12 hours
 - (F) Interviewing 6 hours
 - (G) Driver Safety 4 hours
 - Total Hours 50 hours
 - Total Course Hours 154 hours

(c) The "Juvenile Court Counselor Basic Training Manual" as published by the North Carolina Department of Public Safety

shall be applied as the curriculum for delivery of Juvenile Court Counselor basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon completion of a Commission-certified training course for Juvenile Court Counselors and Chief Court Counselors, the Director of the school conducting the course shall notify the Commission of training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Completion Form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

(e) Employees of the Division of Adult Correction and Juvenile Justice who have completed the minimum 152 hour training program accredited by the Commission pursuant to Rule .0236 of this Section after January 1, 2013 who transfer from a Juvenile Justice Officer position to a Juvenile Court Counselor position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Court Counselor under Subparagraph (b)(2) of this Rule.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004;
Amended Eff. August 1, 2015; May 1, 2014.

12 NCAC 09B .0236 BASIC TRAINING – JUVENILE JUSTICE OFFICERS

(a) The basic training course for Juvenile Justice Officers shall consist of a minimum of 152 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for Juvenile Justice Officers shall include training in the following identified topic areas:

- (1) Juvenile Justice Common Core:
 - (A) Juvenile Justice Overview 2 hours
 - (B) Basic Individual Counseling Skills 16 hours
 - (C) Interpersonal Communication Skills 8 hours
 - (D) Working with Families 3 hours
 - (E) Characteristics of Delinquents 3 hours
 - (F) Unlawful Workplace Harassment 2 hours
 - (G) Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace 2 hours
 - (H) Staff and Juvenile Relationships 4 hours
 - (I) Gang Awareness 4 hours
 - (J) Situational Awareness and Risk Assessment 4 hours

- (K) Restraints, Controls and Defensive Techniques 28 hours
- (L) Mechanical Restraints 4 hours
- (M) Secure Transportation 4 hours
- (N) Mental Health 8 hours
- (O) CPR 4 hours
- (P) First Aid 4 hours
- (Q) Employee Fitness and Wellness 4 hours
- Total Hours 104 hours

- (2) Juvenile Justice Officer Specific:
 - (A) Treatment Program Operations 4 hours
 - (B) Maintaining Documentation of Activities and Behaviors 6 hours
 - (C) Basic Group Leadership Skills 8 hours
 - (D) Crisis Intervention Techniques 8 hours
 - (E) Effective Behavior Management 12 hours
 - (F) Health Services Overview 2 hours
 - (G) Trauma and Delinquents 6 hours
 - (H) Contraband and Search Techniques 2 hours
 - Total Hours 48 hours
 - Total Course Hours 152 hours

(c) The "Juvenile Justice Officer Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the curriculum for delivery of Juvenile Justice Officer basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon completion of a Commission-certified training course for Juvenile Justice Officers the Director of the school conducting the course shall notify the Commission of the training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Completion Form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

(e) Employees of the Division of Adult Correction and Juvenile Justice who have completed the minimum 154 hour training program accredited by the Commission under Rule .0235 of this Section after January 1, 2013 who transfer from a Juvenile Court Counselor position to a Juvenile Justice Officer position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Justice Officer pursuant to Subparagraph (b)(2) of this Rule.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004; Amended Eff. August 1, 2015; May 1, 2014.

12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to run concurrently with the existing General Instructor Certification, except as set out in Paragraph (d) of this Rule. The applicant shall apply for certification as a Specialized Instructor within 60 days from the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) The requirements for certification as a specialized instructor are determined by the expiration date of the existing General Instructor Certification. The following requirements apply during the initial period of certification:

- (1) where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to satisfy the teaching requirement for only the general probationary instructor certification. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are 12 months or more until the certifications' expiration date, the instructor shall teach 12 hours for each specialized topic for which certification has been issued; and
- (4) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are fewer than 12 months until the certification expiration date, the instructor shall not be required to teach any hours for the specialized subject.

(c) The term of certification as a specialized instructor shall not exceed the 36 month period of General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics

for which Specialized Instructor Certification was granted and that instruction was provided in a Commission-accredited basic training, Speed Measuring Instrument Operator, SMI Instructor, Instructor Training or Specialized Instructor Training course or in-service training course, pursuant to 12 NCAC 09E .0105. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;

(2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and

(A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-accredited basic training, Speed Measuring Instrument Operator, SMI Instructor, Instructor Training or Specialized Instructor Training course, pursuant to Rule 12 NCAC 09C .0401, or an in-service training course, pursuant to 12 NCAC 09E .0105, during the three-year period of Specialized Instructor Certification; or

(B) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Commission Instructor Evaluation Form, located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(3) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal.

(4) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

Upon the applicant's submission of the required documentation for renewal, the Commission staff shall renew the certification as a Specialized Instructor. Such renewal shall occur at the time of renewal of the General Instructor certification.

(d) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(e) All instructors shall remain active during their period of certification. Any Specialized Instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not teach at least 12 hours in each of the specialized topics during the three-year period for which certification was granted. Upon application for re-certification, such applicants shall meet the requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2015; May 1, 2014; June 1, 2012; November 1, 2007; January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.

12 NCAC 09B .0401 TIME REQUIREMENT FOR COMPLETION OF TRAINING

- (a) Each criminal justice officer, with the exception of law enforcement officers, holding probationary certification shall complete, with passing scores, a Commission-accredited basic training course as prescribed in Rules .0235, .0236, and .0412 of this Subchapter that includes training in the skills and knowledge necessary to perform the duties of his or her office. The officer shall complete the course within one year from the date of his original appointment, as determined by the date of the probationary certification.
- (b) Each law enforcement officer shall have completed with passing scores the accredited basic training course as prescribed in Rule .0205 of this Subchapter prior to obtaining probationary certification.
- (c) If a trainee completes the basic training course as prescribed in Rule .0205 of this Subchapter prior to being employed as a law enforcement officer, the trainee shall be duly appointed and sworn as a law enforcement officer within one year of successfully passing the comprehensive written exam as specified in Rule .0406 of this Subchapter for that basic training course to be recognized under these Rules.
- (d) If local confinement supervisory and administrative personnel complete basic training prior to being employed by a facility in a supervisory and administrative position that requires certification as prescribed in G.S. 153A-217 and G.S. 153A-218, the personnel shall be duly appointed to a local confinement facility supervisory and administrative position within one year of the completion of training for the basic training course specified in 12 NCAC 09B .0205. This one year period shall begin with the date the applicant achieves a passing score on the comprehensive written exam, as specified in Rule .0411 of this Section.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. August 1, 2015; January 1, 2015; January 1, 1995; March 1, 1992; July 1, 1989; June 1, 1986.

12 NCAC 09C .0303 PROBATIONARY CERTIFICATION

- (a) Before a prospective criminal justice officer may be administered the oath of office, exercise the power of arrest, or commence active service as an officer, the employing agency shall have in its possession the person's Probationary Certification.
- (b) The Commission shall certify as a probationary officer a person meeting the minimum standards for criminal justice employment, as specified in Rule .0101 of this Subchapter when the person's employing agency submits a Report of Appointment to the Standards Division. The Report of Appointment Form is located on the agency's website: [http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-\(DJJDP\)--6-11.aspx](http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-(DJJDP)--6-11.aspx). The process for issuing probationary certification is as follows:

- (1) The Standards Division shall issue the person's Probationary Certification to the employing agency.

- (2) If an oath is required, the official administering an oath of office to the person shall be presented the person's Probationary Certification prior to the swearing. The administering official shall sign and date the oath on the Probationary Certification. The employing agency shall return a copy of the signed Probationary Certification to the Standards Division within 10 days of the administration of the officer's oath.
- (3) If no oath is required, the officer's department head shall endorse the Probationary Certification and enter the date on which the officer's service commenced, returning a copy of the certification to the Standards Division within 10 days of the commencement of the officer's service.

- (c) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner terminated by his or her agency for cause.
- (d) Before a prospective law enforcement officer may be issued a Probationary Certification, the prospective officer shall have completed the required basic training course stipulated in 12 NCAC 09B .0205(b).
- (e) An applicant for certification who holds a valid Probationary Certification issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be certified as a probationary law enforcement officer as specified under Paragraphs (b), (c) and (d) of this Rule.
- (f) Where the local governing authority declares the existence of a public emergency pursuant to G.S. 166A-19.22, the department head of the criminal justice agency of the jurisdiction may swear persons as law enforcement officers without first obtaining Probationary Certification for those officers. The employing agency shall obtain Probationary Certification for such emergency officers not more than 20 days after the administration of their oath of office.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. August 1, 2015; November 1, 1993; March 1, 1992; July 1, 1989; October 1, 1985.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following topical areas and specifications are established as topics, specifications, and hours to be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) 2016 Firearms Training and Qualification (6 credits);
- (2) 2016 Legal Update (4 credits);
- (3) 2016 Juvenile Minority Sensitivity Training: The Color of Justice (2 credits);
- (4) Human Trafficking Awareness (2 credits);

- (5) North Carolina Firearms Laws: Citizens and Guns (minimum of 2 credits); and
- (6) 2016 Department Topics of Choice (10 credits). The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission.

(b) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
 North Carolina Department of Justice
 1700 Tryon Park Drive
 Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99
 Salemberg, North Carolina 28385

(c) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
 North Carolina Department of Justice
 1700 Tryon Park Drive
 Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99
 Salemberg, North Carolina 28385

(d) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(e) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
- (2) A student shall pass each test by achieving 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be

given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005; Amended Eff. January 1, 2016; January 1, 2015; February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .1801 EXERCISE OF PROFESSIONAL JUDGMENT IN FILLING PRESCRIPTIONS

- (a) A pharmacist or device and medical equipment dispenser shall have a right to refuse to fill or refill a prescription order if doing so would be contrary to his or her professional judgment.
- (b) A pharmacist or device and medical equipment dispenser shall not fill or refill a prescription order if, in the exercise of professional judgment, there is or reasonably may be a question regarding the order's accuracy, validity, authenticity, or safety for the patient.
- (c) A prescription order is valid only if it is a lawful order for a drug, device, or medical equipment issued by a health care provider for a legitimate medical purpose, in the context of a patient-prescriber relationship, and in the course of legitimate professional practice as recognized by the occupational licensing board governing the health care provider.

History Note: Authority G.S. 90-85.6; 90-85.32; Eff. April 1, 1983; Amended Eff. August 1, 2015; February 1, 2007; March 1, 2004; April 1, 2003; September 1, 1995.

CHAPTER 68 - SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

21 NCAC 68 .0101 DEFINITIONS

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

- (1) "Applicant" means a person who submits documentation seeking Board status for registration, certification, or licensure.
- (2) "Application packet" means a set of instructions and forms required by the Board for registration.
- (3) "Approved supervisor " means a person who monitors and directs the activities of a

- substance abuse professional in the role of an applicant supervisor or a practice supervisor as set out in G.S. 90-113.31A. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation of approved supervisor pursuant to Rule .0211 of this Chapter by completing its academic, didactic, and experiential requirements.
- (4) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems, and needs for the development of a treatment or service plan for a substance use disorder.
- (5) "Clinical application" means the assumption of professional and ethical responsibilities in the form of clinical supervision defined in Item (7) of this Rule in a clinical setting for 300 hours as well as the utilization of practice dimensions that include:
- (a) clinical evaluation;
 - (b) treatment planning;
 - (c) referral;
 - (d) service coordination;
 - (e) counseling;
 - (f) education for the individual client, family or community; and
 - (g) documentation.
- (6) "Clinical setting" means a location where the primary purpose is the delivery of behavioral health care to clients, patients, and consumers.
- (7) "Clinical supervision" means clinical oversight required for all credentials with 50 percent clinical supervision that shall accrue in person and face-to-face while in the same room: the balance of this requirement may be fulfilled electronically via video, face-to-face, if performed in real time.
- (8) "Clinical supervision specific education" means training that covers the aspects of clinical supervision of a substance abuse professional or any of the Twelve Core Functions in their clinical application.
- (9) "Client" means an individual who is in receipt of substance abuse counseling.
- (10) "Complainant" means a person who has filed a complaint pursuant to these Rules.
- (11) "Consultation" means a meeting for discussion, decision-making, and planning with other service providers for the purpose of providing substance abuse services.
- (12) "Crisis" means a radical change of status event in the course of treatment related to alcohol or drug use that threatens to compromise or destroy the rehabilitation effort.
- (13) "Deemed status group" means those persons who are credentialed as clinical addictions specialists because of their membership in a deemed status as defined in G.S. 90-113.31A(15).
- (14) "Education" means a service that is designed to inform and teach various groups including clients, families, schools, businesses, churches, industries, civic, and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (15) "Full-time" means 2,000 hours of substance abuse professional experience per year.
- (16) "General professional skill building" means education provided to enhance the general skills of a substance abuse professional.
- (17) "Hearing panel" means members of a committee designated by the chairperson of the committee to conduct an informal hearing to determine whether the applicant meets the standards required to be maintained for or awarded a credential.
- (18) "Impairment" means a mental illness, substance abuse, chemical dependency, or physical illness.
- (19) "Letter of reference" means a letter that recommends a person for certification.
- (20) "Membership in good standing" means a member's credential is not in a state of revocation, lapse, or suspension. However, an individual whose credential is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- (21) "Passing score" means the score set and provided by the entity administering the exam.
- (22) "Person served" means an individual who is not a client but is in receipt of substance abuse prevention counseling.
- (23) "Personal service" means the delivery of a document into the hands of the person to whom it is addressed.
- (24) "President" means the President of the Board.
- (25) "Prevention consultation" means a service provided to other mental health, human service, community planning, development organization, or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention of alcohol and drug abuse.
- (26) "Prevention performance domains" means areas of professional activities to include:
- (a) planning and evaluations;
 - (b) education and skill development;
 - (c) community organization;
 - (d) public and organizational policy; and

- (e) professional growth and responsibility.
- (27) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual in utilizing the support systems and community resources available to transfer services.
- (28) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- (29) "Reinstatement" means an action where the Board restores registration, certification, or licensure to an applicant after the applicant completes the requirements imposed by the Board.
- (30) "Relapse" means a return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's return to the pattern of substance abuse or a re-appearance or exacerbation of physical, psychological, or emotional symptoms of impairment.
- (31) "Renewal" means an action by the Board granting a substance abuse professional a consecutive registration, certification, or licensure based upon the completion of requirements for renewal as prescribed by statute and the rules of the Board.
- (32) "Revival" means an action by the Board granting a substance abuse professional a registration, certification, or licensure following a lapse of registration, certification, or licensure wherein the professional must also meet the requirements for renewal.
- (33) "Reprimand" means a written warning from the Board to a person making application for certification or licensure by the Board or registered, certified, or licensed by the Board.
- (34) "Respondent" means a person who is making application for registration, certification, or licensure by the Board or is registered, certified, or licensed by the Board against whom a complaint has been filed.
- (35) "Sexual activity" or "sexual contact" means:
- (a) Contact between the penis and the vulva or the penis and the anus;
 - (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - (c) The penetration, however slight, of the anal or genital opening of another by a hand, finger, or any object with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person;
 - (d) Vaginal intercourse, cunnilingus, fellatio, or anal intercourse, if initiated, agreed to, or not resisted by the substance abuse professional; or
- (e) Kissing or the intentional touching of the other's lips, genital area, groin, inner thigh, buttocks, breasts, or any other body parts, as well as the clothing covering any of these body parts for the purpose of sexual stimulation or gratification of either the substance abuse professional or the client if initiated or agreed to or not resisted by the substance abuse professional.
- (36) "Substance abuse counseling experience " means approved supervised experience that may be full-time, part-time, paid or voluntary, and shall include all of the Twelve Core Functions as set forth in Rule .0204 of this Chapter as documented by a job description and a supervisor's evaluation.
- (37) "Substance abuse prevention consultant experience" means approved supervised experience that may be full-time, part-time, paid or voluntary, and shall include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- (38) "Substance abuse specific" means education focused upon alcohol and other drugs and the substance abusing population and is provided for a substance abuse professional by an individual whose education and experience is in the field of alcohol and other drugs.
- (39) "Supervised practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.
- (40) "Supervisor of record" means the substance abuse professional primarily responsible for providing applicant or practice supervision to a supervisee.
- (41) "Suspension" means a loss of registration, certification, or licensure by a substance abuse professional or the privilege of making application for registration, certification, or licensure by an applicant for one of these credentials.

History Note: Authority G.S. 90-113.30; 90-113.31A; 90-113.31B; 90-113.33; 90-113.40; 90-113.41; 90-113.41A; Eff. August 1, 1996; Temporary Amendment Eff. November 15, 1997; Amended Eff. August 1, 2015; January 1, 2014; June 1, 2011; April 1, 2011; April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

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

(a) An applicant for a substance abuse credential by endorsement or reciprocity based on military service shall have his or her training honored automatically pursuant to the standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated. The applicant shall apply for a credential by using the Board's credentialing software, Learning Builder, and submit to the Board:

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

(b) All information required shall be received by the Board office.

(c) All applicants shall submit to the Board an electronic copy of the applicant's fingerprints as described on the Board's website.

History Note: Authority G.S. 90-113.31A(14); 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1; Eff. August 1, 2015.

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

(a) An applicant for a substance abuse credential by endorsement or reciprocity based on the applicant's status as a military spouse shall have his or her training honored automatically pursuant to the standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated. The applicant shall apply for a credential by using the Board's credentialing software, Learning Builder, and submit to the Board:

- (1) a reciprocity application form prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and provided by the Board as found at its website: <http://www.ncsappb.org>

- (2) that shall be found accompanying the reciprocity information on the website;
- (2) the application fee required by rule applicable to the specific credential as set forth in this Chapter;
- (3) written evidence demonstrating that the applicant is married to an active member of the U.S. military and that such applicant:
 - (A) holds a current substance abuse credential from another jurisdiction whose standards for the credential are substantially equivalent to or greater than those required for the credential described in G.S. 90, Article 5C, this Chapter, and is the subject of the application; and
 - (B) has engaged in practice as a substance abuse professional demonstrating the scope of practice as defined by G.S. 90-113.31B for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of an act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required shall be received by the Board office.

(c) All applicants shall submit to the Board an electronic copy of the applicant's fingerprints as described on the Board's website.

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

Eff. August 1, 2015.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01H .1001 EXEMPT PRIORITY REEMPLOYMENT CONSIDERATION – POLICY AND SCOPE

(a) The rules in this Section apply to employees hired on or before August 20, 2013 and removed from:

- (1) Exempt policymaking positions for reasons other than just cause; and
- (2) Exempt managerial positions for reasons other than just cause.

(b) A career State employee as defined in G.S. 126-1.1 with less than 10 years cumulative service in subject positions prior to placement in an exempt policymaking or exempt managerial position, who is removed from an exempt policymaking or exempt managerial position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment priority shall be exercised by the employee in writing on the application for employment within one year following the date of

the employee's separation. The employee shall be offered any available subject position for which the employee has applied and is qualified as set forth in the job vacancy announcement when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt policymaking or exempt managerial position unless an offer has been made to, and accepted by, a person qualified for mandated reassignment under G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.

(c) A career State employee as defined in G.S. 126-1.1 who had more than 2 but less than 10 years of cumulative service in a subject position who moves from one exempt policymaking or exempt managerial position to another exempt policymaking or exempt managerial position without a break in service, who is removed from the last exempt position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment priority shall be exercised by the employee within one year following the date of the employee's separation. The employee shall be offered any available subject position for which the employee has applied and is qualified as set forth in the job vacancy announcement, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position unless an offer has been accepted by a person qualified for mandated reassignment under G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.

(d) The reemployment priority considerations described in Paragraphs (b) and (c) of this Rule shall expire when an employee refuses an interview or offer for a position for which the employee has applied, regardless of the position's salary grade (or salary grade equivalency), or when an employee accepts a position with the State for which he or she has applied.

(e) If an employee does not receive notice as described in Rule .0630(b) of this Subchapter, the employee shall remain subject to the State Human Resources Act until 10 working days after the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from the position designated as exempt, the employee shall receive reemployment priority consideration to a position at the same salary grade (or salary grade equivalency) as the most recent subject position.

History Note: Authority G.S. 126-1.1; 126-5; Eff. March 1, 1987; Amended Eff. June 1, 1994; June 1, 1992; November 1, 1988; Recodified from 25 NCAC 01D .0512 Eff. December 29, 2003; Amended Eff. February 1, 2007; Temporary Amendment Eff. May 23, 2014; Temporary Amendment Expired March 13, 2015; Amended Eff. August 1, 2015.

25 NCAC 01H .1003 AGENCY RESPONSIBILITIES

The employing agency shall inform the employee in writing of the priority reemployment consideration to be afforded by Rule .1001(b) and (c) of this Section no later than the time of separation.

History Note: Authority G.S. 126-4(4); 126-5; Eff. February 1, 2007; Amended Eff. August 1, 2015; November 1, 2011.

25 NCAC 01H .1004 OFFICE OF STATE HUMAN RESOURCES RESPONSIBILITIES

25 NCAC 01H .1005 MANDATORY RIGHT TO A POSITION

History Note: Authority G.S. 126-1.1; 126-4(6),(10); 126-5; Eff. February 1, 2007; Amended Eff. November 1, 2011; Repealed Eff. August 1, 2015.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission September 17, 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
Jason Thomas (919)431-3081

RULES REVIEW COMMISSION MEETING DATES

September 17, 2015 October 15, 2015
November 19, 2015 December 17, 2015

AGENDA

**RULES REVIEW COMMISSION
THURSDAY, SEPTEMBER 17, 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. Veterans Affairs Commission – 01 NCAC 26B .0104, .0105, .0106 (Thomas)
 - B. Environmental Management Commission – 15A NCAC 02B .0295 (Reeder)
 - C. Board of Electrolysis Examiners – 21 NCAC 19 .0501, .0701 (Reeder)
 - D. Board of Massage and Bodywork Therapy – 21 NCAC 30 .0201, .0701, .0702, .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015 (May)
 - E. Building Code Council – 2011 NC Electrical Code – 300.9 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between July 21, 2015 and August 20, 2015
 - Child Care Commission (Thomas)
 - DHHS/Division of Health Service Regulation (May)
 - Radiation Protection Commission (Hammond)
 - Commission for Public Health (Thomas)
 - Private Protective Services Board (Thomas)
 - Wildlife Resources Commission (Thomas)
 - Property Tax Commission (Hammond)
 - Board of Architecture (Thomas)
 - Board of Examiners for Nursing Home Administrators (Reeder)
- V. Existing Rules Review
 - Review of Reports
 - 1. 04 NCAC 15 – Commission of Navigation Pilotage for the Cape Fear River and Bar (Hammond)
 - 2. 10A NCAC 63 – DHHS/Division of Services for the Blind (Reeder)

3. 15A NCAC 18C – Commission for Public Health (Thomas)

- VI. Commission Business
- Legislative Update
 - Next meeting: Thursday, October 15, 2015

**Commission Review
Log of Permanent Rule Filings
July 21, 2015 through August 20, 2015**

CHILD CARE COMMISSION

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

<u>License</u> Amend/*	10A NCAC 09 .2902
<u>Staff Qualifications</u> Amend/*	10A NCAC 09 .2903

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Subchapter 14E concern certifications of Clinics for Abortion including certification procedure (.0100); minimum standards for construction and equipment (.0200); governing authority (.0300); and medical staff (.0400).

<u>Definitions</u> Amend/*	10A NCAC 14E .0101
<u>Plans</u> Amend/*	10A NCAC 14E .0104
<u>Renewal</u> Amend/*	10A NCAC 14E .0109
<u>Inspections</u> Amend/*	10A NCAC 14E .0111
<u>Building Code Requirements</u> Amend/*	10A NCAC 14E .0201
<u>Sanitation</u> Amend/*	10A NCAC 14E .0202
<u>Elements and Equipment</u> Amend/*	10A NCAC 14E .0206
<u>Area Requirements</u> Amend/*	10A NCAC 14E .0207
<u>Governing Authority</u> Amend/*	10A NCAC 14E .0302

<u>Policies and Procedures and Administrative Records</u> Amend/*	10A NCAC 14E .0303
<u>Admission and Discharge</u> Amend/*	10A NCAC 14E .0304
<u>Medical Records</u> Amend/*	10A NCAC 14E .0305
<u>Personnel Records</u> Amend/*	10A NCAC 14E .0306
<u>Nursing Service</u> Amend/*	10A NCAC 14E .0307
<u>Quality Assurance</u> Adopt/*	10A NCAC 14E .0308
<u>Laboratory Services</u> Amend/*	10A NCAC 14E .0309
<u>Emergency Back-Up Services</u> Amend/*	10A NCAC 14E .0310
<u>Surgical Services</u> Amend/*	10A NCAC 14E .0311
<u>Post-Operative Care</u> Amend/*	10A NCAC 14E .0313
<u>Housekeeping</u> Amend/*	10A NCAC 14E .0315

RADIATION PROTECTION COMMISSION

The rules in Chapter 15 are from the Radiation Protection Commission and include general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); x-rays in the healing arts (.0600); use of radioactive sources in the healing arts (.0700); requirements for analytical x-ray equipment (.0800); requirements for particle accelerators (.0900); notices, instructions, reports and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); requirements for wire-line service operators and subsurface-tracer studies (.1300); tanning facilities (.1400); licenses for disposal site access (.1500); and standards for protections against radiation (.1600).

<u>Definitions</u> Amend/*	10A NCAC 15 .0502
<u>Radiation Machines</u> Repeal/*	10A NCAC 15 .0518
<u>Purpose and Scope</u> Amend/*	10A NCAC 15 .0801
<u>Definitions</u> Amend/*	10A NCAC 15 .0802
<u>Equipment Requirements</u> Amend/*	10A NCAC 15 .0803
<u>Area Requirements</u> Amend/*	10A NCAC 15 .0804
<u>Operating Requirements</u> Amend/*	10A NCAC 15 .0805
<u>Personnel Requirements</u> Amend/*	10A NCAC 15 .0806
<u>Permanent Radiographic Installation and Industrial Radiop...</u> Adopt/*	10A NCAC 15 .0807

Applicable Rules for Bomb Detection RGDS 10A NCAC 15 .0808
 Adopt/*

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

Reportable Diseases and Conditions 10A NCAC 41A .0101
 Amend/*

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Chapter 16 are from the Private Protective Services Board and cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator: electronic countermeasures (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); continuing education (.1300); and armed armored car service guards firearm registration permit (.1400).

Purpose 14B NCAC 16 .0101
 Amend/*

Training Requirements for Armed Security Guards 14B NCAC 16 .0807
 Amend/*

Requirements for Firearms Trainer Certificate 14B NCAC 16 .0901
 Amend/*

Renewal of a Firearms Trainer Certificate 14B NCAC 16 .0904
 Amend/*

Unarmed Trainer Certificate 14B NCAC 16 .0909
 Amend/*

Training Requirements for Armed Armored Car Service Guards 14B NCAC 16 .1407
 Amend/*

WILDLIFE RESOURCES COMMISSION

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

Mecklenburg and Gaston Counties 15A NCAC 10F .0333
 Amend/*

PROPERTY TAX COMMISSION

The rules in Chapter 11 concern the property tax commission including the organization of the commission (.0100); and appeals to the commission (.0200).

<u>Legal Representation Before the Commission</u> Amend/*	17	NCAC	11	.0216
<u>Appearance at Hearing Required</u> Amend/*	17	NCAC	11	.0217

ARCHITECTURE, BOARD OF

The rules in Chapter 2 are from the Board of Architecture and include general provisions (.0100); practice of architecture (.0200); examination procedures (.0300); rules, petitions, and hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600); administrative hearings: decisions and related rights (.0700); judicial review (.0800); and continuing education (.0900).

<u>Subpoenas</u> Readopt/*	21	NCAC	02	.0703
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NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS FOR

The rules in Subchapter 37D concern new licenses including general provisions (.0100); application for license (.0200); education, experience, and required course (.0300); administrators in training (.0400); preceptors (.0500); national exam (.0600); and state exam (.0700).

<u>Initial Licensure Fee</u> Readopt/*	21	NCAC	37D	.0202
<u>Required Course</u> Readopt/*	21	NCAC	37D	.0303
<u>Application to Become Administrator-In-Training</u> Readopt/*	21	NCAC	37D	.0402
<u>Administrator-In-Training Selection of Preceptor</u> Readopt/*	21	NCAC	37D	.0404
<u>National Exam Application</u> Readopt/*	21	NCAC	37D	.0602
<u>State Examination Administration</u> Readopt/*	21	NCAC	37D	.0703

The rules in Subchapter 37E concern applications for reciprocity/endorsement.

<u>Application Process</u> Readopt/*	21	NCAC	37E	.0101
<u>Application Contents</u> Readopt/*	21	NCAC	37E	.0102

The rules in Subchapter 37F concern temporary license requirements.

<u>Issuance of Temporary License</u> Readopt/*	21	NCAC	37F	.0102
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The rules in 37G concern renewal requirements (.0100); inactive licenses (.0200); reinstatement (.0300); and duplicate licenses (.0400).

<u>Renewal Fee</u> Readopt/*	21	NCAC	37G	.0102
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RULES REVIEW COMMISSION

<u>Inactive Requirements</u> Readopt /*	21	NCAC 37G .0201
<u>Duplicate License Requirements</u> Readopt/*	21	NCAC 37G .0401

The rules in Subchapter 37H concern continuing education requirements.

<u>Continuing Education Programs of Study</u> Readopt/*	21	NCAC 37H .0102
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CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May

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

J. Randolph Ward

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
The Geube Group, Michael K Grant Sr v. Alcoholic Beverage Control Commission	14 ABC 08696	02/16/15	
Alcoholic Beverage Control Commission v. Bhavesh Corp T/A K and B Foodmart	14 ABC 09023	02/04/15	
Alcoholic Beverage Control Commission v. Greenleaf Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
<u>BOARD OF ARCHITECTURE</u>			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77
<u>BOARD OF BARBER EXAMINERS</u>			
Arthur Donald Darby Jr v. Board of Barber Examiners - Staff	14 BBE 04565	12/05/14	
<u>BOARD OF FUNERAL SERVICES</u>			
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 05389	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 07597	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 08028	02/23/15	
<u>DEPARTMENT OF COMMERCE</u>			
Hog Slat, Inc v. Department of Commerce	13 COM 20122	12/05/14	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Kimberly H. Oliver v. Victims Compensation Commission	13 CPS 14371	04/17/15	30:03 NCR 354
Jose Guadalupe Munoz Nunez v. Victims Compensation Commission	14 CPS 02633	02/16/15	
Jack Norris v. Victims Compensation Commission	14 CPS 06019	03/30/15	30:01 NCR 89
Yessika Murga Martinez v. Crime Victims Compensation Commission	14 CPS 07544	05/29/15	

CONTESTED CASE DECISIONS

Joanne Sanon v. Department of Public Safety	14 CPS 07995	01/16/15	
Bonnie Hall v. Crime Victims Compensation Commission	14 CPS 08618	01/23/15	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Strategic Interventions Inc. v. Western Highlands Network A LME-MCO	13 DHR 05119	06/21/13	
Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	05/04/15	30:03 NCR 360
Joyce Carol Hunter v. DHHS, Division of Health Service Regulation	13 DHR 17855	01/03/14	
Rex Hospital v. DHHS, Division of Medical Assistance	13 DHR 18151	05/29/15	30:03 NCR 372
Paul M Stella v. DHHS, Division of Public Health	13 DHR 19269	02/06/14	
UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance	13 DHR 19653	05/29/15	30:03 NCR 387
UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance	13 DHR 19654	05/29/15	30:03 NCR 387
A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation	13 DHR 19835	05/22/15	
Stepping Stone Counseling v. NCDHHS, Division of Medical Assistance	13 DHR 19837	05/12/15	
Carolina Community Support Services, Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01500	04/02/15	30:04 NCR 480
Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01503	04/02/15	30:01 NCR 97
Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01594	04/02/15	30:01 NCR 133
Regina Joyner v. Division of Child Development and Early Education, DHHS	14 DHR 04463	12/10/14	
Cumberland County Hospital System, Inc d/b/a Cape Fear Valley Health System and Hoke Healthcare LLC v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section	14 DHR 04692	01/21/15	
Bio-Medical Applications of NC, Inc d/b/a BMA Rocky Mount v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care Inc d/b/a Nash County Dialysis	14 DHR 05495	03/26/15	30:02 NCR 196
Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 05566	03/10/15	30:02 NCR 229
First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation	14 DHR 06332	02/12/15	
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FILED

STATE OF NORTH CAROLINA
COUNTY OF STANLY

2015 FEB 23 PM 12:45

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 OSP 07837

JOSEPH TENHAGEN,
Petitioner,

v.

N C DEPARTMENT OF PUBLIC SAFETY,
EMPLOYEE ADVISORY COMMITTEE
Respondent.

OFFICE OF
ADMINISTRATIVE HEARINGS

FINAL DECISION

The contested case of Joseph Tenhagen, Petitioner herein, was heard before Administrative Law Judge Selina M. Brooks on February 5, 2015, in Mecklenburg County, North Carolina.

APPEARANCES

PETITIONER: Clark D. Tew
HOMESLEY & WINGO LAW GROUP, PLLC
330 South Main Street
 Mooresville, NC 28115

RESPONDENT: Tamika L. Henderson
Assistant Attorneys General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27609

WITNESSES

The following witness testified for the Petitioner:

Joseph Tenhagen

The follow witnesses testified for the Respondent:

Joseph Tenhagen

Vicky Lynn Stone
Jack Richard Haridister, Jr.
Lawrence Parsons
Todd Wayne Pinion

EXHIBITS

Petitioner's exhibits ("P. Exs.") 1-10 and 12 were admitted into evidence.

Respondent's exhibits ("R. Exs.") 1-4 and 6-17 were admitted into evidence.

PARTY REPRESENTATIVES

The Petitioner's party representative was Petitioner, Joseph Tenhagen.

The Respondent's party representative was Lawrence Parsons.

ISSUES

Whether Respondent had just cause to dismiss Petitioner?

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

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

FINDINGS OF FACT

1. Petitioner commenced his employment with the North Carolina Department of Public Safety ("NCDPS") in 2006 as a Correctional Officer. (R.Ex.6;Tr.pp.13-14).
2. Petitioner attended Basic Training and was trained annually thereafter regarding NCDPS policies and procedures. (Tr.p.14).
3. On or about January 10, 2014 Petitioner was employed as a Correctional Officer at Albemarle Correctional Institution ("Albemarle"). (R.Ex.6;Tr.p.14).

3

4. On January 10, 2014 Petitioner had four active written warnings. Petitioner received a written warning on February 25, 2011 for Grossly Inefficient Job Performance for failing to remain alert on his work post. (R.Ex.1;Tr.pp.15-16). Petitioner received a second written warning on February 20, 2012 for Unacceptable Personal Conduct for calling a co-worker a name that the co-worker perceived as offensive. (R.Ex.2;Tr.pp.18). Petitioner received a third written warning on March 14, 2013 for Grossly Inefficient Job Performance for not remaining on his work post. (R.Ex.3; Tr.pp.18-19).Petitioner received a fourth written warning on January 9, 2014 for Unacceptable Personal Conduct for horseplay. (R.Ex.4;Tr.p.21).

5. When Petitioner began working as a Correctional Officer at Albemarle, Vickie Stone also was a Correctional Officer, the same rank as Petitioner. In 2013, both Petitioner and coworker Vickie Stone applied for a Correctional Sergeant position. Ms. Stone was promoted to the higher rank of Correctional Sergeant and Petitioner remained in the lower rank of Correctional Officer. (Tr.pp.85-86).

6. On January 10, 2014, Petitioner was assigned to Perimeter Patrol duty. A Correctional Officer assigned to Perimeter Patrol duty is responsible for patrolling the outer perimeter of the prison to protect against escape attempts, contraband or assault attempts. Petitioner concedes that it is an important post that affects prison security. (R.Ex.12-13; Tr.pp.23-24;104).

7. Petitioner was trained on and understood Albemarle's Standard Operating Procedures regarding Security and Control, Perimeter Security, and Perimeter Patrol Officers. (R.Ex.14;Tr.pp.24-26).

8. Albemarle's Standard Operating Procedures regarding Perimeter Security provide that a Perimeter Patrol Officer needing relief contacts the Gatehouse Officer to arrange relief. The policy provides that relief will be coordinated by the Sergeant assigned to the post of Master Control and Gatehouse and the Perimeter Patrol Officer will not stop the vehicle until relief is present. (R.Ex.12).

9. On January 10, 2014, when Petitioner was assigned to Perimeter Patrol Duty he was under the command of Sergeant Stone. (Tr.pp. 27).

10. At some point during his patrol duty, Petitioner stopped the vehicle in which he was patrolling in order to ascertain whether or not anyone was available to relieve him. (Tr.pp.30,53). Sergeant Stone saw Petitioner stop his vehicle and ordered him to continue to patrol. (R.Ex.6,p.00170;Tr.pp.72-73). It was a very foggy night which creates a security risk and Sergeant Stone wanted continuous roving. (Tr.pp.104-106). Petitioner became irate and yelled at Sergeant Stone that he had been patrolling for two hours and it was time for him to be relieved. (R.Ex.6;Tr.pp.108-109,115-116). In a written statement, Petitioner states that "I told her that my fucking relief was coming out the door." (R.Ex.6,p.000171)

11. Although Petitioner denies using profanity during this exchange, Petitioner testified

that “I told her my friggin’ relief was coming out the front door right now.” He concedes that this language is derogatory. (Tr.p.231).

12. Sergeant Stone and Correctional Officer Jack Hardister heard Petitioner use profanity during this exchange. (R.Ex.6,pp.159,186;Tr.pp.109-110,156).

13. The Undersigned finds as fact that Petitioner directed profanity toward a superior officer during this exchange.

14. Petitioner concedes that he disobeyed Sergeant Stone’s initial order for him to continue to patrol. (Tr.pp.29,55).

15. Sergeant Stone gave Petitioner another direct order to get back in his vehicle and patrol until he was called to be relieved. After being directed again, Petitioner did continue to patrol.

16. The Undersigned finds as fact that Petitioner willfully failed to follow a clear oral directive given by his superior officer.

17. NCDPS is a para-military organization which operates on a chain of command; the operation and safety of the prison is dependent upon employees following directives. (Tr.pp.192).

18. Petitioner testified that he can question an order of a superior officer if he believes that his superior officer does not have all of the relevant information. (Tr.pp.255-57,269).

19. Petitioner testified that he does have the authority to override a sergeant’s orders. (Tr.p.270).

20. On January 11, 2014, Petitioner was working in Albemarle’s master control room which controls entrances and exits to the prison, including the master control room. It is possible to enter and exit the master control room only if the officer “buzzes” you in or out. (Tr.pp.33-34).

21. Sergeant Stone came to the master control room to discuss Petitioner’s behavior from the previous day with him and that disobeying her orders was not acceptable.

22. Petitioner testified that he told Sergeant Stone that “she didn’t have to fucking micro-manage a bunch of adults.” (R.Ex.6,p.000165;T.pp.35,239-240).

23. At that point, Sergeant Stone said that she was done with the conversation and asked that Petitioner buzz her out. Initially, Petitioner did not buzz her out. Sergeant Stone had to give Petitioner a direct order more than once before he obeyed her command to let her out of the master control room. (Tr.pp.36-37,110-113).

24. Although he describes the incident differently, Petitioner testified that he recalls Sergeant Stone asking him twice before he buzzed her out the door. (Tr.pp.241-243)

25. The Undersigned finds as fact that Petitioner willfully delayed following a clear oral directive given by his superior officer.

26. Petitioner admits to stating that unless he committed a felony, NCDPS couldn't do anything to him because he had an open workers compensation claim. (R.Ex.6,p.000173; Tr.pp.39-40).

27. The Undersigned finds as fact that Petitioner believed that he could behave inappropriately at work without consequence.

28. NCDPS's Professional Standards Office conducted an investigation into Petitioner's conduct and submitted a report to NCDPS management. (R.Ex.6).

29. Petitioner was timely provided notice of a predisciplinary conference which was held on April 15, 2014. (R.Exs.7&10;Tr.pp.41-42). Petitioner was given the opportunity to speak and submit a written statement in which he admits to saying "freaking gatehouse" to Sergeant Stone on January 10 and to saying "one curse word during the conversation" with Sergeant Stone on January 11. He claims that he did not intend to be disrespectful, but "it was just one of those cases where the mouth works before the brain really gets moving." (R.Ex.8,p.125)

30. In January 2014, Todd Pinion was employed by NCDPS as the Regional Director of the Piedmont Region. In that position, he had oversight of twelve prison facilities including Albemarle. (Tr.pp. 188-189.)

31. Regional Director Pinion received and reviewed the Investigation report and consulted with his superiors at NCDPS prior to imposing discipline on Petitioner. He also considered the information Petitioner provided to DPS during his pre-disciplinary conference, the statements Petitioner made to DPS during the internal investigation, and the statements of other employees gathered during the internal investigation. (Tr.pp.190-191). In deciding on the level of discipline to impose on Petitioner, he considered Petitioner's years of service and his active written warnings. (Tr.pp.191).

32. Petitioner was dismissed on June 5, 2014 for Unacceptable Personal Conduct as defined as insubordination, the willful violation of know or written work rules, conduct unbecoming a State employee that is detrimental to State service, and conduct for which no reasonable person should expect to receive prior warning. (R.Ex.11).

33. Petitioner appealed his dismissal to the Employee Advisory Committee and gave a written statement in which Petitioner stated that in the incident on January 10, he told Sergeant Stone "that my relief was coming out the freaking door" and that on January 11 he told her that "she was fucking micro-managing." (R.Ex.15).

34. The Employee Advisory Committee affirmed Petitioner's dismissal in a Final Agency Decision entered on September 3, 2014. (R.Ex.16;T.p.49).

CONCLUSIONS OF LAW

1. All parties are properly before this Administrative Law Judge and jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Petitioner was continuously employed as a State employee since 2006. At the time of his dismissal, he was a Career State Employee entitled to the protections of the North Carolina State Personnel Act (N.C. Gen. Stat. § 126-1 *et seq.*), and specifically the just cause provision of N.C. Gen. Stat. §126-35.

3. Because Petitioner has alleged that Respondent lacked just cause for his dismissal, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue the final decision in this matter.

4. Pursuant to N.C. Gen. Stat. § 126-35(d), in an appeal of a disciplinary action, the employer bears the burden of proving that "just cause" existed for the disciplinary action.

5. To demonstrate just cause, a State employer may show "unacceptable personal conduct" 25 N.C.A.C. 1J.0604(b)(2) or "grossly inefficient job performance" 25 NCAC 1J.0606.

6. The dismissal letter specified that the Petitioner was being dismissed for Unacceptable Personal Conduct.

7. Respondent complied with the procedural requirements for dismissal for unacceptable personal conduct pursuant to 25 N.C.A.C. 01J .0613.

8. An employer may discipline an employee for just cause based upon one instance of unacceptable personal conduct. 25 N.C.A. 1J.0604(b).

9. Section 126-35 does not define "just cause", "however the words are to be accorded their ordinary meaning." *Amanini v. Dep't of Human Resources*, 114 N.C. App. 668, 678 – 679, 443 S.E.2d 114, 120 (1994) (defining "just cause" as, among other things, good and adequate reason).

10. Just cause is a "flexible concept embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case." *NC Dep't. of Env't & Natural Res. V. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004). A determination of whether disciplinary action taken was "just" requires "an irreducible act of

judgment that cannot always be satisfied by the mechanical application of rules and regulations.”
Id.

11. The North Carolina Court of Appeals articulated a three-part “analytical approach” for determining where there is just cause for discipline, to wit: “...first determine whether the employee engaged in the conduct the employer alleges ... the second inquiry is whether the employee’s conduct falls within one of the categories of unacceptable personal conduct provided in the Administrative Code; ... [and third] If the employee’s act qualifies as a type of unacceptable personal conduct ... whether that misconduct amounted to just cause for the disciplinary action taken. Just cause must be determined based upon an examination of the facts and circumstances of each individual case.” *Warren v. North Carolina Dep’t of Crime Control & Public Safety, N. Carolina Highway Patrol*, 221 N.C. App. 376, 383, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) review denied, 735 S.E.2d 175 (N.C. 2012).

Did Petitioner engage in the conduct as alleged?

12. The preponderance of the evidence shows that Petitioner engaged in the conduct alleged by Respondent. He admitted that he did not obey a direct command from his supervisor on January 10, 2014 when she ordered him to continue to patrol the perimeter of the prison. Likewise, he did not obey a direct command from his supervisor on January 11, 2014 when she ordered him to buzz her out of Master Control.

13. The preponderance of the evidence also demonstrates that Petitioner used profane language when talking with his supervisor on both January 10 and January 11, 2014.

Does Petitioner’s conduct fall into one of the categories of unacceptable personal conduct?

14. NCDPS dismissed Petitioner for conduct unbecoming a State Employee that is detrimental to State service, conduct for which no reasonable person should expect to receive prior written warning, and for insubordination.

15. The next step in the *Warren* analytical process is whether the behavior falls into one of the categories of unacceptable personal conduct as defined by 25 N.C.A.C. 1J.0614(1) such as:

- (a) conduct for which no reasonable person should expect to receive prior warning;
- (b) the willful violation of known or written work rules;
- (c) conduct unbecoming a state employee that is detrimental to state service.

16. Any one of the types of unacceptable personal conduct identified above is sufficient to constitute just cause.

17. “The State Employee's Handbook defines insubordination as the refusal to accept a reasonable and proper assignment from an authorized supervisor.” *Mendenhall v. Department of Human Resources*, 119 N.C. App. 644, 651 (1995); and see *Employment Security Commission v. Lachman*, 305 N.C. 492, 506, 290 S.E.2d 616, 624–625 (1982); 25 NCAC 01J.0614(7). The refusal which is the basis of the offense must be a willful refusal, *Id.*, *Kandler v. Department of Correction*, 80 N.C.App. 444, 451, 342 S.E.2d 910, 914 (1986), and the reasonableness of the assignment must be determined in light of the relative circumstances existing at the time of the incident, *Lachman*, 305 N.C. at 506, 290 S.E.2d at 624–625, and in light of the employee's reasonable perception of those circumstances. *Kandler*, 80 N.C.App. at 451. What constitutes a “reasonable” action by Petitioner is necessarily a subjective determination. See, e.g., *Mendenhall*, 119 N.C. App. At 651. Therefore, insubordination involves two elements: (1) A reasonable and proper assignment by an authorized supervisor; and (2) A willful or intentional refusal to comply with such instruction or assignment.

18. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior written warning. 25 NCAC 01J.0614(7).

19. Sergeant Stone had the authority to direct Petitioner to continue to patrol the perimeter of the prison. The directive was reasonable and proper under the circumstances, and Petitioner willfully refused to comply with Sergeant Stone’s instructions. Petitioner’s refusal was not reasonable.

20. Sergeant Stone had the authority and it was within her appropriate job duties to counsel Petitioner regarding his insubordination on January 10, 2014. It was also reasonable for Sergeant Stone to end the conversation when Petitioner directed profanity toward her and to order Petitioner to buzz her out of the master control room. Petitioner willfully refused to comply with Sergeant Stone’s instructions. Petitioner’s refusal was not reasonable and it is of no consequence that Petitioner eventually complied.

21. The Petitioner’s conduct as found herein on January 10 and January 11 constitutes insubordination.

22. Petitioner’s insubordination and directing profanity toward his supervisor constitutes conduct unbecoming a State Employee that is detrimental to State service and conduct for which no reasonable person should expect to receive prior written warning.

Did Petitioner’s misconduct constitute just cause for dismissal?

23. Respondent had four active written warnings at the time of his conduct. See 25 NCAC 01J.0614(6)(c). Respondent properly considered Petitioner’s active written warnings when ascertaining the level of discipline.

24. Respondent could have properly been dismissed for his insubordination on January 10 and January 11 without prior written warning. 25 NCAC 01J.0614(7).

25. Respondent met its burden of proof and established by substantial evidence in the record that it had just cause to dismiss Petitioner for unacceptable personal conduct for the reasons stated in the pre-disciplinary conference notice and the discharge letter.

On the basis of the above-noted Findings of Fact and Conclusions of Law, the Undersigned makes the following:

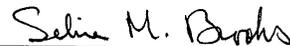
DECISION

The Undersigned affirms Respondent's decision to dismiss Petitioner in that Respondent had just cause for this disciplinary action pursuant to N.C. Gen. Stat. § 126-35.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statutes § 126-34.02(a): "An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing." In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this final decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this final decision.

This the 23rd day of March, 2015.



Selina M. Brooks
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
6/5/2015 9:24 AM

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ00052

Martin Luther Locklear Petitioner v. N C Criminal Justice Education And Training Standards Commission Respondent	PROPOSAL FOR DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward on March 16, 2015 in Fayetteville, North Carolina, upon Respondent's request, pursuant to N.C. General Statute § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case.

APPEARANCES

Petitioner: Daniel Locklear, Esq.
Attorney at Law
PO Box 1148
Lumberton, NC

Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC

ISSUE

Whether Petitioner committed the acts necessary to satisfy the elements of the misdemeanor offense of assault, by pointing a gun, such that Petitioner's Probation/Parole Certification is subject to suspension pursuant to 12 NCAC 09A .0204(a)?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. §14-34, 12 NCAC 09A .0204(a), 12 NCAC 09G.0102(9)(h),
12 NCAC 09G.0504(b)(3)&(c), 12 NCAC 09G.0505(b)(1)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: Respondent's Exhibits ("R. Exs.") 1-7

WITNESSES

For Petitioner: Officer Martin L. Locklear, Petitioner
 Mr. Larry Bozzo
 Trooper C.R. Thompson

For Respondent: Officer Martin L. Locklear, Petitioner

UPON DUE CONSIDERATION of the arguments of counsel; the documents and other exhibits admitted; and the sworn testimony of each of the witnesses, the undersigned makes the following Findings of Fact. In making these Findings of Fact, the undersigned Administrative Law Judge has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility including, but not limited to, their opportunity to see, hear, know, and recall relevant facts and occurrences; any interests they witnesses may have; and whether their testimony is reasonable, and consistent with other credible evidence. Upon assessing the greater weight of the evidence from the record as a whole, in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent North Carolina Criminal Justice Education and Training Standards Commission (hereinafter, "Respondent" or "the Commission") has authority granted under Chapter 17C of the N.C. General Statutes, and Title 12, Chapter 9G of the N.C. Administrative Code, to certify probation/parole officers and to revoke, suspend, or deny such certification. Upon Petitioner's appeal of the proposed suspension of his certification, on January 5, 2015, Respondent requested the designation of an Administrative Law Judge to preside at the hearing of this contested case.
2. Petitioner was awarded Probationary Probation/Parole Officer Certification by the Commission on November 13, 2013, and received General Probation/Parole Officer Certification on July 1, 2014. (R. Ex. 7)
3. Petitioner joined the Armed Forces in 1974, served two tours in Iraq, and remains active in the Reserves. He has been in the field of law enforcement since approximately 1986. Petitioner first served as a campus police officer in Raleigh. He began work with the Division of Prisons in 1988, supervising and transporting inmates. Petitioner then moved to probation/parole in 1997, where he served until becoming a surveillance officer in 2013. His most recent duty assignment is as a Judicial Services Coordinator, handling

intake in the courtroom immediately following sentencing. Petitioner has approximately 29 years of experience in the field of corrections and law enforcement.

4. On November 8, 2013, before going on duty, Petitioner drove his wife to Emporia, Virginia, where she planned to stay with her niece's children while their parents took a trip. Petitioner's intention was to go directly from Virginia to work at Adult Corrections in Robeson County, and he was carrying his duty weapon in his holster on his right hip. Petitioner was not in a uniform, but was carrying his identification as a probation/parole officer.
5. While traveling on I-95 South, Petitioner overtook a heavy commercial tractor trailer truck operated by Mr. Larry P. Bozzo. Mr. Bozzo had been driving trucks commercially for 43 years--since his teens--and was certified by the Department of Defense to carry high value, heavy military cargo, such as "Humvees" and jet engines. Mr. Bozzo was required to undergo a background check and security clearance before becoming authorized to transport this kind of equipment for the United States military, and he has no criminal history. At the time of the hearing, Mr. Bozzo had driven his truck for 12 years and nearly one million miles without a traffic ticket. On a typical trip, he would carry large steel I-beams north for Nucor Steel and a military load south. Following the September 11, 2001 terrorist attack on the World Trade Center in New York, he was given training in responding to an attack while transporting defense-related equipment. Mr. Bozzo has seven children, and the youngest, a nine-year-old, is still at home. On November 8, 2013, his defense load in Virginia had been canceled, but he was being paid for his trip south with an empty truck to pick up a load in Charleston.
6. Officer Locklear and Mr. Bozzo have each had admirable careers in their respective fields, have no history that suggest any tendency to outrageous conduct, and each gave testimony at the hearing concerning the events of November 8, 2013 that was facially credible, but utterly irreconcilable with the other's. The two men had never met prior to this date.
7. Petitioner testified that while traveling on I-95 South in his white Lincoln Town Car on November 8, 2013, he overtook Mr. Bozzo's tractor trailer in a section of the highway with two southbound lanes. As he was passing the truck in the left lane, Mr. Bozzo's truck started coming over into the left lane, almost sideswiping Petitioner's vehicle. Petitioner stated that he blew his horn to avoid being struck and accelerated to get out in front of the tractor trailer. Mr. Bozzo's rig then came over into the left lane, behind Petitioner, to get around a slower red truck that he had been behind in the right lane. Petitioner testified that while Mr. Bozzo's truck was directly behind him, a vehicle in front of him slowed down suddenly, requiring him to brake sharply, and causing him to look in his rearview mirror to see if the truck had slowed enough to avoid hitting him. Mr. Bozzo steered his truck into the right lane and came up beside Petitioner. According to his testimony, Petitioner then drove on towards his workplace uneventfully. He recalled being stopped by the Highway Patrol about 10 minutes later. Petitioner denies that he repeatedly hit the brakes while Mr. Bozzo's truck was behind him. He denies removing his duty firearm from its holster during this roadway encounter with Mr. Bozzo.

and denies ever pointing the firearm at Mr. Bozzo. He testified that while his Smith & Wesson "P 40" semiautomatic pistol was holstered, its grip and trigger guard remained visible.

8. When Petitioner overtook him, Mr. Bozzo was coming up behind a red truck that he thought had a governor that held its speed down to 62 mph. He testified that he did not hear Petitioner blow his horn, but that "you can't hear anything" in his truck. As Petitioner pulled even with the red truck, Mr. Bozzo moved over to the left lane behind him. Mr. Bozzo testified that Petitioner began slamming on his brakes in the left lane, forcing him to have to brake and/or change lanes, then sped up to get beside the red truck again, thus forming a rolling roadblock to keep Mr. Bozzo from getting by them. Mr. Bozzo testified that this happened "at least 10 times," and was not caused by a vehicle in front of the Petitioner. As this continued, Mr. Bozzo increased the distance between himself and Petitioner's vehicle.
9. Mr. Bozzo testified that he was able to contact the driver of the red truck by radio, and obtained his cooperation to break the roadblock. With Mr. Bozzo behind him in the right lane, the driver of the red truck pulled into the left lane in front of Petitioner after he hit his brakes, freeing Mr. Bozzo to pass Petitioner in the right lane. Mr. Bozzo testified that he looked down into the Lincoln as he pulled even with Petitioner, and that Petitioner had his service pistol in his right hand, and with his elbow resting on the armrest in the middle of the front seat, Petitioner was pointing the gun up at Mr. Bozzo. He described the gun to law officers that day as a black automatic, and testified that he knew it was automatic by the box-shaped muzzle of the gun.
10. In keeping with his Department of Defense training, Mr. Bozzo immediately slowed and pulled in behind Petitioner's vehicle, where it would be most difficult to shoot at him, and called 911. Although shaken by the incident, Mr. Bozzo remained within sight behind Petitioner until law enforcement arrived. Trooper C.R. Thompson of the North Carolina State Highway Patrol responded to the 911 call and pulled Petitioner over about 20 minutes after the call came in. Petitioner appeared to be calm, and Trooper Thompson did not perceive him as a threat. He testified that Petitioner identified himself as a probation/parole officer, and he saw the firearm holstered on his right side. The Trooper testified he could identify the pistol as an automatic from the shape of its exposed handle. Petitioner's firearm matched the description of the gun provided by Mr. Bozzo. However, Petitioner denied to the Trooper that he drew his duty weapon or pointed it at Mr. Bozzo. Trooper Thompson testified that Mr. Bozzo was upset and adamant that he wanted something be done about the assault.
11. Mr. Bozzo went before a magistrate following the November 8, 2013 incident, resulting in a criminal summons being issued against Petitioner for Assault by Pointing a Gun in violation of North Carolina General Statute § 14-34. Mr. Bozzo went to court each time the case was set for hearing, and on the third such occasion, the case was tried. Neither Trooper Thompson nor any other law enforcement officer responding to the incident testified. Petitioner's trial in Wilson County District Court, under the higher criminal standard of proof, resulted in a verdict of not guilty.

12. Petitioner was written up in a TAPS report for violating a policy of the North Carolina Division of Adult Corrections on the day of the above-referenced incident. The basis of the violation was that Petitioner was not allowed to carry his duty weapon while on a personal errand. Petitioner testified that this was a policy that he was not aware of at the time, but that he could not argue with the citation, because his wife had been in the car. Petitioner testified that this was the first time he has ever been reprimanded while employed in corrections.

13. When recalling blowing his horn as Mr. Bozzo's truck began to come into his lane, Petitioner testified that he had driven semis while in the military and knew their drivers had blind spots. It is probable Officer Locklear used his horn with an enthusiasm that would anger another driver if it was not justified. But it is likely that any driver, and particularly Mr. Bozzo (if he had actually heard the horn), would understand that Petitioner was genuinely fearful of an accident in the near-miss situation he described. The single incident of sharply braking in front of Mr. Bozzo's vehicle that Petitioner described in his testimony could have been shocking to the operator of the big truck. But particularly from the higher vantage point of the truck's cab, it would have been clear to Mr. Bozzo that Petitioner was not at fault, if the incident was caused by another vehicle suddenly braking in front of the Lincoln, as Petitioner testified. Mr. Bozzo testified that he was "cut off" in traffic "every day" as he operated his truck and spoke of handling the discourtesies and irritating incidents of driving as being a routine part of his job. Petitioner's testimony does not describe a situation that would likely inspire an average driver, and particularly not one of Mr. Bozzo's maturity and experience, to falsely swear out a complaint and attend four hearings to give his testimony out of anger and spite. It is plausible that an inattentive lane change that threatened the life of Officer Locklear might have caused him to stage the punitive demonstration that Mr. Bozzo described and that his anger would spike enough when Mr. Bozzo was foiling him to make him want to frighten Mr. Bozzo by brandishing his weapon.

14. The greater weight of the evidence presented at the administrative hearing shows Petitioner did commit the offense of Assault by Pointing a Gun on November 8, 2013. Mr. Bozzo's recollection and testimony regarding the events of November 8, 2013 are credible. Mr. Bozzo did not know Petitioner prior to the date in question. This incident was troubling enough to Mr. Bozzo to cause him to immediately contact 911 and to stay with law enforcement for approximately 20 miles until Petitioner was stopped.

15. A preponderance of the evidence presented at the administrative hearing shows that on November 8, 2013, Petitioner committed the acts necessary to satisfy the elements of the misdemeanor offense of Assault by Pointing a Gun in violation of N.C. Gen. Stat. § 14-34 --specifically, by intentionally pointing his gun at Mr. Bozzo. That statute provides: "If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class A1 misdemeanor." The gun "must be pointed intentionally and not accidentally." *State v. Evans*, 40 N.C. App. 730, 733, 253 S.E.2d 590, 592 (1979), citing *State v. Kluckhohn*, 243 N.C. 306, 90 S.E.2d 768 (1956).

16. Petitioner received the Commission's Proposed Suspension of Probation/Parole Officer Certification letter by certified mail on November 19, 2014. (R. Ex. 1) Petitioner made a timely request to the Commission for a contested case hearing, which was received at the Commission on December 16, 2014. (R. Ex. 2)
17. 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. On due and timely notice, the parties are properly before the Office of Administrative Hearings, which has jurisdiction over the parties and cause.
3. Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and probation/parole officers and to revoke, suspend, or deny such certifications.
4. 12 NCAC 09G .0504(b)(3) provides that the North Carolina Criminal Justice Education and Training Standards Commission may, suspend, revoke, or deny the certification of a probation/parole officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G.0102 after certification.
5. Pursuant to 12 NCAC 09G.0505(b)(1), when the Commission suspends or denies the certification of a probation/parole officer pursuant to 12 NCAC 09G.0504 of this Section, the period of sanction shall be 3 years where the cause of sanction is the commission or conviction of a misdemeanor as defined in 12 NCAC 9G.0102. The Commission has the discretion to issue a period of probation in lieu of suspension under this rule.
6. "Assault by Pointing a Gun" in violation of N.C.G.S. § 14-34 is classified as a DAC misdemeanor pursuant to 12 NCAC 09G.0102(9)(h). A person is guilty of "Assault by Pointing a Gun" if that person: (1) Intentionally; (2) points a gun; (3) at another.
7. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a). Respondent has the burden of proof in the case at bar. A

preponderance of the evidence shows that Petitioner committed the misdemeanor offense of Assault by Pointing a Gun on November 8, 2013.

Consequently, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge respectfully enters the following:

PROPOSAL FOR DECISION

That Respondent suspend Petitioner's probation/parole officer certification for a period of not less than three (3) years based upon Petitioner's commission of the DAC misdemeanor Assault by Pointing a Gun in violation of N.C.G.S. § 14-34; and

That the Commission exercise its discretionary authority to issue a period of probation in lieu of active suspension under 12 NCAC 09G.0505.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED.

This the 5th day of June, 2015.



J. Randolph Ward
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA 2015 MAY -4 PM 11:20 IN THE OFFICE OF
COUNTY OF BERTIE ADMINISTRATIVE HEARINGS
15 DOJ 00055

Office of
Administrative Hearings

RONALD CORBETT, JR.,
Petitioner,

v.

NORTH CAROLINA CRIMINAL
JUSTICE
EDUCATION AND TRAINING
STANDARDS COMMISSION,
Respondent.

PROPOSAL FOR DECISION

This case came on for hearing on April 22, 2015 before Administrative Law Judge Donald W. Overby in Elizabeth City, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Ronald Corbett, Jr.
Post Office Box 884
Windsor, North Carolina 27983

Respondent: Hal F. Askins, Special Deputy Attorney General
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to revoke Petitioner's correctional officer certification for 10 years for the commission of the felony offense of Attempting to Carry Pistol Outside Home/Business?

RULES AT ISSUE

12 NCAC 09G .0504(a)

12 NCAC 09G .0505(a)(1)

BASED UPON careful consideration of the sworn testimony of the witness presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACTS:

In making the FINDINGS OF FACTS, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witness by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed Revocation of Correctional Officer Certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on December 3, 2014. (Respondent's Exhibit 1)

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. On April 6, 2014, Petitioner provided a written employee/witness statement form in which he stated that "on April 5, 2014 around 12:30 am I was asked to have a search of my vehicle. I had a registered handgun locked in the car. I have a permit to carry a concealed [sic] weapon. I was placed under arrest they state that I had an unregistered weapon." (Respondent's Exhibit 3)

4. On August 29, 2014, Petitioner provided a written employee/witness statement form in which he stated that "on April 5th 2014 the District of Columbia filed charges against me for carrying my consealed [sic] weapon. I have a registered pistol and consealed [sic] permit for my pistol in N.C. I was unaware of the gun laws in D.C. On June 13, 2014 I plead Guilty to the misdemeanor [sic] charges rather than going to trial with a felony charge. I was ordered to pay \$50.00 on each of the (3) charges and (6) months probation (unsupervised) ending on December 13th 2014." (Respondent's Exhibit 4)

5. Petitioner testified at the hearing in this matter that:

- a) he had in fact travelled to Washington D.C. and on or about April 5, 2014 attempted to enter a night club while in possession of a concealed weapon, a pistol, due to a mistaken belief that he was permitted to carry a concealed weapon in the District;
- b) he was confronted upon his entry into the club and told he could not bring a weapon into the club. He voluntarily took his pistol to his car and placed it under the driver's seat;
- c) he was later confronted by members of the Washington D.C. Police Department concerning his possession of a firearm and allowed the officers to retrieve his pistol from his car; and
- d) he was charged by the officers with the felony violation of D.C. Code §22-4504 (Respondent's Exhibit 6), carrying a pistol on or about his person, as well as two other charges.

6. Petitioner further testified that the facts and circumstances surrounding the charges were accurately reported in a police report written by members of the Washington D.C. Police Department (Respondent's Exhibit 5), that he was represented by legal counsel before the court on the charges, and was allowed as a part of a plea bargain to plead to lesser misdemeanor charges in order to resolve all criminal charges arising from the incident. (Respondent's Exhibit 8)

7. Petitioner provided to the Commission and to the ALJ an explanation of the justification and reasoning for the plea agreement provided by his legal counsel in the form of a letter. (Respondent's Exhibit 9)

8. Based on all of the evidence presented, the Court finds that the Petitioner committed the felony offense of carrying a pistol in a place other than the person's dwelling place, place of business, or on other land possessed by the Petitioner in violation of D.C. Code §22-4504(a)(1).

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G .0504(a) provides that the Commission shall revoke the certification of a correctional officer when the Commission finds that the officer has committed or been convicted of a felony offense.

4. 12 NCAC 09G .0505(a)(1) provides that when the Commission revokes or denies the certification of a corrections officer for the commission of a felony offense, the period of the sanction shall be 10 years.

5. D.C. Code § 22-4504 states that "no person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed . . . by carrying a pistol in a place other than the person's dwelling place, place of business, or on other land possessed by the person" and that a violation is punishable by imprisonment for not more than 5 years.

6. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

7. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

8. Respondent has the burden of proof in the case at bar. Respondent has shown by a preponderance of the evidence that Petitioner committed the felony offense of Carry Pistol Outside Home/Business.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's correctional officer certification be revoked for a period of 10 years.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the 4th day of May, 2015.



Donald W. Overby
Administrative Law Judge