

NORTH CAROLINA REGISTER

VOLUME 30 • ISSUE 07 • Pages 715 - 840

October 1, 2015

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

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Raleigh, North Carolina 27603-8005

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NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

(919) 715-2893

amy.bason@ncacc.org

NC League of Municipalities

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

(919) 715-4000

scollins@nclm.org

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Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

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(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

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Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2015 – December 2015

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



State of North Carolina

PAT McCRORY
GOVERNOR

September 1, 2015

EXECUTIVE ORDER NO. 77

DISASTER DECLARATION FOR THE TOWN OF LAKE SANTEETLAH

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

WHEREAS, starting on July 14, 2015, the Town of Lake Santeetlah, located in Graham County, North Carolina was impacted by severe weather which included straight-line winds; and

WHEREAS, as a result of the straight-line winds the Town of Lake Santeetlah proclaimed a local state of emergency on July 14, 2015; and

WHEREAS, due to the impact of the straight-line winds, a joint preliminary damage assessment was done by state and local emergency management officials on July 17, 2015; and

WHEREAS, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in the Town of Lake Santeetlah; and

WHEREAS, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Town of Lake Santeetlah declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in G.S. 166A-19.41(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-19.41(a), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

Section 1. Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Town of Lake Santeetlah in Graham County, North Carolina.

Section 2. I authorize state disaster assistance in the form of public assistance grants to eligible governments located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.

Section 3. I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

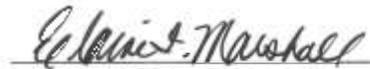
Section 4. This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

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


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State



State of North Carolina

PAT McCRORY
GOVERNOR

September 1, 2015

EXECUTIVE ORDER NO. 78

CONTINUITY OF OPERATIONS PLANNING

WHEREAS, natural and man-made emergencies and disasters can hinder the ability of State agencies to deliver essential services to the People of North Carolina; and

WHEREAS, the purpose of Continuity of Operations and Continuity of Government planning is to ensure survival of a constitutional form of government and the continuity of essential State functions under all circumstances; and

WHEREAS, effective State agency planning is vital to the implementation and operation of coordinated and well-managed Continuity of Operations and Continuity of Government plans; and

WHEREAS, the possibility of a communicable disease emergency is real and demands planning effort in government as well as the private sector; and

WHEREAS, personnel shortages that could result from a communicable disease emergency or other widespread disease should be included in Continuity of Operations planning; and

WHEREAS, it is imperative that all State agencies have in place a viable Continuity of Operations Plan which ensures the performance of their essential functions during any emergency or situation that may disrupt normal operations; and

WHEREAS, a standard format will lead to more consistent, understandable, and executable Continuity of Operations plans;

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

Section 1:

Each North Carolina Executive Branch agency shall prepare a Continuity of Operations Plan to ensure the State's ability to deliver essential services under any circumstance. Plans will be developed using the North Carolina Continuity of Operations Planning Manual. Such plans shall be coordinated with existing business continuity plans for information technology pursuant to N.C.G.S. 147-33.89 and shall include:

1. Identification and listing of Essential Functions
2. Delegations of Authority
3. Orders of Succession
4. Alternate Facilities
5. Interoperable Communications
6. Essential Records
7. Human Resources Management
8. Provisions for Tests, Training, and Exercises
9. Devolution
10. Reconstitution

Section 2:

Each North Carolina Executive Branch agency shall include in its Continuity of Operations Plan provisions to address a communicable disease emergency. Plans shall be developed using guidance available from the North Carolina Office of State Human Resources, the North Carolina Division of Public Health, and the Federal Emergency Management Agency.

Section 3:

The North Carolina Department of Public Safety (DPS), North Carolina Emergency Management is designated as the lead agency for Continuity of Operations plans. DPS is directed to establish and organize a Continuity of Operations Steering Committee comprised of all executive agency heads or their designated representatives and chaired by the Secretary of DPS or his designated representative. North Carolina Emergency Management is directed to provide advice and assistance to all State agencies developing Continuity of Operations plans.

Section 4:

The Secretary of Department of Public Safety, as designated executive agent for the North Carolina State Government Complex Continuity of Operations Plan, shall delegate to Emergency Management, with necessary coordination, and approval authority for changes to this plan and assure it is reviewed at least annually and updated as necessary. The Department of Administration remains the lead agency for purposes of procuring and assigning alternate facilities to displaced agencies.

Section 5:

An annual review of each agency's Continuity of Operations plans is due on November 1st of each year. Continuity of Operations plans are to be updated as necessary. Compliance with this requirement should be documented by attestation submitted by November 15th each year from Executive Branch Agency heads to the Director of Emergency Management.

Section 6:

State agencies outside the Executive Branch not directly subject to this order are invited and encouraged to comply with this order and to participate fully in the North Carolina Continuity of Operations planning effort.

Section 7:

This Executive Order supersedes and replaces all other executive orders on this subject. It shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this first day of September in the year of our Lord two thousand and fifteen, and of the independence of the United States the two hundred thirty-nine.


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State

IN ADDITION

North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of N.C.G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1926 promulgated as of May 4, 2015, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses the following recent verbatim adoptions:

- Confined Spaces in Construction
(80 FR 25366, May 4, 2015)

The *Federal Register* (FR), as cited above, explains the basis for the amendment and contains information on the need for the regulation; affected establishments; benefits, net benefits, and cost; effectiveness; compliance costs; and economic impacts.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Jane Ammons Gilchrist, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101



NORTH CAROLINA
State Board of Elections

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 733-7173
Fax: (919) 715-0135

KIM WESTBROOK STRACH
Executive Director

August 28, 2015

Mr. Michael Weisel
Bailey & Dixon, LLP
Post Office Box 1351
Raleigh, North Carolina 27602

Re: Request for Written Advisory Opinion pursuant to NC.C. Gen. Stat. § 163-278.23 on Questions Related to the Scope of Article 22A of Chapter 163 of the N.C. General Statutes ("G.S.")

Dear Mr. Weisel:

In your request for opinion, you seek guidance on the State Board of Election's regulatory authority over "issue advocacy." The following opinion is provided in accordance with N.C.G.S. § 163-278.23 and is based upon the information supplied in your request for opinion.

Factually, you have provided that several of your clients are nonprofit North Carolina corporations organized under sections 501(c)(4) and 527 of the Internal Revenue Code. Your letter indicates "These entities conduct research, sponsor educational activities and events, and disseminate information regarding issue and policy positions. These efforts educate the public about and promote the maintenance and improvement of North Carolina's common good, quality of life, and social welfare (e.g. the importance of adequately funding the state's public education system), while holding public officials accountable for their actions and statements concerning these matters." In 2015 and 2016, your clients wish to engage in communications with the public through broadcast, cable, internet or satellite transmission, mass mailing or telephone "as a component of educating the general public about various issue, policy, and accountability matters." These communications are the subject of the specific advisory question you pose:

Could any payment for issue advocacy communications made during the Relevant Time Period (2015 and 2016) by the Entities (your clients) ever be deemed a "coordinated expenditure" or "contribution?"

In addressing this question, there are several other facts you include in your letter that are relevant. First, you confirm that none of the Entities are "owned or controlled by a candidate, authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee (hereinafter referred to as "Candidate")." Second, you indicate that none of the Entities will make contributions to

6400 Mail Service Center • Raleigh, NC 27699-6400
441 N. Harrington Street • Raleigh, NC 27611-7255

Michael Weisel Advisory Opinion-*Scope of Article 22A regarding Issue Advocacy*
Page 2

candidates and none have the major purpose to support or oppose the nomination or election of one or more clearly identified candidates. It will also be assumed that this includes candidates of a clearly identified political party. Third, your letter states that the issue advocacy communications will not contain express advocacy or be deemed electioneering communications. Based on the assertion of all of these facts, the Entities would not be considered North Carolina political committees or assumed to be engaging in communications that would be deemed electioneering communications or independent expenditures.

The State Board of Elections has regulatory authority over North Carolina political committees and entities engaging in electioneering communications and/or independent expenditures. If an organization is not a North Carolina political committee and is not engaging in electioneering communications or communications that contain express advocacy, then communications made by those organizations are not subject to State Board of Elections regulation.

If an organization that is not a North Carolina political committee coordinates issue advocacy communications with a Candidate and those issue advocacy communications do not constitute electioneering communications or contain express advocacy, payments for those communications cannot be deemed "coordinated expenditures" or "contributions."

This opinion is based upon the information provided in your request for opinion. If any information in that letter should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina register and the North Carolina Administrative Code.

Sincerely,



Kim Westbrook Strach

cc: Mollie Masich, Codifier of Rules

Amy Strange, Deputy Director-Campaign Finance and Operations

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Radiation Protection Commission and NC Department of Health and Human Services/Secretary intends to amend the rules cited as 10A NCAC 15 .1403, .1414, .1415, .1418, .1419, and .1423.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: May 1, 2016

Public Hearing:

Date: October 22, 2015

Time: 10:00 a.m.

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

Reason for Proposed Action: *The proposed amendments to Section .1400, Tanning Facilities, of the Radiation Protection rules, are being made to improve the safety of individuals using tanning equipment, as well as making technical changes in the rules. The Food and Drug Administration (FDA) modified their health and safety requirements for the labeling of sunlamp products. The governor signed Session Law 2015-21 on May 21, 2015 prohibiting persons under the age of 18 from using tanning equipment. These proposed rules are being revised to conform to the FDA to require labels on tanning equipment that state contraindications regarding age, and skin lesions and warnings regarding skin cancer. These proposed rules are being revised to conform to the revised statute for under the age of 18 tanning equipment use prohibition. The proposed rules also address updates to the Radiation Protection Section's address and telephone number as well as an update to the agency's name due to the transfer of the Radiation Protection Section from the Department of Environment and Natural Resources to the Department of Health and Human Services.*

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

Comment period ends: November 30, 2015

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after

the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 15 – RADIATION PROTECTION

SECTION .1400 - TANNING FACILITIES

10A NCAC 15 .1403 DEFINITIONS

As used in this Section, the following definitions shall apply:

- (1) "Agency" means the North Carolina Department of ~~Environment and Natural Resources.~~ Health and Human Services, Division of Health Service Regulation, Radiation Protection Section.
- (2) "Consumer" means any individual who is provided access to a tanning facility which is required to be registered pursuant to provisions of this Section.
- (3) "Formal Operator Training" is a course of study approved by this agency as meeting the requirements in Paragraph (h) of Rule .1418 in this Section.
- (4) "Individual" means any human being.
- (5) "Inspection" means an official examination or observation to determine compliance with the rules in this Section, and orders, requirements and conditions of the agency.
- (6) "Minor" means any individual less than 18 years of age.
- (7) "Medical Lamps" means any lamp that is specifically designed or labeled for medical use only.

- (8) "Operator" means any individual designated by the registrant to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment. Under this definition, the term "operator", includes, but is not limited to, any such individual who conducts one or more of the following activities:
- (a) determining consumer's skin type;
 - (b) determining the suitability of prospective consumers for tanning equipment use;
 - (c) informing the consumer of dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;
 - (d) assuring that the consumer reads and properly signs all forms as required by the rules in this Section;
 - (e) maintaining required consumer exposure records;
 - (f) recognizing and reporting consumer injuries or alleged injuries to the registrant;
 - (g) determining the consumer's exposure schedule;
 - (h) setting timers which control the duration of exposure; and
 - (i) instructing the consumer in the proper use of protective eyewear.
- (9) "Person", as defined in G.S. 104E-5(11), means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.
- (10) "Registrant" means any person who is registered with the agency as required by provisions of this Section.
- (11) "Registration" means registration with the agency in accordance with provisions of this Section.
- (12) "Tanning components" means any constituent tanning equipment part, to include ballasts, starters, lamps, reflectors, acrylic shields, timers, and airflow cooling systems.
- (13) "Tanning equipment" means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation, e.g., beds, booths, facials and wands.
- (14) "Tanning equipment services" means the installation, sales and servicing of tanning equipment and associated tanning components; calibration of equipment used in surveys to measure radiation and timer accuracy; tanning

health physics consulting, e.g. radiation output measurements, design of safety programs, training seminars for tanning operators and service personnel.

- (15) "Tanning facility" means any location, place, area, structure or business which provides consumers access to tanning equipment. For the purpose of this definition tanning equipment registered to different persons at the same location and tanning equipment registered to the same person, but at separate locations, shall constitute separate tanning facilities.
- (16) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between 200 nanometers and 400 nanometers.

Authority G.S. 104E-7(a)(7); S.L. 2011-145, s. 13.3(e).

10A NCAC 15 .1414 WARNING SIGNS REQUIRED

- (a) The registrant shall post the warning sign described in Paragraph (b) of this Rule within one meter of each tanning station and in such a manner that the sign is clearly ~~visible~~, visible to consumers; not obstructed by any barrier, ~~equipment~~ equipment, or other ~~object~~, object; and ~~can~~ may be easily viewed by the consumer before the tanning equipment is energized.
- (b) The warning sign in Paragraph (a) of this Rule shall use upper and lower case letters ~~which that~~ are at least seven millimeters and three and one-half millimeters in height, respectively, and shall ~~have the following wording:~~ state:

DANGER - ULTRAVIOLET RADIATION
UV – emitting tanning devices have been classified as
"carcinogenic to humans."
ATTENTION: THIS DEVICE SHALL NOT BE USED
BY PERSONS UNDER 18 YEARS OF AGE.

- Follow instruction.
- Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. REPEATED EXPOSURE MAY CAUSE PREMATURE AGING OF THE SKIN AND SKIN CANCER.
- Wear protective eyewear.

FAILURE TO USE PROTECTIVE EYEWEAR MAY
 RESULT IN SEVERE BURNS OR LONG-TERM
 INJURY TO THE EYES.

Contraindications: This sunlamp product must not be used if skin lesions or open wounds are present.
Warning: This sunlamp product should not be used on individuals who have had skin cancer or have a family history of skin cancer.
Warning: Persons repeatedly exposed to ultraviolet sunlamp products should be regularly evaluated for skin cancer.

- Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before

using sunlamp or tanning equipment if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight. Consult your certified tanning operator for a list of cosmetics and products known to create sensitivity to light.

- If you do not tan in the sun, you are unlikely to tan from the use of this product.

- Consumers should report to the agency any injury for which medical attention is sought or obtained resulting from the use of registered tanning equipment. This report should be made within five working days after the occurrence.

(c) Warning signs shall include the current address of the ~~agency~~ agency: Department of Health and Human Services, Division of Health Service Regulation, Radiation Protection Section, 1645 Mail Service Center, Raleigh, NC 27699-1600.

Authority G.S. 104E-7(a)(7); 104E-9.1.

10A NCAC 15 .1415 EQUIPMENT AND CONSTRUCTION REQUIREMENTS

(a) The registrant shall use only tanning equipment manufactured in accordance with the specifications set forth in 21 Code of Federal Regulations (CFR) Part 1040, Section 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products"-products," and with 21 CFR Part 878.4635 "Sunlamp Products". The standard of compliance shall be the standards in effect at the time of manufacture as shown on the equipment identification label required by 21 CFR Part 1010, Section 1010.3. The registrant shall place an additional label on the bed which states "North Carolina state law prohibits the use of this device by persons under 18 years of age".

(b) Each assembly of tanning equipment shall be designed for use by only one consumer at a time.

(c) Each assembly of tanning equipment shall be equipped with a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error exceeding plus or minus 10 percent of the maximum timer interval for the product.

(d) Tanning equipment shall include physical barriers to protect consumers from injury induced by touching or breaking the lamps.

(e) All tanning equipment labeling required in Paragraph (a) of this Rule ~~by 21 CFR 1010, Section 1010.3 and 21 CFR Part 878.4635 shall be legible and accessible to view.~~ easily read by the consumer while in the proximity of the tanning bed.

(f) The timer intervals shall be numerically indicated on the face of the timer.

(g) The timer shall not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer ~~eyele,~~ cycle when emission from the tanning device has been interrupted.

(h) Each assembly of tanning equipment shall be provided with a control on the equipment to enable the consumer to manually terminate radiation emission from the equipment at any time

without disconnecting the electrical plug or removing any ultraviolet lamp.

(i) The timer for the tanning devices shall be remotely located outside the room where the tanning equipment is located. The remote timer shall be set by a certified tanning operator. ~~Effective August 1, 2004, all tanning facilities shall be equipped with remote timers.~~

(j) The registrant shall ensure that timer tests are performed annually on each assembly of tanning equipment and documented in writing for agency review during inspections to ensure the timer is accurate to within 10 percent as specified in Paragraph (c) of ~~this Rule .1415 of this Section~~ and the consumer is able to terminate the radiation manually in accordance with Paragraph (h) of this Rule.

(k) Medical lamps shall not be used for commercial cosmetic tanning purposes.

Authority G.S. 104E-7(a)(7); 104E-9.1.

10A NCAC 15 .1418 RECORDS: REPORTS AND OPERATING REQUIREMENTS

(a) Prior to initial exposure, the tanning ~~facility~~ operator shall provide each consumer the opportunity to read a copy of the warning specified in Rule .1414(b) of this Section and ~~request that~~ have the consumer sign a statement that the information has been read and understood. For illiterate or visually impaired persons unable to sign their name, the warning statement shall be read aloud by the operator, operator to that individual, in the presence of a witness, and the witness and the operator shall sign the statement.

(b) The registrant shall maintain a record of each consumer's total number of tanning visits including dates and durations of tanning exposures.

(c) The registrant shall submit ~~to the agency~~ a written report of injury for which medical attention was sought or obtained from the use of registered tanning equipment to the Radiation Protection Section within five working days after occurrence. The report shall include:

- (1) the name of the affected individual;
- (2) the name and location of the tanning facility involved;
- (3) the nature of the actual or alleged injury; and
- (4) any other information relevant to the actual or alleged injury, to include the date and duration of exposure and any documentation of medical attention sought or obtained.

(d) The registrant shall not allow individuals under the age of 18 to use tanning ~~equipment~~ equipment ~~unless the individual provides a consent form and a statement, described in Paragraph (a) of this Rule, signed by that individual's parent or legal guardian.~~

(e) The registrant shall verify by checking legal identification that each consumer is 18 years of age or older.

~~(e)(f)~~ (f) The registrant shall not allow minors to remain in the tanning room while the tanning equipment is in ~~operation~~ operation ~~except as provided for in this Rule.~~

~~(f)(g)~~ (g) The registrant shall replace defective or burned out lamps, ~~bulbs~~ bulbs, or filters with a type intended for use in the affected tanning equipment as specified by the manufacturer's product

label and having the same spectral distribution (certified equivalent lamp).

~~(g)(h)~~ The registrant shall replace ultraviolet lamps and bulbs, which bulbs that are not otherwise defective or damaged, at such frequency or after such duration of use as ~~may be~~ is recommended by the manufacturer of such lamps and bulbs.

~~(h)(i)~~ The registrant shall certify that all tanning equipment operators are trained in at least the following:

- (1) the requirements of this Section;
- (2) procedures for correct operation of the tanning facility and tanning equipment;
- (3) recognition of injury or overexposure to ultraviolet radiation;
- (4) the tanning equipment manufacturer's procedures for operation and maintenance of the tanning equipment;
- (5) the determination of skin type of customers and ~~appropriate~~ determination of duration of exposure to registered tanning equipment; and
- (6) emergency procedures to be followed in case of injury.

~~(i)(j)~~ The registrant shall allow operation of tanning equipment only by and in the physical presence of persons who have successfully completed formal training courses ~~which that~~ meet the requirements of Subparagraphs ~~(h)(4)~~ (i)(1) to (6) of this Rule.

~~(j)(k)~~ The registrant shall maintain a record of operator training required in Paragraphs ~~(h) and (i)~~ (i) and (j) of this Rule for inspection by authorized representatives of the agency.

~~(k)(l)~~ No registrant shall possess, use, ~~operate~~ operate, or transfer tanning equipment or their ultraviolet radiation sources in such a manner as to cause any individual under 18 years of age to be exposed to radiation emissions from such ~~equipment except in accordance with Paragraph (d) of this Rule.~~ equipment.

~~(l)(m)~~ Each registrant shall make available to all employees current copies of the following documents:

- (1) the facility's certificate of ~~registration;~~ registration with the Radiation Protection Section; and
- (2) conditions or documents incorporated into the registration by reference and amendments thereto.

Authority G.S. 104E-7(a)(7); 104E-9; 104E-9.1; 104E-12.

10A NCAC 15 .1419 COMMUNICATIONS WITH THE AGENCY: AGENCY ADDRESS

Applications for registration, reports, ~~notifications~~ notifications, and other communications required by this Section shall be mailed to the ~~Division of Radiation Protection, Protection~~ Section, 1645 Mail Service Center, Raleigh, North Carolina ~~27699 1645-27699-1600~~ or delivered to the agency at its office located at ~~3825 Barrett Drive, Raleigh, North Carolina 27609 7221, 5505 Creedmoor Road, Suite 100, Raleigh, North Carolina 27612.~~

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

10A NCAC 15 .1423 FEES AND PAYMENT

~~(a)~~ This Rule establishes fees for persons registered pursuant to the provisions of this Section to cover the anticipated costs of ~~tanning equipment inspection and enforcement activities of the agency.~~

~~(b)(a)~~ Annual fees established in this Rule ~~are~~ shall be due on the first day of July of each year.

~~(c)(b)~~ Notwithstanding Paragraph ~~(b)(a)~~ of this Rule, when a new registration is issued by the ~~agency~~ Radiation Protection Section after the first day of July of any year, the initial fee is due on the date of issuance of the registration.

~~(d)(c)~~ The initial fee in Paragraph ~~(c)(b)~~ of this Rule shall be computed as follows:

- (1) When any new registration is issued before the first day of January of any year, the initial fee is the full amount specified in this Rule; and
- (2) When any new registration is issued on or after the first day of January of any year, the initial fee is one-half of the amount specified in this Rule.

~~(e)~~ All fees received by the agency pursuant to provisions of this Rule are ~~nonrefundable.~~

~~(f)(d)~~ Each registrant may pay all fees by cash, ~~check~~ check, or money order ~~provided as follows:~~

- (1) Checks or money orders shall be made payable to "Radiation Protection ~~Section~~, Section," and mailed to 1645 Mail Service Center, Raleigh, NC ~~27699 1645-27699-1600~~ or delivered to the agency office at ~~3825 Barrett Drive, Raleigh, NC 27609 7221; and 5505 Creedmoor Road, Suite 100, Raleigh, NC 27612; and~~
- (2) Cash payments shall be made only by appointment by calling the agency at ~~919/571-4144 919/814-2250~~ and delivered to the agency office at ~~3825 Barrett Drive, Raleigh, NC 27609 7221, 5505 Creedmoor Road, Suite 100, Raleigh, NC 27612.~~

~~(g)(e)~~ Within five days after the due dates established in Paragraphs ~~(b) and (c)~~ (a) and (b) of this Rule, the agency shall mail to each ~~registrant, registrant~~ who has not already submitted ~~payment, payment~~ a notice ~~which that~~ indicates the due date, the amount of fees due, and the delinquent date.

~~(h)(f)~~ Payment of fees established in this Rule ~~is~~ shall be delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs ~~(b) and (c)~~ (a) and (b) of this Rule.

~~(i)(g)~~ If a registrant remits a fee in the form of a check or other instrument ~~which that~~ is uncollectible from the paying institution, the agency shall notify the registrant by certified mail and allow the registrant 15 days to correct the matter, ~~which includes~~ including payment of any fee charged to the agency by a banking institution.

~~(j)(h)~~ If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute legal action to collect.

~~(k)(i)~~ Annual fees for persons registered pursuant to provisions of this Section are as listed in the following table:

PROPOSED RULES

Type of registered facility	Letters appearing in registration number	Facility plus first piece of tanning equipment	Each additional piece of tanning equipment
Tanning Facility	B	\$200.00	\$30.00
Tanning Equipment Services	F	\$200.00	NA

Authority G.S. 104E-7(a)(4); 104E-9(a)(8); 104E-19(a).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 09F .0106.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>.

Proposed Effective Date: May 1, 2016

Public Hearing:

Date: February 11, 2016

Time: 1:00 p.m.

Location: Central Piedmont Community College, 1141 Elizabeth Ave., Charlotte, NC 28204

Reason for Proposed Action: *The Criminal Justice Education and Training Standards Commission has proposed to amend this rule in order to provide a process for auditing certified Concealed handgun Instructors.*

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

Comment period ends: February 11, 2016

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

Fiscal impact (check all that apply).

State funds affected

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

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09F – CONCEALED HANDGUN TRAINING

SECTION .0100 – CONCEALED HANDGUN TRAINING PROGRAM

12 NCAC 09F .0106 SANCTIONS

(a) The Commission shall suspend an approved course when the Commission finds that the course has failed to meet or maintain the required standards for approval.

(b) The Commission may conduct, at its discretion, an audit of a Concealed Carry Handgun Course taught by a certified Concealed Carry Handgun instructor for compliance with the specifications of this Subchapter.

(b) The Commission shall deny or suspend the certification of instructor status when the Commission finds that the instructor:

- (1) has failed to meet or maintain the required course and instruction standards approved by the Commission as set forth in 12 NCAC 09F .0102;
- (2) has failed to submit modification of courses or change in instructor status;
- (3) has submitted any non-sufficient funds check;
- (4) has falsified any successful completion of an approved course;
- (5) has distributed any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor;
- (6) has taught any "Concealed Carry Handgun Training Program" course or approved certification while the instructor's certification was suspended by the Commission; or
- (7) is ineligible to receive and possess a firearm under Federal or North Carolina State Law.

(c) Instructors who have lost certified status subject to Subparagraphs (1), (2), or (3) of Paragraph (b) of this Rule may reapply for certification upon documentation of compliance after one year has elapsed from the date of suspension of the instructor's certification by the Commission. Instructors who have lost

certified status subject to Subparagraphs (4), (5), (6), or (7) of Paragraph (b) of this Rule may have their certification suspended or permanently revoked by the Commission.

Authority G.S. 14-415.12; 14-415.13.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 14B NCAC 16 .0807, .0809, .0901, .0904.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdps.gov/pps

Proposed Effective Date: February 1, 2016

Public Hearing:

Date: Friday, October 16, 2015

Time: 2:00 p.m.

Location: 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612

Reason for Proposed Action: The Board is authorized by statute to approve any firearm carried by registered armed security guards in North Carolina. The Board voted to approve a rifle, in addition to specified handguns and a shotgun, for carry. These rules amend the existing rules for firearms training to implement the new rifle authorization.

Comments may be submitted to: Anthony Bonapart, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612, phone (919)788-5320 ext 218, fax (919)788-5365 or email Anthony.bonapart@ncdps.gov.

Comment period ends: November 30, 2015

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected

- Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private investigator licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter and all additional training requirements set forth in that Rule.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
handgun safety, including range firing procedures -- (minimum of one hour);
handgun operation and maintenance -- (minimum of three hours);
handgun fundamentals -- (minimum of eight hours); and
night firing -- (minimum of four hours).

(d) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy, the student shall be given three additional attempts to qualify on the course of fire the student did not pass, which additional attempts shall take place within 20 days of the completion of the initial 20 hour course. Failure to meet the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed Security Guards.

(e) All armed security guard training required by this Chapter shall be administered by a certified trainer and shall be completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(f) All applicants for an armed security guard firearm registration permit shall obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(g) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(h) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard currently registered with one company may be registered with a second company. Such registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required, along with the digital photograph, updated criminal records checks and a forty dollar (\$40.00) registration fee. If the guard will be carrying a ~~weapon firearm~~ of the same ~~make and model~~, make, model and caliber then no additional firearms training is required. The licensee shall submit a letter stating the guard will be carrying the same make and model ~~weapon~~, firearm. If the guard will be carrying a ~~weapon firearm~~ of a different make and model, the licensee shall submit a letter to the Board advising of the ~~make and model~~ make, model and caliber, of the ~~weapon firearm~~ the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c) and (d) of this Rule, ~~four~~ six hours of classroom training which shall include the following:

- (1) legal limitations on the use of ~~shotguns~~; shotgun (minimum of one hour);
- (2) shotgun safety, including range firing ~~procedures~~; procedures (minimum of one hour);
- (3) shotgun operation and ~~maintenance~~; and maintenance (minimum of one hour);
- (4) shotgun ~~fundamentals~~; fundamentals; (minimum of two hours); and
- (5) night firing (minimum of one hour).

(k) An applicant may take the additional shotgun training at a time after the initial training in Subparagraph (c) of this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete ~~an additional~~ one hour of classroom training as covering the topics set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph ~~(k)~~(d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c) and (d) of this Rule, 16 hours of classroom training which shall include the following:

- (1) legal limitations on the use of rifles (minimum of one hour);
- (2) rifle safety, including range firing procedures (minimum of one hour);
- (3) rifle operation and maintenance (minimum of two hours); and
- (4) rifle fundamentals (minimum of 10 hours); and
- (5) night firing (minimum two hours).

(n) The applicant must pass a skills course that test each basic rifle skill and the test of each skill must be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

~~(m)~~(q) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (d) of this Rule.

~~(n)~~(r) The armed security officer is required to qualify annually for both day and night firing with his or her duty hand ~~gun and shotgun~~, gun, shotgun and rifle, if applicable. If the security officer fails to qualify on either course of fire, the security officer cannot carry a the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify the firearm instructor shall notify the security officer that he or she is no longer authorized to carry a the firearm, and the firearm instructor shall notify the employer and the Private Protective Services Board staff on the next business day.

Authority G.S. 74C-5; 74C-9; 74C-13.

14B NCAC 16 .0809 AUTHORIZED FIREARMS

Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard revolver from .32 caliber to .357 caliber, a standard semi-automatic pistol from .354 caliber to .45 caliber, or any standard 12 gauge shotgun, or any standard semi-automatic or boltaction .223 or 5.56 X 45 mm NATO caliber rifle as long as the licensee or registrant has been trained pursuant to Rule .0807 of this Section. For purposes of this Section, a "standard" firearm means a firearm that has not been modified or altered from its original manufactured design.

Authority G.S. 74C-5; 74C-13.

SECTION .0900 – TRAINER CERTIFICATE

14B NCAC 16 .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

- (a) Firearms trainer applicants shall:
- (1) meet the minimum standards established by Rule .0703 of this Chapter;
 - (2) have a minimum of one year of supervisory experience in security with a contract security company or proprietary security organization, or one year of experience with any federal, state, county or municipal law enforcement agency;
 - (3) attain a 90 percent score on a firearm's prequalification course approved by the Board and the Secretary of Public Safety, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
 - (4) to teach handgun qualification, complete a training course approved by the Board and the Secretary of Public Safety which shall consist of a minimum of 4032 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
 - (5) to teach shotgun or rifle qualification, complete a training course approved by the Board and the Secretary of Public Safety which shall consist of minimum of 24 hours of classroom and practical range training in shotgun and rifle safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of shotgun and rifle firing;
 - ~~(5)(6)~~ pay the certified trainer application fee established in Rule .0903(a)(1) of this Section; and
 - ~~(6)(7)~~ successfully complete the requirements of the Unarmed Trainer Certificate set forth in Rule .0909 of this Section.
- (b) The applicant's score on the prequalification course set forth in Subparagraph (a)(3) of this Rule is valid for 180 days after completion of the course.
- (c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission.
- (d) In lieu of Subparagraphs (a)(2) and (4) of this Rule, an applicant may establish that the applicant satisfies the conditions set forth in G.S. 93B-15.1(a) for firearm instruction and two years of verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor.
- (e) All applicants subject to Paragraphs (c) and (d) of this Rule shall comply with the provisions of Subparagraph (a)(3), pay the

application amount as set forth in Rule .0903 of this Section, and complete the eight-hour course given by the Board on rules and regulations.

(f) In addition to the requirement of Section .0200 of this Chapter, an applicant for a firearms trainer certificate who is the spouse of an active duty member of the U.S. Armed Forces shall establish that the applicant satisfies the conditions set forth in G.S. 93B-15.1(b).

(g) A Firearms Trainer Certificate expires two years after the date of issuance.

Authority G.S. 74C-5; 74C-9; 74C-13; 93B-15.1.

14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

(a) Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board and available on its website at www.ncdps.gov/PPS. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in ~~handgun and shotgun~~ handgun and shotgun safety and maintenance of the applicable firearm (i.e. handgun, shotgun or rifle), range operations, control and safety procedures, and methods of ~~handgun and shotgun~~ handgun and shotgun firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months and, if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74C-5; 74C-8.1(a); 74C-13.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02Q .0318, amend the rules cited as 15A NCAC 02Q .0102 and .0903, and repeal the rule cited as 15A NCAC 02Q .0302.

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

Proposed Effective Date: *March 1, 2016*

Public Hearing:

Date: *November 4, 2015*

Time: *6:00 p.m.*

Location: *Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC 27604*

Reason for Proposed Action: *To amend Rule 15A NCAC 02Q .0102, Activities Exempted From Permit Requirements, to simplify the rule to make it easier to understand. New exemptions are also added. Facilities with actual emissions less than five tons per year of each specified pollutant and total aggregate actual emissions of 10 tons per year would be exempt from permitting. Facilities that are not exempt and have total aggregate actual emissions less than 25 tons per year would be eligible for registration instead of obtaining a permit.*

To repeal Rule 15A NCAC 02Q .0302, Facilities Not Likely To Contravene Demonstration, since the rule is duplicative of the requirements contained in the revised Rule 15A NCAC 02Q .0102. To adopt Rule 15A NCAC 02Q .0318, Changes Not Requiring Permit Revisions, to allow facilities to make minor changes without first modifying their permit.

To amend Rule 15A NCAC 02Q .0903, Emergency Generators And Stationary Reciprocating Internal Combustion Engines, to add an exemption from permitting for stationary reciprocating internal combustion engines if the engine is the only source of emissions at the facility.

Comments may be submitted to: *Joelle Burlison, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, joelle.burlison@ncdenr.gov*

Comment period ends: *November 30, 2015*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule.

The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02Q – AIR QUALITY PERMITS PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

~~(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.~~

~~(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements:~~

- ~~(1) — new source performance standards under Rule 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:~~
 - ~~(A) — 40 CFR Part 60, Subpart D, industrial, commercial, and institutional steam generating units;~~
 - ~~(B) — 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;~~
 - ~~(C) — 40 CFR Part 60, Subpart AAA, new residential wood heaters;~~
 - ~~(D) — 40 CFR Part 60, Subpart JJJ, petroleum dry-cleaners;~~
 - ~~(E) — 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;~~
 - ~~(F) — 40 CFR Part 60, Subpart IIII, stationary compression ignition internal combustion engines; or~~
 - ~~(G) — 40 CFR Part 60, Subpart JJJJ, stationary spark ignition internal combustion engines;~~
- ~~(2) — national emission standards for hazardous air pollutants under Rule 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;~~
- ~~(3) — prevention of significant deterioration under Rule 15A NCAC 02D .0530;~~

- (4) ~~new source review under Rule 15A NCAC 02D .0531 or .0532;~~
- (5) ~~sources of volatile organic compounds subject to the requirements of Section .0900, Volatile Organic Compounds, that are located in Mecklenburg County according to Rule 15A NCAC 02D .0902(f);~~
- (6) ~~sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under Rule 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;~~
- (7) ~~sources at facilities subject to Section .1100 of Subchapter 02D. (If a source qualifies for an exemption in Subparagraphs (a)(1) through (a)(24) of 15A NCAC 02Q .0702, or does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (e) of this Rule).~~

(e) ~~The following activities do not require a permit or permit modification under Section .0300 of this Subchapter. The Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:~~

- (1) ~~categories of exempted activities:~~
 - (A) ~~maintenance, upkeep, and replacement:~~
 - (i) ~~maintenance, structural changes, or repairs which do not change the capacity of such process, fuel burning, refuse burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;~~
 - (ii) ~~housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;~~
 - (iii) ~~use of office supplies, supplies to maintain copying equipment, or blueprint machines;~~
 - (iv) ~~use of fire fighting equipment;~~
 - (v) ~~paving parking lots; or~~
 - (vi) ~~replacement of existing equipment with equipment of the same size, type, and~~

~~function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;~~

- (B) ~~air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;~~
- (C) ~~laboratory activities:~~
 - (i) ~~bench scale, on site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non production environmental compliance assessments;~~
 - (ii) ~~bench scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non production educational laboratories;~~
 - (iii) ~~bench scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or~~
 - (iv) ~~research and development laboratory activities provided the activity produces no commercial product or feedstock material;~~
- (D) ~~storage tanks:~~
 - (i) ~~storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;~~
 - (ii) ~~storage tanks used to store gasoline or ethanol-based fuels for which there are no~~

- applicable—requirements except Stage I controls under 15A NCAC 02D .0928;
- (iii)—storage tanks used solely to store inorganic liquids; or
- (iv)—storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E)—combustion and heat transfer equipment:
 - (i)—space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
 - (ii)—residential wood stoves, heaters, or fireplaces;
 - (iii)—hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F)—wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;
- (G)—gasoline distribution: gasoline service stations or gasoline dispensing facilities;
- (H)—dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (I)—solvent recycling: portable solvent distillation systems used for on site solvent recycling if:
 - (i)—the portable solvent distillation system is not:
 - (I)—owned by the facility, and
 - (II)—operated at the facility for more than seven consecutive days; and
 - (ii)—the material recycled is recycled at the site of origin;
- (J)—processes:
 - (i)—electric motor burn out ovens with secondary combustion chambers or afterburners;
 - (ii)—electric motor bake on ovens;
 - (iii)—burn off ovens for paint line hangers with afterburners;
 - (iv)—hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (v)—blade wood planers planing only green wood;
- (K)—solid waste landfills: municipal solid waste landfills. This does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under Section .0300 of this Subchapter unless they qualify for another exemption under this Paragraph;
- (L)—miscellaneous:
 - (i)—motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
 - (ii)—non self propelled non road engines, except generators, regulated by rules adopted under Title II of the Federal Clean Air Act (Generators are required to be permitted under Section .0300 of this Subchapter unless they qualify for another exemption under this Paragraph.);
 - (iii)—portable generators regulated by rules adopted under Title II of the Federal Clean Air Act;
 - (iv)—equipment used for the preparation of food for direct on-site human consumption;
 - (v)—a source whose emissions are regulated only under Section 112(f) or Title VI of the Federal Clean Air Act;
 - (vi)—exit gases from in-line process analyzers;
 - (vii)—stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
 - (viii)—refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations

promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under Section .0300 of this Subchapter unless it qualifies for another exemption under this Paragraph);

- (ix) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under Section .0300 of this Subchapter unless it qualifies for another exemption under this Paragraph);
- (x) equipment that does not emit any regulated air pollutants;
- (xi) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under Section .0300 of this Subchapter unless it qualifies for another exemption under this Paragraph);
- (xii) sources for which there are no applicable requirements;
- (xiii) animal operations not required to have control technology under Section .1800 of the Subchapter 02D (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).

(2) categories of exempted size or production rate:

(A) storage tanks:

- (i) above ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a

true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or

- (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70°F;

(B) combustion and heat transfer equipment:

- (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
 - (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
 - (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;

Internal combustion engines are required to be permitted under Section .0300 of this Subchapter unless they qualify for another exemption under this Paragraph;

- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under Section .0300 of this Subchapter unless they qualify for another exemption under this Paragraph);

- (iii) ~~space heaters burning waste oil if:~~
 - (I) ~~the heater burns only oil that the owner or operator generates or used oil from do it yourself oil changers who generate used oil as household wastes;~~
 - (II) ~~the heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and~~
 - (III) ~~the combustion gases from the heater are vented to the ambient air;~~
 - (iv) ~~fuel combustion equipment with a heat input rating less than 10 million Btu per hour that is used solely for space heating except:~~
 - (I) ~~space heaters burning waste oil;~~
~~or~~
 - (II) ~~internal combustion engines;~~
 - (v) ~~emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:~~
 - (I) ~~680 kilowatts (electric) or 1000 horsepower for natural gas fired engines;~~
 - (II) ~~1800 kilowatts (electric) or 2510 horsepower for liquefied petroleum gas fired engines;~~
 - (III) ~~590 kilowatts (electric) or 900 horsepower for diesel fired or kerosene fired engines; or~~
 - (IV) ~~21 kilowatts (electric) or 31 horsepower for~~
 - (C) ~~gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;~~
 - (D) ~~processes:~~
 - (i) ~~graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and~~
- gasoline fired engines;
(Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.)
- (vi) ~~portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365 day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation. Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph;~~
 - (vii) ~~peak shaving generators that produce no more than 325,000 kilowatt hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12 month basis;~~

- solvent cleaning operations are defined in Rule 15A NCAC 02Q .0803);
- (ii) sawmills that saw no more than 2,000,000 board feet per year, provided only green wood is sawed;
 - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
 - (iv) electrostatic dry powder coating operations with filters or powder recovery systems, including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
- (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, such as potential uncontrolled emissions, would each be no more than five tons per year and whose potential emissions of hazardous air pollutants would be below their lesser quantity cutoff except:
 - (I) storage tanks;
 - (II) fuel combustion equipment;
 - (III) space heaters burning waste oil;
 - (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines;
 - (V) bulk gasoline plants;
 - (VI) printing, paint spray booths, or other painting or coating operations;
 - (VII) sawmills;
 - (VIII) perchloroethylene dry cleaners; or
 - (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. A source identified in Subpart (I) through (IX) of this Part is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph;
 - (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, such as uncontrolled emissions, would each be less than five tons per year, whose potential emissions of all hazardous air pollutants would be below their lesser quantity cutoff emission rate, and none of whose sources would violate an applicable emissions standard;
 - (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air

~~pollutants are below their lesser quantity cutoff emission rates; or~~

~~(iv) any incinerator covered under Subparagraph (e)(4) of Rule 15A NCAC 02D .1201;~~

~~(F) case by case exemption: activities that the applicant demonstrates to the satisfaction of the Director:~~

~~(i) to be negligible in their air quality impacts;~~

~~(ii) not to have any air pollution control device; and~~

~~(iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.~~

~~(d) An activity that is exempt from the permit or permit modification process is not exempted from other applicable requirements. The owner or operator of the source is not exempt from demonstrating compliance with any applicable requirement.~~

~~(e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to Rule 15A NCAC 02Q .0702 (exemptions from air toxic permitting).~~

~~(f) The owner or operator of a facility or source claiming an exemption under Paragraph (e) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.~~

~~(g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he shall revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter if necessary to obtain or maintain compliance.~~

~~(a) For the purposes of this Rule, the definitions listed in 15A NCAC 02D .0101 and 02Q .0103 shall apply.~~

~~(b) This Rule does not apply to:~~

~~(1) facilities whose potential emissions require a permit under 15A NCAC 02Q .0500 (Title V Procedures); or~~

~~(2) a source emitting a pollutant that is part of the facility's 15A NCAC 02D .1100 (Control of Toxic Air Pollutants) modeling demonstration if that source is not exempted under 15A NCAC 02Q .0702.~~

~~(c) The owner or operator of an activity exempt from permitting shall not be exempt from demonstrating compliance with any applicable State or federal requirement.~~

~~(d) Any facility whose actual emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are each less than five tons per year and whose actual total aggregate emissions are less than 10 tons per year shall not require a permit under 15A NCAC 02Q .0300. This Paragraph shall not apply to synthetic minor facilities that are subject to Rule .0315 of this Subchapter.~~

(e) Any facility that is not exempted from permitting under Paragraph (d) of this Rule and whose actual total aggregate emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are greater than or equal to five tons per year and less than 25 tons per year may register their facility under 15A NCAC 02D .0202 instead of obtaining a permit under 15A NCAC 02Q .0300. This Paragraph shall not apply to any facility as follows:

(1) synthetic minor facilities that are subject to Rule .0315 of this Subchapter;

(2) facilities with a source subject to maximum achievable control technology under 40 CFR Part 63;

(3) facilities with sources of volatile organic compounds or nitrogen oxides that are located in a nonattainment area; or

(4) facilities with a source subject to NSPS, unless the source is exempted under Paragraph (g) or (h) of this Rule.

(f) The Director may require the owner or operator of a facility to register them under 15A NCAC 02D .0200 or obtain a permit under 15A NCAC 02Q .0300 if necessary to obtain compliance.

(g) The following activities do not require a permit or permit modification under 15A NCAC 02Q .0300. These activities shall not be included in determining applicability of any rule or standard that requires facility-wide aggregation of source emissions, including activities subject to 15A NCAC 02D .0530, 15A NCAC 02D .0531, 15A NCAC 02Q .0500, and 15A NCAC 02Q .0700 unless specifically noted below:

(1) maintenance, upkeep, and replacement:

(A) maintenance, structural changes, or repair activities which do not increase the capacity of such process and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant;

(B) housekeeping activities or building maintenance procedures, including painting buildings, paving parking lots, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;

(C) use of office supplies, supplies to maintain copying equipment, or blueprint machines;

(D) use of firefighting equipment (excluding engines subject to 40 CFR 63, Subpart ZZZZ); or

(E) replacement of existing equipment with equipment of the same size (or smaller), type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants, and that does not affect the compliance status, and with replacement equipment that fits the

- description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
- (2) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
 - (3) laboratory or classroom activities:
 - (A) bench-scale, on-site equipment used for experimentation, chemical or physical analysis for quality control purposes or for diagnosis of illness, training, or instructional purposes;
 - (B) research and development activities that produce no commercial product or feedstock material; or
 - (C) educational activities, including but not limited to wood working, welding, and automotive;
 - (4) storage tanks with no applicable requirements other than Stage I controls under 15A NCAC 02D .0928, Gasoline Service Stations Stage I;
 - (5) combustion and heat transfer equipment:
 - (A) heating units used for human comfort, excluding space heaters burning used oil, that have a heat input of less than 10 million Btu per hour and that do not provide heat for any manufacturing or other industrial process;
 - (B) residential wood stoves, heaters, or fireplaces; or
 - (C) water heaters that are used for domestic purposes only and are not used to heat process water;
 - (6) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no state or federal air requirements;
 - (7) dispensing equipment: equipment used solely to dispense gasoline, diesel fuel, kerosene, lubricants or cooling oils;
 - (8) electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (9) electric motor bake-on ovens;
 - (10) burn-off ovens with afterburners for paint-line hangers;
 - (11) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (12) woodworking operations processing only green wood;
 - (13) solid waste landfills: This does not apply to flares and other sources of combustion at solid waste landfills. These flares and other combustion sources are required to be permitted
- under 15A NCAC 02Q .0300, unless they qualify for another exemption under this Paragraph; or
 - (14) miscellaneous:
 - (A) equipment that does not emit any regulated air pollutants;
 - (B) sources for which there are no applicable requirements;
 - (C) motor vehicles, aircraft, marine vessels, locomotives, tractors, or other self-propelled vehicles with internal combustion engines;
 - (D) engines subject to Title II of the Federal Clean Air Act (Emission Standards for Moving Sources);
 - (E) equipment used for the preparation of food for direct on-site human consumption;
 - (F) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;
 - (G) exit gases from in-line process analyzers;
 - (H) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
 - (I) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment. A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300, unless it qualifies for another exemption under this Paragraph;
 - (J) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds. Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300, unless it qualifies for another exemption under this Paragraph;
 - (K) animal operations not required to have control technology under 15A NCAC 02D .1800. If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter;
 - (L) any incinerator covered under 15A NCAC 02D .1201(c)(4); or

(M) dry cleaning operations, regardless of NSPS or NESHAP applicability.

(h) The following activities do not require a permit or permit modification under 15A NCAC 02Q .0300. These activities are included in determining applicability of any rule or standard that requires facility-wide aggregation of source emissions, including activities subject to 15A NCAC 02D .0530, 15ANCAC 02D .0531, 15A NCAC 02Q .0500, and 15A NCAC 02Q .0700:

(1) combustion and heat transfer equipment (includes direct-fired units that only emit regulated pollutants from fuel combustion):

(A) fuel combustion equipment (excluding internal combustion engines) not subject to 40 CFR Part 60, NSPS, firing exclusively unadulterated liquid fossil fuel, wood, or approved equivalent unadulterated fuel as defined in 15A NCAC 02Q .0103;

(B) fuel combustion equipment (excluding internal combustion engines) firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels; or

(C) space heaters burning waste oil if:
(i) the heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes; and
(ii) the heater is designed to have a maximum capacity of not more than 500,000 Btu per hour;

(2) gasoline distribution: bulk gasoline plants as defined in 15A NCAC 02D .0926(a)(3), with an average daily throughput of less than 4,000 gallons;

(3) paint spray booths or graphic arts operations, coating operations, and solvent cleaning operations as defined in 15A NCAC 02Q .0803 located at a facility whose facility-wide actual uncontrolled emissions of volatile organic compounds are less than five tons per year, except that such emission sources whose actual uncontrolled emissions of volatile organic compounds are less than 100 pounds per year shall qualify for this exemption regardless of the facility-wide emissions. For the purpose of this exemption water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices;

(4) electrostatic dry powder coating operations with filters or powder recovery systems;

(5) miscellaneous: any source whose potential uncontrolled emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon

monoxide shall each be no more than five tons per year; or

(6) case-by-case exemption: activities that the applicant demonstrates to the Director not to violate any applicable emission control standard.

(i) The owner or operator of a facility or source claiming an activity is exempt under Paragraphs (d), (e), (g) or (h) of this Rule shall submit emissions data, documentation of equipment type, or other supporting documents to the Director upon request that the facility or source is qualified for that exemption.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

SECTION .0300 – CONSTRUCTION AND OPERATIONS PERMITS

15A NCAC 02Q .0302 FACILITIES NOT LIKELY TO CONTRAVENE DEMONSTRATION

(a) This Rule applies only to this Section. It does not apply to Section .0500 (Title V Procedures) of this Subchapter.

(b) If a facility is subject to any of the following rules, the facility is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (3) prevention of significant deterioration under 15A NCAC 2D .0530;
- (4) new source review under 15A NCAC 2D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;
- (6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109, .1112 or under 40 CFR Part 63 or to apply generally available control technology (GACT) or work practice standards under 40 CFR Part 63;
- (7) sources at facilities subject to 15A NCAC 2D .1100; or
- (8) facilities subject to Title V permitting procedures under Section .0500 of this Subchapter.

(c) The owner or operator of any facility required to have a permit under this Section may request the Director to exempt the facility from the requirement to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. This documentation shall include:

- (1) documentation that the facility has no air pollution control devices;

- (2) ~~documentation that no source at the facility will violate any applicable emissions control standard when operating at maximum design or operating rate, whichever is greater; and~~
- (3) ~~ambient modeling showing that the ambient impact of emissions from the facility will not exceed the levels in 15A NCAC 2D .0532(e)(5) when all sources at the facility are operated at maximum design or operating rate, whichever is greater.~~

If the documentation shows to the satisfaction of the Director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

Authority G.S. 143-215.3(a)(1); 143-215.108.

15A NCAC 02Q .0318 CHANGES NOT REQUIRING PERMIT REVISIONS

(a) This Rule applies to sources that are not exempt under Rule .0102 of this Subchapter. This Rule applies to facilities that have an air quality permit.

(b) An owner or operator of a facility may make changes without first modifying their air permit if:

- (1) the change does not violate any existing requirements or new applicable requirements;
- (2) the change does not cause emissions allowed under the current permit to be exceeded;
- (3) the change does not require a modification of a permit term or condition under Rule .0315 or avoidance condition under Rule .0317 of this Section;
- (4) the change does not require a permit under 15A NCAC 02Q .0700, Toxic Air Pollutant Procedures;
- (5) the change does not require a P.E. Seal under 15A NCAC 02Q .0112; and
- (6) the owner or operator shall notify the Director with written notification seven calendar days before the change is made. Within seven calendar days of receipt of the notice, the Division of Air Quality shall notify the owner or operator of its determination that the change meets the requirements of Subparagraphs (b)(1) through (b)(5).

(c) The written notification required under Subparagraph (b)(6) of this Rule shall include:

- (1) a description of the change;
- (2) a date on which the change will occur;
- (3) any change in emissions; and
- (4) any permit terms or conditions of the current permit that may be affected by this change.

(d) A copy of the notification required under Subparagraph (b)(6) of this Rule shall be attached to the current permit until the permit is revised at the next modification, name change, ownership change, or renewal.

Authority G.S. 143-215.3(a)(1); 143-215.108.

SECTION .0900 – PERMIT EXEMPTIONS

15A NCAC 02Q .0903 EMERGENCY GENERATORS AND STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES

(a) For the purposes of this Rule, the following definitions apply:

- (1) "emergency-~~Emergency generator~~" means a-an emergency stationary reciprocating internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance, as defined in 40 CFR 63.6675. An emergency generator may be operated periodically to ensure that it will operate.
- (2) "Stationary reciprocating internal combustion engine" shall be defined as set forth in 40 CFR 63.6675.

(b) This Rule applies to emergency generators and stationary reciprocating internal combustion engines at a facility whose only sources that would require a permit are emergency generators and stationary reciprocating internal combustion engines whose ~~emergency generators consume less than:~~

- (1) ~~322,000 gallons per calendar year of diesel fuel;~~
- (2) ~~48,000,000 cubic feet per calendar year of natural gas;~~
- (3) ~~1,200,000 gallons per calendar year of liquified petroleum gas;~~
- (4) ~~25,000 gallons per calendar year of gasoline for gasoline powered generators; or~~
- (5) ~~any combination of the fuels listed in this Paragraph provided the facility-wide actual emissions of each regulated air pollutant does not exceed are less than 100 tons per calendar year, year of any regulated pollutant, 10 tons per calendar year of any hazardous air pollutant or 25 tons per calendar year of any combination of hazardous air pollutants.~~

(c) The owner or operator of emergency generators and stationary reciprocating internal combustion engines covered under this Rule shall comply with ~~Rules .0516 (sulfur dioxide emissions from combustion sources); .0516;.0521 (control of visible emissions); .0521, and .0524 (new source performance standard); .0524, and .1111 of Subchapter 02D.~~

(d) The owner or operator of ~~an emergency generator-generators~~ and stationary reciprocating internal combustion engines covered under this Rule shall ~~maintain records of the amount of fuel burned in the generator for each calendar year so that the Division can determine upon review of these records provide the Director documentation upon request that the emergency generator-generators and stationary reciprocating internal combustion enginesqualifies to be covered under this Rule. meet the applicability requirements in Paragraph (b) of this Rule.~~

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 08 – BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the North Carolina State Board of Certified Public Accountant Examiners intends to adopt the rules cited as 21 NCAC 08N .0301 and .0410, readopt with substantive changes the rules cited as 21 NCAC 08A .0301; 08F .0103; 08M .0106; 08N .0208, .0209, .0211, .0214, .0215, .0302, .0304, .0307, .0308, .0401, .0403-.0406, .0409, and readopt without substantive changes the rules cited as 21 NCAC 08A .0307-.0309; 08B .0508; 08F .0105, .0111, .0302, .0401, .0410, .0502; 08G .0401 .0403 .0404, .0406, .0410; 08I .0104; 08J .0101, .0105, .0107, .0111; 08M .0105; 08N .0101-.0103, .0201-.0207, .0212, .0213, .0301, .0303, .0305, .0306, .0402, and .0408.

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

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

Proposed Effective Date: February 1, 2016

Public Hearing:

Date: October 22, 2015

Time: 10:00 a.m.

Location: NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605

Reason for Proposed Action:

Adoption – the purpose of these proposed rules is to adopt the national industry standards and international standards respectively for Personal Financial Planning Services and International Standards on Auditing.

Readoption with substantive changes – the main purpose of these proposed rules is the readoption of these rules pursuant to the existing rules review process as outlined in NCGS 150B-21.3A. The changes in these rules include new and updated definitions, correcting word usage, conforming with the Uniform Accountancy Act, statute changes, and formatting issues.

Readoption without substantive changes – the main purpose of these proposed rules is the readoption of these rules pursuant to the existing rules review process as outlined in NCGS 150B-21.3A. The changes in these rules include correcting word usage, formatting issues, and no changes at all to eight of the rules in this group.

Comments may be submitted to: Robert N. Brooks, NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605, phone (919) 733-1425, fax (919) 733-4209, email rbrooks@nccpaboard.gov

Comment period ends: November 30, 2015

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the

rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

SUBCHAPTER 08A – DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

21 NCAC 08A .0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) apply when those defined terms are used in this Chapter.

(b) In addition to the definitions set out in G.S. 93-1(a), other definitions in this Section, and the following definitions apply when these terms are used in this Chapter:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Inactive" status;
- (2) "Agreed-upon procedures" means a professional service whereby a CPA is engaged to issue a report of findings based on specific procedures performed on ~~financial information prepared by a party;~~ identified subject matter;
- (3) "AICPA" means the American Institute of Certified Public Accountants;
- (4) "Applicant" means a person who has applied to take the CPA examination or applied for a certificate of qualification;
- (5) ~~"Attest service or assurance service" means:~~ "Attest service" means a professional service whereby a CPA in the practice of public accounting is engaged to issue or does issue:
 - (A) any audit or engagement to be performed in accordance with the Statements on Auditing Standards, Statements on Generally Accepted Governmental Auditing Standards,

- ~~and—Public Company Accounting Oversight Board Auditing Standards; Standards, and International Standards on Auditing;~~
- (B) any review or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services;
- (C) any compilation or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services; or
- (D) any ~~agreed upon procedure~~ or engagement to be performed in accordance with the Statements on Standards for Attestation Engagements;
- (6) "Audit" means a professional service whereby a CPA is engaged to examine financial statements, items, accounts, or elements of a financial statement prepared by management, in order to express an opinion on whether the financial statements, items, accounts, or elements of a financial statement are presented in conformity with ~~generally accepted accounting principles or other comprehensive basis of accounting; an applicable reporting framework, that enhances the degree of confidence that intended users can place on the financial statements, items, accounts, or elements of a financial statement;~~
- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted by the Board and who may sit for the CPA examination;
- (9) "Client" means a person or an entity who orally or in writing agrees with a licensee to receive any professional services performed or ~~delivered in this State; delivered;~~
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) "Compilation" means a professional service whereby a CPA is engaged to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the statements;
- (12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (13) "CPA" means certified public accountant;
- (14) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership ~~which that~~ uses "certified public accountant(s)" or "CPA(s)" in or with its name or offers to or renders any attest services in the public practice of accountancy;
- (15) "CPE" means continuing professional education;
- (16) "Disciplinary action" means revocation or suspension of, or refusal to grant; a certificate, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (17) "FASB" means the Financial Accounting Standards Board;
- (18) ~~"Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions the entity expects to exist and the course of action the entity expects to take;~~
- (18) "Firm network" means an association of entities that includes one or more firms that cooperate for the purpose of enhancing the firms' capabilities to provide professional services and share one or more of the following characteristics:
- (A) The use of a common brand name, including initials, as part of the firm name;
- (B) Common control among the firms through ownership, management, or other means;
- (C) Profits or costs, excluding costs of operating the association; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the firm;
- (D) Common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the association's strategy and are accountable for performance pursuant to that strategy;
- (E) Significant part of professional resources;
- (F) Common quality control policies and procedures that firms are required to implement and that are monitored by the association;
- (19) "GASB" means the Governmental Accounting Standards Board;

- (20) "Inactive," when used to refer to the status of a person, describes a person who has requested inactive status and has been approved by the Board and who does not use the title "certified public accountant", nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he nor she nor anyone else refers to him or her in any representation as described in Rule .0308(b) of this Section;
- (21) "IRS" means the Internal Revenue Service;
- (22) "Jurisdiction" means any state or territory of the United States or the District of Columbia;
- (23) "License year" means the 12 months beginning July 1 and ending June 30;
- (24) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (25) "NASBA" means the National Association of State Boards of Accountancy;
- (26) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (27) "North Carolina office" means any office physically located in North Carolina;
- (28) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (29) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- ~~(30) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;~~
- ~~(31)~~(30) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- ~~(32)~~(31) "Revenue Department" means the North Carolina Department of Revenue;
- ~~(33)~~(32) "Review" means a professional service whereby a CPA is engaged to perform procedures, limited to analytical procedures and inquiries, to obtain a reasonable basis for expressing limited assurance on whether any material modifications should be made to the financial statements for them to be in conformity with generally accepted accounting principles or other comprehensive basis of accounting;
- ~~(34)~~(33) "Reviewer" means a member of a review team including the review team captain;

- ~~(35)~~(34) "Suspension" means a revocation of a certificate for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension;
- ~~(36)~~(35) "Trade name" means a name used to designate a business enterprise;
- ~~(37)~~(36) "Work papers" mean the CPA's records of the procedures applied, the tests performed, the information obtained, and the conclusions reached in attest services, tax services, consulting services, special report services, or other engagements. Work papers include programs used to perform professional services, analyses, memoranda, letters of confirmation and representation, checklists, copies or abstracts of company documents, and schedules of commentaries prepared or obtained by the CPA. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds or symbols; and
- ~~(38)~~(37) "Work product" means the end result of the engagement for the client which may include a tax return, attest or assurance report, consulting report, and financial plan. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds, or symbols.

(c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service cancellation by that date, if received by a private delivery service by that date, or received in the Board office on the next business day.

Authority G.S. 93-1; 93-12; 93-12(3).

21 NCAC 08A .0307 - READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08A .0308 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08A .0309 – READOPT WITHOUT SUBSTANTIVE CHANGES

SUBCHAPTER 08B - RULE-MAKING PROCEDURES

SECTION .0500 - DECLARATORY RULINGS

21 NCAC 08B .0508 – READOPT WITHOUT SUBSTANTIVE CHANGES

SUBCHAPTER 08F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations shall be filed with the Board and accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board to recover its actual costs of examination services. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned. CPA Exam applications and fee information are on the Board's website at www.nccpaboard.gov and may be requested from the Board.

(b) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, including:

- (1) minimum legal age;
- (2) education; and
- (3) good moral character.

(c) Any person born outside the United States shall furnish to the Board office evidence of citizenship; evidence of resident alien status; or

- (1) other bona fide evidence that the applicant is legally allowed to remain in the United States;
- (2) a notarized affidavit of intention to become a U.S. citizen; or
- (3) evidence that the applicant is a citizen of a foreign jurisdiction ~~which that~~ extends to citizens of this ~~state~~ State like or similar privileges to be examined.

(d) Official transcripts (~~originals~~ originals, not photocopies) signed by the college registrar and bearing the college seal are required to prove satisfaction of education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. No examination grades shall be released until an official transcript is filed with the Board confirming the satisfaction of education requirement as stated in the college registrar's letter.

(e) ~~Applications~~ Applicants for re-examination shall not re-submit official transcripts, additional statements, or affidavits regarding education.

(f) To document good moral character as required by G.S. 93-12(5), three persons not related by blood or marriage to the applicant shall sign the application certifying the good moral character of the applicant.

(g) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of the final disposition if the applicant has been arrested, charged, convicted or found guilty of, received a prayer for judgment continued, or pleaded nolo contendere to any criminal offense. An applicant is not required to disclose any arrest, charge, or conviction that has been expunged by the court.

(h) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has

been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(i) Two identical photographs shall accompany the application for the CPA ~~examination and the application for the CPA certificate~~ examination. These photographs shall be of the applicant alone, 2x2 inches in size, front view, full face, taken in normal street attire without a hat or dark glasses, printed on paper with a plain light background and taken within the last six months. Photographs may be in black and white or in color. Retouched photographs shall not be accepted. Applicants shall write their names on the back of their ~~photos~~ photographs.

(j) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

(k) Candidates shall file initial and re-exam applications to sit for the CPA Examination on forms provided by the Board.

(l) Examination fees are valid for a six-month period from the date of the applicant's notice to schedule for the examination from the examination vendor.

(m) No application for examination shall be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or conditionally suspended sentence, any of which are imposed as a result of having been convicted or having pled to a criminal charge.

Authority G.S. 93-12(3); 93-12(4); 93-12(5); 93-12(7).

21 NCAC 08F .0105 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08F .0111 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08F .0302 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08F .0401 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08F .0410 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08F .0502 – READOPT WITHOUT SUBSTANTIVE CHANGES

SUBCHAPTER 08G - CONTINUING PROFESSIONAL EDUCATION (CPE)

SECTION .0400 - CPE REQUIREMENTS

21 NCAC 08G .0401 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08G .0403 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08G .0404 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08G .0406 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08G .0410 – READOPT WITHOUT SUBSTANTIVE CHANGES

SUBCHAPTER 08I - REVOCATION OF CERTIFICATES AND OTHER DISCIPLINARY ACTION

21 NCAC 08I .0104 – READOPT WITHOUT SUBSTANTIVE CHANGES

SUBCHAPTER 08J - RENEWALS AND REGISTRATIONS

21 NCAC 08J .0101 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08J .0105 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08J .0107 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08J .0111 – READOPT WITHOUT SUBSTANTIVE CHANGES

SUBCHAPTER 08M – STATE QUALITY REVIEW PROGRAM

SECTION .0100 – GENERAL SQR REQUIREMENTS

21 NCAC 08M .0105 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08M .0106 COMPLIANCE

(a) A CPA firm registered for peer review shall provide to the Board the following:

- (1) Peer review due date;
(2) Year end date;
(3) Final Letter of Acceptance from peer review program within 60 days of the date of the letter; and
(4) A package to include the Peer Review Report, Letter of Response, and Final Letter of Acceptance for all failed and second passed with deficiencies reports issued by a peer review program within 60 days of the date of the Final Letter of Acceptance.

(b) A peer review is not complete until the Final Letter of Acceptance is issued by the peer review program with the new due date.

(c) If a CPA firm fails to comply with 21 NCAC 08M .0105(e), (d), or (g), Rule .0105(c), (d), or (g) of this Section, and continues to offer or render services, the Board may take disciplinary action against the CPA firm's members which that may include: include

a suspension of each members' CPA certificate for a period of not less than 30 days and a civil penalty up to one thousand dollars (\$1,000).

- (1) one hundred dollar (\$100.00) civil penalty for non-compliance of less than 60 days;
(2) two hundred fifty dollar (\$250.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days; and
(3) a suspension of each member's CPA certificate for a period of not less than 30 days and a civil penalty of five hundred dollars (\$500.00) for non-compliance in excess of 120 days.

Authority G.S. 93-12(7b); 93-12(8c).

SUBCHAPTER 08N – PROFESSIONAL ETHICS AND CONDUCT

SECTION .0100 - SCOPE AND APPLICABILITY

21 NCAC 08N .0101 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0102 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0103 – READOPT WITHOUT SUBSTANTIVE CHANGES

SECTION .0200 – RULES APPLICABLE TO ALL CPAS

21 NCAC 08N .0201 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0202 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0203 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0204 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0205 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0206 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0207 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS

(a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, pleading of nolo contendere or receiving a prayer for judgment continued to any criminal offense.

(b) Civil Actions. A CPA shall notify the Board within 30 days of ~~the following: any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration that:~~

- ~~(1) any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration;~~
- ~~(2)(1) which is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law; and~~
- ~~(3)(2) that was brought against either the CPA or a North Carolina office of a CPA firm of which the CPA was a managing partner-owner.~~

(c) Settlements. A CPA shall notify the Board within 30 days of any settlement in lieu of a civil suit or criminal charge which is grounded upon an allegation of professional negligence; gross negligence; dishonesty; fraud; misrepresentation; incompetence; or violation of any federal, state, or local law. Notification is required regardless of any confidentiality clause in the settlement.

(d) Investigations. A CPA shall notify the Board within 30 days of any inquiry or investigation by the criminal investigation divisions of the Internal Revenue Service (IRS) or any state department of revenue ~~criminal investigation divisions~~ pertaining to any personal or business tax matters.

(e) Liens. A CPA shall notify the Board within 30 days of the filing of any liens by the Internal Revenue Service (IRS) or any state department of revenue regarding the failure to pay or apparent failure to pay for any amounts due any tax matters.

Authority G.S. 55B-12; 57C-2-01; 93-12(3); 93-12(9).

21 NCAC 08N .0209 ACCOUNTING PRINCIPLES

(a) Generally Accepted Accounting Principles. A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle ~~which that~~ has a material effect on the statements taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases the CPA's report shall describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(b) Financial Accounting Standards Board Accounting Standards Codification. The Financial Accounting Standards Board Accounting Standards Codification, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted accounting principles for the purposes of Paragraph (a) of this Rule.

~~(c) Departures. In such cases the CPA's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.~~

~~(d)(c) Copies of Standards. Copies of the Financial Accounting Standards Board Accounting Standards Codification may be inspected in the offices of the Board, as described in 21 NCAC~~

08A .0102. Copies may be obtained from the FASB, Post Office Box 30816, Stamford, CT 06150 5116, Norwalk, CT 06856 as part of the "FASB Accounting Standards." They are available at cost, which is ~~one hundred ninety five dollars (\$195.00) two hundred fifteen dollars (\$215.00)~~ in paperback form as of the effective date of the last amendment to this Rule.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0211 RESPONSIBILITIES IN TAX PRACTICE

(a) Standards for Tax Services. A CPA shall not render services in the area of taxation unless the CPA has complied with the standards for tax services.

(b) Statements on Standards for Tax Services. The Statements on Standards for Tax Services issued by the AICPA, including subsequent amendments and editions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered as the standards for tax services for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)(c) Copies of Standards. Copies of the Statements on Standards for Tax Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC, 27707 as part of the "AICPA Professional Standards." They are available at cost, which is ~~one hundred sixty nine dollars (\$169.00) one hundred ninety-four dollars (\$194.00)~~ in paperback form or ~~four hundred eighty six dollars (\$486.00) one hundred sixty-nine dollars (\$169.00)~~ in looseleaf-online subscription form as of the effective date of the last amendment to this Rule.~~

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0212 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0213 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0214 OUTSOURCING TO THIRD-PARTY PROVIDERS

(a) A CPA shall provide a written disclosure in advance of the outsourcing to the client that he or she is using a third-party provider to assist the CPA in providing any professional services to the client.

~~(b) A CPA shall provide annual disclosure in a written statement of the services to be rendered by the third party provider as well as the third party provider's name, address, and phone number. The written statement shall be dated, signed by both the CPA and client in advance of the outsourcing, and a copy provided to the client.~~

~~(c)(b) A CPA outsourcing professional services to a third-party provider is responsible for ensuring a third-party provider is in~~

compliance with all rules of Professional of Conduct and Ethics in ~~21 NCAC 08N~~; this Subchapter.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0215 INTERNATIONAL FINANCIAL ACCOUNTING STANDARDS

(a) International Financial Accounting Standards. A CPA shall not express an opinion that financial statements are presented in accordance with international financial accounting standards if such statements contain any departure from an accounting standard ~~which that~~ has a material effect on the statements, taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases, the CPA's report shall describe the departure, the approximate effect thereof if practicable, and the reason(s) why compliance with the standard would result in a misleading statement.

(b) International Financial Accounting Standards consist of the following:

- (1) International Financial Reporting Standards (IFRS) issued after 2001;
- (2) International Accounting Standards (IAS) issued before 2001;
- (3) Interpretations originated from the International Financial Reporting Interpretations Committee (IFRIC) issued after 2001; and
- (4) Standing Interpretations Committee (SIC) issued before 2001.

~~(e) Departures. The CPA's report must describe the departure, the approximate effect thereof if practicable and the reasons why compliance with the standard would result in a misleading statement.~~

~~(d)~~(c)Copies of Standards. Copies of International Financial Accounting Standards may be inspected in the office of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the International Accounting Standards Board, IASC Foundation Publications Department, 30 Cannon Street, London, EC4M6XH, United Kingdom. They are available at cost, which is approximately ~~thirty-four dollars (\$34.00)~~ one hundred two dollars (\$102.00) in paperback form or ~~three hundred eighty-three dollars (\$383.00)~~ four hundred thirty-two dollars (\$432.00) in loose-leaf subscription form.

Authority G.S. 55-12; 57C-2-01; 93-12(9).

SECTION .0300 – RULES APPLICABLE TO ALL CPAS WHO USE THE CPA TITLE IN OFFERING OR RENDERING PRODUCTS OR SERVICES TO CLIENTS

21 NCAC 08N .0301 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA who uses CPA in or with the name of the business or offers or renders ~~attest or assurance services~~ audits, reviews, compilations, agreed-upon procedure or engagement services performed in accordance with

the standards in 21 NCAC 08A .0301(b)(5) in the public practice of accountancy to clients shall do so only through a registered sole proprietorship, partnership, Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Ownership. A CPA firm may have an ownership of up to 49 percent by non-CPAs. A CPA firm shall have ownership of at least 51 percent and be controlled in law and fact by holders of valid CPA certificates who have the unrestricted privilege to use the CPA title and to practice public accountancy in a jurisdiction and at least one of whom shall be licensed by this Board.

(c) CPA Firm Registration Required. A CPA shall not offer or render professional services through a CPA firm which is in violation of the registration requirements of 21 NCAC 08J .0108, 08J .0110, or 08M .0105.

(d) Supervision of CPA Firms. Every North Carolina office of a CPA firm registered in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

(e) CPA Firm Requirements for CPA Ownership. A CPA firm and its designated supervising CPA ~~is~~ shall be accountable for the following in regard to a CPA owner:

- (1) A CPA owner shall be a natural person or a general partnership or a limited liability partnership directly owned by natural persons.
- (2) A CPA owner shall actively participate in the business of the CPA firm.
- (3) A CPA owner who, prior to January 1, 2006, is not actively participating in the CPA firm may continue as an owner until such time as his or her ownership is terminated.

(f) CPA Firm Requirements for Non-CPA Ownership. A CPA firm and its designated supervising CPA ~~partner is~~ owner shall be accountable for the following in regard to a non-CPA owner:

- (1) a non-CPA owner shall be a natural person or a general partnership or limited liability partnership directly owned by natural persons;
- (2) a non-CPA owner shall actively participate in the business of the firm or an affiliated entity as his or her principal occupation;
- (3) a non-CPA owner shall comply with all applicable accountancy statutes and the rules;
- (4) a non-CPA owner shall be of good moral character and shall be dismissed and disqualified from ownership for any conduct that, if committed by a licensee, would result in a discipline pursuant to G.S. 93-12(9); and
- (5) a non-CPA owner shall report his or her name, home address, phone ~~number~~ number, social security number, and Federal Tax ID number (if any) on the CPA firm's ~~registration; and registration.~~
- ~~(6) a non-CPA owner's name may not be used in the name of the CPA firm or held out to clients or the public that implies the non-CPA owner is a CPA.~~

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0303 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0304 CONSULTING SERVICES STANDARDS

(a) Standards for Consulting Services. A CPA shall not render consulting services unless the CPA has complied with the standards for consulting services.

(b) Statements on Standards for Consulting Services. The Statements on Standards for Consulting Services (including the definition of such services) issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for consulting services for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)(c) Copies of Statements. Copies of the Statements on Standards for Consulting Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is ~~one hundred sixty-nine dollars (\$169.00)~~ one hundred ninety-four dollars (\$194.00) in paperback form or ~~four hundred eighty-six dollars (\$486.00)~~ one hundred sixty-nine dollars (\$169.00) in looseleaf-on-line subscription form as of the effective date of the last amendment to this Rule.~~

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0305 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0306 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0307 CPA FIRM NAMES

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive. The name or initials of one or more members of a new CPA firm, as defined in 21 NCAC 08A .0301, shall be included in the CPA firm name. The name of former members and the initials of former members that are currently in the CPA firm name and the name of current members and the initials of current members may be included in a new CPA firm name. The name, the portion of the name, the initials of the name or the acronym derived from the name of a firm association or firm network that includes names that were not previous CPA members or are not current CPA members of the CPA firm may be included in the CPA firm name. The name or initials of a non-CPA member in a CPA firm name may be included in the CPA firm name if certified public accountant or CPA is not included in or with the CPA firm name. ~~is prohibited.~~

(b) Style of Practice. It is misleading if a CPA firm practices under a name or style ~~which that~~ would tend to imply the existence of a partnership or registered limited liability partnership or a professional corporation or professional limited liability company of more than one CPA shareholder or CPA member or an association when in fact there is no partnership nor is there more than one CPA shareholder or CPA member of a CPA firm. For example, no CPA firm having just one CPA member may have as a part of its name the words "associates," "group," "firm," or "company" or their abbreviations. It is also misleading if a CPA renders non-attest professional services through a non-CPA firm using a name that implies any non-licensees are CPAs.

(c) Any CPA firm that has continuously used an assumed name approved by the Board prior to April 1, 1999, may continue to use the assumed name. A CPA firm (or a successor firm by sale, merger, or operation of law) using the name, or a portion of a name, or the initials of the name, or the acronym derived from the name of a firm association or firm network that was approved by the Board prior to April 1, 1999 may continue to use that name so long as that use is not deceptive. A CPA firm (or a successor firm by sale, merger, or operation of law) may continue to use the surname of a retired or deceased partner or shareholder in the CPA firm's name so long as that use is not deceptive.

(d) Any CPA firm registered in another jurisdiction that provides notification of intent to practice pursuant to G.S. 93-10(c)(3) may practice under the name as registered with that jurisdiction.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0308 VALUATION SERVICES STANDARDS

(a) Standards for Valuation Services. A CPA shall not render valuation services of a business, a business ownership interest, security, or intangible asset unless the CPA has complied with the standards for valuation services.

(b) Statements on Standards for Valuation Services. The Statements on Standards for Valuation Services (including the definition of such services) issued by the AICPA, including amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for valuation services for the purposes of Paragraph (a) of this Rule. Departures from the standards listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(c) Departures. Departures from the standards listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)(c) Copies of Statements. Copies of the statements on standards for valuation services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is ~~one hundred sixty-nine dollars (\$169.00)~~ one hundred ninety-four dollars (\$194.00) in paperback form or ~~four hundred eighty-six dollars (\$486.00)~~ one hundred sixty-nine dollars (\$169.00) in looseleaf-on-line subscription form as of the effective date of the last amendment to this Rule.~~

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0309 PERSONAL FINANCIAL PLANNING SERVICES

(a) Statement on Standards on Personal Financial Planning Services. A CPA shall not render personal financial planning services unless the CPA has complied with the applicable standards for personal financial planning services.

(b) Statement on Standards on Personal Financial Planning Services. The Statement on Standards on Personal Financial Planning Services (including the definition of such services) issued by the AICPA, including subsequent amendments and editions, is hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for personal financial planning services for the purpose of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies of the Statement on Standards on Personal Financial Planning Services may be inspected in the office of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in online subscription form as of the effective date of the last amendment of this Rule.

Authority G.S. 55-12; 57C-2-01; 93-12(9).

SECTION .0400 - RULES APPLICABLE TO CPAS PERFORMING ATTEST SERVICES

21 NCAC 08N .0401 PUBLIC RELIANCE

The rules in this Section apply to any CPA who engages in the attest or assurance services as defined in 21 NCAC 08A .0301(b). CPAs who engage in such services are also subject to the Peer Review requirements of Subchapter 08M.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0402 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0403 AUDITING STANDARDS

(a) Standards for Auditing Services. A CPA shall not render auditing services unless the CPA has complied with the applicable generally accepted auditing standards.

(b) Statements on Auditing Standards. The Statements on Auditing Standards issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted auditing standards for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(e) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)(c)~~ Copies of Statements. Copies of the Statements on Auditing Standards may be inspected in the offices of the Board,

as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is ~~one hundred sixty-nine dollars (\$169.00)~~ one hundred ninety-four dollars (\$194.00) in paperback form or ~~four hundred eighty-six dollars (\$486.00)~~ one hundred sixty-nine dollars (\$169.00) in ~~looseleaf-on-line~~ subscription form as of the effective date of the last amendment to this Rule.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0404 ACCOUNTING AND REVIEW SERVICES STANDARDS

(a) Standards for Accounting and Review Services. A CPA shall not render accounting and review services unless the CPA has complied with the standards for accounting and review services.

(b) Statements on Standards for Accounting and Review Services. The Statements on Standards for Accounting and Review Services issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for accounting and review services for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(e) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)(c)~~ Copies of Statements. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is ~~one hundred sixty-nine dollars (\$169.00)~~ one hundred ninety-four dollars (\$194.00) in paperback form or ~~four hundred eighty-six dollars (\$486.00)~~ one hundred sixty-nine dollars (\$169.00) in ~~looseleaf-on-line~~ subscription form as of the effective date of the last amendment to this Rule.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0405 GOVERNMENTAL ACCOUNTING STANDARDS

(a) Standards for Governmental Accounting. A CPA shall not permit the CPA's name to be associated with governmental financial statements for a client unless the CPA has complied with the standards for governmental accounting.

(b) Statements on Governmental Accounting and Financial Reporting Services. The Statements on Governmental Accounting and Financial Reporting Services issued by the GASB, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for governmental accounting for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(e) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)(c)~~ Copies of Statements. Copies of the Statements on Governmental Accounting and Financial Reporting Standards,

including technical bulletins and interpretations, may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the GASB, Post Office Box 30784, Stamford, CT 06150. They are available at cost, which is ~~two hundred twenty-eight dollars (\$228.00)~~ one hundred eighty-four dollars (\$184.00). In addition to the basic set, an updating subscription service is available for ~~two hundred five dollars (\$205.00)~~ two hundred twenty-five dollars (\$225.00) annually as of the effective date of the last amendment to this Rule.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0406 ATTESTATION STANDARDS

(a) Standards for Attestation Services. A CPA shall not render attestation services unless the CPA has complied with the applicable attestation standards.

(b) Statements on Standards for Attestation Engagements. The Statements on Standards for Attestation Engagements issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered attestation standards for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

~~(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.~~

~~(d)~~(c) Copies of Statements. Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is ~~one hundred sixty-nine dollars (\$169.00)~~ one hundred ninety-four dollars (\$194.00) in paperback form or ~~four hundred eighty-six dollars (\$486.00)~~ one hundred sixty-nine dollars (\$169.00) in ~~looseleaf~~ on-line subscription form as of the effective date of the last amendment to this Rule.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0408 – READOPT WITHOUT SUBSTANTIVE CHANGES

21 NCAC 08N .0409 GOVERNMENT AUDITING STANDARDS

(a) Standards for Government Audits. A CPA shall not render audit services to a government entity or entity that receives government awards and is required to receive an audit in

accordance with Government Auditing Standards unless the CPA has complied with the applicable Generally Accepted Government Auditing Standards.

(b) Government Auditing Standards. The Government Auditing Standards issued by the United States Government Accountability Office, including subsequent amendments and additions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered Generally Accepted Government Auditing Standards for the purpose of Paragraph (a) of this Rule. Departures from the standards listed in this Paragraph shall be justified by those who do not follow them as set out in the standards.

~~(c) Departure. Departures from the standards listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the standards.~~

~~(d)~~(c) Copies of the Standards. Copies of the Government Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the Government Printing Office, Washington, D.C. 20402-0001. They are available at a cost, which is ~~approximately twelve dollars and fifty cents (\$12.50)~~ sixteen dollars (\$16.00) in ~~paperback form.~~ form as of the effective date of the last amendment to this Rule.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0410 INTERNATIONAL STANDARDS ON AUDITING

(a) International Standards on Auditing. A CPA shall not render auditing services unless the CPA has complied with the applicable international standards on auditing.

(b) Statement on International Standards on Auditing. The Statement on International Standards on Auditing issued by the International Auditing and Assurance Board, including subsequent amendments and additions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered International Standards on Auditing for the purpose of Paragraph (a) of this Rule. Departures from the standards listed in this Paragraph must be justified by those who do not follow them as set out in the standards.

(c) Copies of the Standards. Copies of the International Standards on Auditing may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the International Auditing and Assurance Board at 529 5th Avenue, 6th Floor, New York, NY 10017. They are available at a cost, which is approximately one hundred sixty dollars (\$160.00) in paperback form.

Authority G.S. 55-12; 57C-2-01; 93-12(9).

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 August 20, 2015.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

ELECTIONS, STATE BOARD OF

<u>Determination of Reasonable Resemblance at Check-In</u>	08	NCAC	17	.0101*	29:21 NCR
<u>Determination of Reasonable Resemblance by Judges of</u>	08	NCAC	17	.0102*	29:21 NCR
<u>Identification of Curbside Voters</u>	08	NCAC	17	.0103	29:21 NCR
<u>Opportunity to Update Name or Address After Reasonable</u>	08	NCAC	17	.0104*	29:21 NCR
<u>Declaration of Religious Objection to Photograph</u>	08	NCAC	17	.0105*	29:21 NCR

MEDICAL CARE COMMISSION

<u>Definitions</u>	10A	NCAC	13B	.2101	29:18 NCR
<u>Reporting Requirements</u>	10A	NCAC	13B	.2102*	29:18 NCR
<u>Definitions</u>	10A	NCAC	13C	.0103*	29:18 NCR
<u>Reporting Requirements</u>	10A	NCAC	13C	.0206*	29:18 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>PM2.5 Particulate Matter</u>	15A	NCAC	02D	.0410	29:20 NCR
<u>Prevention of Significant Deterioration Requirements for ...</u>	15A	NCAC	02D	.0544	29:20 NCR
<u>Payment of Fees</u>	15A	NCAC	02Q	.0206	29:20 NCR
<u>Applications</u>	15A	NCAC	02Q	.0304	29:20 NCR
<u>Applicability</u>	15A	NCAC	02Q	.0502	29:20 NCR
<u>Application</u>	15A	NCAC	02Q	.0507*	29:20 NCR

COASTAL RESOURCES COMMISSION

<u>AECs Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304*	29:19 NCR
<u>Single Family Residences Exempted from the CAMA Permit</u>	15A	NCAC	07K	.0213	29:19 NCR

ELECTROLYSIS EXAMINERS, BOARD OF

<u>Fees</u>	21	NCAC	19	.0201*	29:19 NCR
<u>Application for Licensure</u>	21	NCAC	19	.0202*	29:19 NCR
<u>Application for Renewal, Reinstatement, or Reactivation o...</u>	21	NCAC	19	.0203*	29:19 NCR
<u>Application for Renewal, Reinstatement, or Reactivation o...</u>	21	NCAC	19	.0204*	29:19 NCR
<u>Cleaning, Sterilization, and Safety Precautions for Instr...</u>	21	NCAC	19	.0407*	29:19 NCR
<u>Client Evaluation</u>	21	NCAC	19	.0409*	29:19 NCR
<u>Application for and Renewal of School Certification</u>	21	NCAC	19	.0602*	29:19 NCR
<u>School Equipment</u>	21	NCAC	19	.0608*	29:19 NCR
<u>Certification of Schools in Other States or Jurisdictions</u>	21	NCAC	19	.0622*	29:19 NCR
<u>Board Approval of Courses</u>	21	NCAC	19	.0702*	29:19 NCR

VETERINARY MEDICAL BOARD

Practice of Veterinary Medicine

21 NCAC 66 .0209* n/a G.S. 150B 21.5(a)(3)

TITLE 08 – BOARD OF ELECTIONS

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

(a) An election official shall check the registration status of all persons presenting to vote in-person on election day or during one-stop early voting pursuant to G.S. 163-166.7, and shall require that all persons presenting to vote provide one of the forms of photo identification listed in G.S. 163-166.13(e), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the person presenting to vote of applicable options specified in G.S. 163-166.13(c). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

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

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

- (1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-166.13(e). A valid United States passport book or a valid United States passport card is acceptable pursuant to G.S. 163-166.13(e)(3);
- (2) That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163-166.13(e);
- (3) That the photograph appearing on the photo identification depicts the person presenting to vote. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. Perceived differences of the following features shall not be grounds for the election official to find that the photograph appearing on the photo identification fails to depict the person presenting to vote:
 - (A) weight;

- (B) hair features and styling, including changes in length, color, hairline, or use of a wig or other hairpiece;
 - (C) facial hair;
 - (D) complexion or skin tone;
 - (E) cosmetics or tattooing;
 - (F) apparel, including the presence or absence of eyeglasses or contact lenses;
 - (G) characteristics arising from a perceptible medical condition, disability, or aging;
 - (H) photographic lighting conditions or printing quality; and
- (4) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. The name appearing on the photo identification shall be considered substantially equivalent to the name contained in the registration record if differences are attributable to a reasonable explanation or one or more of the following reasons:
- (A) Omission of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);
 - (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);
 - (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. Sanchez versus Aaron B. Sanchez);
 - (D) Use of a former name, including maiden names (such as, for illustrative purposes only, Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell D. Jacobson);

- (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia);
- (F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

(d) The election official shall not require any additional evidence outside the four corners of the photo identification. The election official shall not require that any person remove apparel for the purposes of rendering a determination under Paragraph (c). If the face of the person presenting to vote is covered such that the election official cannot render a determination under Subparagraph (c)(3), then the election official shall give the person the opportunity to remove the covering but shall not require that removal. If the person declines to remove the covering, the election official shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(c)(3), and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the person bears any reasonable resemblance to the photo identification.

(e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph (c)(1) and the address contained in the registration record shall not be construed as evidence that the photographic identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor shall it be construed as evidence that the photographic identification does not otherwise meet the requirements of any other provision of Paragraph (C).

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

- (1) If the election official determines that the photo identification meets all the requirements of Paragraph (c), then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and 163-166.13(b); or
- (2) If the election official determines that the photo identification does not meet all of the requirements of Subparagraphs (c)(1) and (c)(2), the election official shall inform the person presenting to vote of the reasons for such determination (such as, for illustrative purposes only, that the photo identification is expired) and shall invite the person to provide any other acceptable photo identification that he or she may have. If the person presenting to vote does not produce photo identification that meets all the requirements of Subparagraph (c)(1) and (c)(2), then the election official shall inform the person presenting to vote of applicable options

specified in G.S. 163-166.13(c). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

- (3) If the election official determines that the photo identification does not meet all the requirements of Subparagraphs (c)(3) and (c)(4), the election official shall notify the voting site's judges of election that the person presenting to vote does not bear any reasonable resemblance to the photo identification.

History Note: Authority G.S. 163-82.6A; 163-82.15; 163-166.7; 163-166.13; 163-166.14; 163-182.1A; Eff. January 1, 2016.

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

(a) The judges of election shall make a determination as to reasonable resemblance pursuant to G.S. 163-166.14 only if the person presenting to vote is referred to them by an election official as set out in 08 NCAC 17 .0101(f)(3).

(b) The judges of election shall inspect the photo identification provided by the person presenting to vote and shall make a determination as to all requirements set out in 08 NCAC 17 .0101(c)(3) and (4). The judges of election shall make their determinations based on the totality of the circumstances, construing all evidence in the light most favorable to the person presenting to vote. The judges of election shall consider the following, if presented:

- (1) Any information contained in the photo identification meeting the requirements of 08 NCAC 17 .0101(c)(1) and the registration record (such as, for illustrative purposes only, date of birth, sex, or race);
- (2) Any explanation proffered by the person presenting to vote or by other persons; and
- (3) Any additional documentation provided by the person presenting to vote or by other persons.

(c) The judges of election shall follow 08 NCAC 17 .0101(e) with regard to addresses appearing on the photo identification.

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

- (1) Unless the judges of election unanimously find that the photo identification does not bear any reasonable resemblance to the person appearing before them as set out in Subparagraph (e)(2), the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and 163-166.13(b).
- (2) If the judges of election unanimously find that the photo identification does not meet all the

requirements of 08 NCAC 17 .0101(c)(3) and (4), the judges of election shall enter a determination that the photo identification does not bear any reasonable resemblance to the person presenting to vote, and shall record their determinations in the manner set out in Paragraph (e) of this Rule. The judges of election shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-88.1.

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

History Note: Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; 163-166.13; 163-166.14; Eff. January 1, 2016.

08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS

An election official assisting curbside voters shall require identification of curbside voters pursuant to G.S. 163-166.9(b). If the curbside voter provides one of the forms of photo identification listed in G.S. 163-166.13(e), the provisions of 08 NCAC 17 .0101 shall apply.

History Note: Authority G.S. 163-166.9; 163-166.13; Eff. January 1, 2016.

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

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

History Note: Authority G.S. 163-82.15(d); 163-82.16(d); 163-166.7; 163-166.13(b); Eff. January 1, 2016.

08 NCAC 17 .0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH

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

- (1) The voter's name, address, current county, and voter registration number;
- (2) The following declaration: "I, [voter's name], have a sincerely-held religious objection to

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

(3) The voter's dated signature.

(b) A signed declaration form as allowed under G.S. 163-166.13(a)(2) shall be effective for all elections going forward held in the State that are held at least 25 days from the date of the completed declaration being made, or until the voter cancels the declaration. A signed declaration form as allowed under G.S. 163-182.1A(b) will be effective for the election for which the declaration was made and all elections going forward held in the State, or until the voter cancels the declaration.

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

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

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

History Note: Authority G.S. 163-82.7A; 163-166.12(a)(2); 163-166.13(a)(2); 163-182.1A(b)(2); 163-275; Eff. January 1, 2016.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13B .2101 DEFINITIONS

In addition to the terms defined in G.S. 131E-214.13, the following terms shall apply throughout this Section, unless text indicates to the contrary:

- (1) "Current Procedural Terminology (CPT)" means a medical code set developed by the American Medical Association.

- (2) "Diagnostic related group (DRG)" means a system to classify hospital cases assigned by a grouper program based on ICD (International Classification of Diseases) diagnoses, procedures, patient's age, sex, discharge status, and the presence of complications or co-morbidities.
- (3) "Department" means the North Carolina Department of Health and Human Services.
- (4) "Financial assistance" means a policy, including charity care, describing how the organization will provide assistance at its hospital(s) and any other facilities. Financial assistance includes free or discounted health services provided to persons who meet the organization's criteria for financial assistance and are unable to pay for all or a portion of the services. Financial assistance does not include:
 - (a) bad debt;
 - (b) uncollectable charges that the organization recorded as revenue but wrote off due to a patient's failure to pay;
 - (c) the cost of providing such care to the patients in Sub-Item (4)(b) of this Rule; or
 - (d) the difference between the cost of care provided under Medicare or other government programs, and the revenue derived therefrom.
- (5) "Healthcare Common Procedure Coding System (HCPCS)" means a three-tiered medical code set consisting of Level I, II and III services and contains the CPT code set in Level I.

- (2) the 20 most common imaging procedures shall be based upon all outpatient data for both hospitals and ambulatory surgical facilities and represent all occurrences of the diagnostic radiology imaging codes section of the CPT codes, then selecting the top 20 to be provided to the Department; and
- (3) the 20 most common outpatient surgical procedures shall be based upon the primary procedure code from the ambulatory surgical facilities and represent all occurrences of the surgical codes section of the CPT codes, then selecting the top 20 to be provided to the Department.

(b) Information required or reported in Paragraphs (a), (c), (d), and (i) of this Rule shall be posted on the Department's website at: <http://www.ncdhhs.gov/dhsr/ahc> and may be accessed at no cost.

(c) In accordance with G.S. 131E-214.13 and quarterly per year, all licensed hospitals shall report the data required in Paragraph (e) of this Rule related to the statewide 100 most frequently reported DRGs to the certified statewide data processor in a format provided by the certified statewide processor. Commencing September 30, 2015, a rolling four quarters data report shall be submitted that includes all sites operated by the licensed hospital. Each report shall be for the period ending three months prior to the due date of the report.

(d) In accordance with G.S. 131E-214.13 and quarterly per year, all licensed hospitals shall report the data required in Paragraph (e) of this Rule related to the statewide 20 most common outpatient imaging procedures and the statewide 20 most common outpatient surgical procedures to the certified statewide data processor in a format provided by the certified statewide processor. This report shall include the related primary CPT and HCPCS codes. Commencing September 30, 2015, a rolling four quarters data report shall be submitted that includes all sites operated by the licensed hospital. Each report shall be for the period ending three months prior to the due date of the report.

(e) The reports as described in Paragraphs (c) and (d) of this Rule shall be specific to each reporting hospital and shall include:

- (1) the average gross charge for each DRG, CPT code, or procedure without a public or private third party payer source;
- (2) the average negotiated settlement on the amount that will be charged for each DRG, CPT code, or procedure as required for patients defined in Subparagraph (e)(1) of this Rule. The average negotiated settlement shall be calculated using the average amount charged all patients eligible for the hospital's financial assistance policy, including self-pay patients;
- (3) the amount of Medicaid reimbursement for each DRG, CPT code, or procedure, including all supplemental payments to and from the hospital;
- (4) the amount of Medicare reimbursement for each DRG, CPT code, or procedure; and
- (5) on behalf of patients who are covered by a Department of Insurance licensed third-party

History Note: Authority G.S. 131E-214.13; Temporary Adoption Eff. December 31, 2014; Eff. September 30, 2015.

10A NCAC 13B .2102 REPORTING REQUIREMENTS

(a) The Department shall establish the lists of the statewide 100 most frequently reported DRGs, 20 most common outpatient imaging procedures, and 20 most common outpatient surgical procedures performed in the hospital setting to be used for reporting the data required in Paragraphs (c) through (e) of this Rule. The lists shall be determined annually based upon data provided by the certified statewide data processor. The Department shall make the lists available on its website. The methodology to be used by the certified statewide data processor for determining the lists shall be based on the data collected from all licensed facilities in the State in accordance with G.S. 131E-214.2 as follows:

- (1) the 100 most frequently reported DRGs shall be based upon all hospital's discharge data that has been assigned a DRG based on the Centers for Medicare & Medicaid Services grouper for each patient record, then selecting the top 100 to be provided to the Department;

and teachers and State employees, the lowest, average, and highest amount of payments made for each DRG, CPT code, or procedure by each of the hospital's top five largest health insurers.

- (A) each hospital shall determine its five largest health insurers based on the dollar volume of payments received from those insurers;
- (B) the lowest amount of payment shall be reported as the lowest payment from each of the five insurers on the DRG, CPT code, or procedure;
- (C) the average amount of payment shall be reported as the arithmetic average of each of the five health insurers payment amounts;
- (D) the highest amount of payment shall be reported as the highest payment from each of the five insurers on the DRG, CPT code, or procedure; and
- (E) the identity of the top five largest health insurers shall be redacted prior to submission.

(f) The data reported, as defined in Paragraphs (c) through (e) of this Rule, shall reflect the payments received from patients and health insurers for all closed accounts. For the purpose of this Rule, "closed accounts" are patient accounts with a zero balance at the end of the data reporting period.

(g) A minimum of three data elements shall be required for reporting under Paragraphs (c) and (d) of this Rule.

(h) The information submitted in the report shall be in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 45 CFR Part 164.

(i) The Department shall provide the location of each licensed hospital and all specific hospital data reported pursuant to this Rule on its website. Hospitals shall be grouped by category on the website. On each quarterly report, hospitals shall determine one category that most accurately describes the type of facility. The categories are:

- (1) "Academic Medical Center Teaching Hospital," means a hospital as defined in Policy AC-3 of the N.C. State Medical Facilities Plan. The N.C. State Medical Facilities Plan may be accessed at: <http://www.ncdhhs.gov/dhsr/ncsmfp> at no cost.
- (2) "Teaching Hospital," means a hospital that provides medical training to individuals, provided that such educational programs are accredited by the Accreditation Council for Graduated Medical Education to receive graduate medical education funds from the Centers for Medicare & Medicaid Services.
- (3) "Community Hospital," means a general acute hospital that provides diagnostic and medical treatment, either surgical or nonsurgical, to inpatients with a variety of medical conditions, and that may provide outpatient services, anatomical pathology services, diagnostic imaging services, clinical laboratory services,

operating room services, and pharmacy services, that is not defined by the categories listed in this Subparagraph and Subparagraphs (i)(1), (2), or (5) of this Rule.

- (4) "Critical Access Hospital," means a hospital defined in the Centers for Medicare & Medicaid Services' State Operations Manual, Chapter 2 – The Certification Process, 2254D – Requirements for Critical Access Hospitals (Rev. 1, 05-21-04), including all subsequent updates and revisions. The manual may be accessed at the website: http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf at no cost.
- (5) "Mental Health Hospital," means a hospital providing psychiatric services pursuant to G.S. 131E-176(21).

History Note: Authority G.S. 131E-214.4; 131E-214.13; Temporary Adoption Eff. December 31, 2014; Eff. September 30, 2015.

10A NCAC 13C .0103 DEFINITIONS

In addition to the terms defined in G.S. 131E-214.13, the following terms shall apply throughout this Subchapter, unless the context clearly requires otherwise:

- (1) "Adequate" means, when applied to various areas of services, that the services are satisfactory in meeting a referred to need when measured against professional standards of practice.
- (2) "AAAASF" means American Association for Accreditation of Ambulatory Surgery Facilities.
- (3) "AAAHC" means Accreditation Association for Ambulatory Health Care.
- (4) "Ancillary nursing personnel" means persons employed to assist registered nurses or licensed practical nurses in the care of patients.
- (5) "Anesthesiologist" means a physician whose specialized training and experience qualify him or her to administer anesthetic agents and to monitor the patient under the influence of these agents. For the purpose of this Subchapter, the term "anesthesiologist" shall not include podiatrists.
- (6) "Anesthetist" means a physician or dentist qualified, as defined in Items (10) and (24) of this Rule, to administer anesthetic agents or a registered nurse qualified, as defined in Items (25) and (27) of this Rule, to administer anesthesia.
- (7) "Authority having jurisdiction" means the Division of Health Service Regulation.
- (8) "Chief executive officer" or "administrator" means a qualified person appointed by the governing authority to act in its behalf in the

- overall management of the facility and whose office is located in the facility.
- (9) "Current Procedural Terminology (CPT)" means a medical code set developed by the American Medical Association.
- (10) "Dentist" means a person who holds a valid license issued by the North Carolina Board of Dental Examiners to practice dentistry.
- (11) "Department" means the North Carolina Department of Health and Human Services.
- (12) "Director of nursing" means a registered nurse who is responsible to the chief executive officer or administrator and has the authority and direct responsibility for all nursing services and nursing care for the entire facility at all times.
- (13) "Financial assistance" means a policy, including charity care, describing how the organization will provide assistance at its facility. Financial assistance includes free or discounted health services provided to persons who meet the organization's criteria for financial assistance and are unable to pay for all or a portion of the services. Financial assistance does not include:
- (a) bad debt;
 - (b) uncollectable charges that the organization recorded as revenue but wrote off due to a patient's failure to pay;
 - (c) the cost of providing such care to the patients in Sub-Item (13)(b) of this Rule; or
 - (d) the difference between the cost of care provided under Medicare or other government programs, and the revenue derived therefrom.
- (14) "Governing authority" means the individual, agency, group, or corporation appointed, elected, or otherwise designated, in which the ultimate responsibility and authority for the conduct of the ambulatory surgical facility is vested.
- (15) "Healthcare Common Procedure Coding System (HCPCS)" means a three tiered medical code set consisting of Level I, II and III services and contains the CPT code set in Level I.
- (16) "JCAHO" or "Joint Commission" means Joint Commission on Accreditation of Healthcare Organizations.
- (17) "Licensing agency" means the Department of Health and Human Services, Division of Health Service Regulation.
- (18) "Licensed practical nurse (L.P.N.)" means any person licensed as such under the provisions of G.S. 90-171.20(8).
- (19) "Nursing personnel" means registered nurses, licensed practical nurses, and ancillary nursing personnel.
- (20) "Operating room" means a room in which surgical procedures are performed.
- (21) "Patient" means a person admitted to and receiving care in a facility.
- (22) "Person" means an individual, a trust or estate, a partnership or corporation, including associations, joint stock companies and insurance companies; the State, or a political subdivision or instrumentality of the state.
- (23) "Pharmacist" means a person who holds a valid license issued by the North Carolina Board of Pharmacy to practice pharmacy in accordance with G.S. 90-85.3A.
- (24) "Physician" means a person who holds a valid license issued by the North Carolina Medical Board to practice medicine. For the purpose of carrying out these Rules, a "physician" may also mean a person holding a valid license issued by the North Carolina Board of Podiatry Examiners to practice podiatry.
- (25) "Qualified person," when used in connection with an occupation or position, means a person:
- (a) who has demonstrated through experience the ability to perform the required functions; or
 - (b) who has certification, registration, or other professional recognition.
- (26) "Recovery area" means a room used for the post-anesthesia recovery of surgical patients.
- (27) "Registered nurse" means a person who holds a valid license issued by the North Carolina Board of Nursing to practice nursing as defined in G.S. 90-171.20(7).
- (28) "Surgical suite" means an area that includes one or more operating rooms and one or more recovery rooms.

History Note: Authority G.S. 131E-149; 131E-214.13; Eff. October 14, 1978; Amended Eff. April 1, 2003; November 1, 1989; Temporary Amendment Eff. December 31, 2014; Eff. September 30, 2015.

10A NCAC 13C .0206 REPORTING REQUIREMENTS

(a) The Department shall establish the lists of the statewide 20 most common outpatient imaging procedures and 20 most common outpatient surgical procedures performed in the ambulatory surgical facility setting to be used for reporting the data required in Paragraphs (c) and (d) of this Rule. The lists shall be determined annually based upon data provided by the certified statewide data processor. The Department shall make the lists available on its website. The methodology to be used by the certified statewide data processor for determining the lists shall be based on the data collected from all licensed facilities in the State in accordance with G.S. 131E-214.2 as follows:

- (1) the 20 most common imaging procedures shall be based upon all outpatient data for ambulatory surgical facilities and represent all occurrences of the diagnostic radiology

imaging codes section of the CPT codes, then selecting the top 20 to be provided to the Department; and

- (2) the 20 most common outpatient surgical procedures shall be based upon the primary procedure code from the ambulatory surgical facilities and represent all occurrences of the surgical codes section of the CPT codes, then selecting the top 20 to be provided to the Department.

(b) All information required by this Rule shall be posted on the Department's website at: <http://www.ncdhhs.gov/dhsr/ahc> and may be accessed at no cost.

(c) In accordance with G.S. 131E-214.13 and quarterly per year, all licensed ambulatory surgical facilities shall report the data required in Paragraph (d) of this Rule related to the statewide 20 most common outpatient imaging procedures and the statewide 20 most common outpatient surgical procedures to the certified statewide data processor in a format provided by the certified statewide processor. This report shall include the related primary CPT and HCPCS codes. Commencing September 30, 2015, a rolling four quarters data report shall be submitted. Each report shall be for the period ending three months prior to the due date of the report.

(d) The report as described in Paragraph (c) of this Rule shall be specific to each reporting ambulatory surgical facility and shall include:

- (1) the average gross charge for each CPT code or procedure without a public or private third party payer source;
- (2) the average negotiated settlement on the amount that will be charged for each CPT code or procedure as required for patients defined in Subparagraph (d)(1) of this Rule. The average negotiated settlement shall be calculated using the average amount charged all patients eligible for the facility's financial assistance policy, including self-pay patients;
- (3) the amount of Medicaid reimbursement for each CPT code or procedure, including all supplemental payments to and from the ambulatory surgical facility;
- (4) the amount of Medicare reimbursement for each CPT code or procedure; and
- (5) on behalf of patients who are covered by a Department of Insurance licensed third-party and teachers and State employees, the lowest, average, and highest amount of payments made for each CPT code or procedure by each of the facility's top five largest health insurers.
 - (A) each ambulatory surgical facility shall determine its five largest health insurers based on the dollar volume of payments received from those insurers;
 - (B) the lowest amount of payment shall be reported as the lowest payment from each of the five insurers on the CPT code or procedure;

- (C) the average amount of payment shall be reported as the arithmetic average of each of the five health insurers payment amounts;
- (D) the highest amount of payment shall be reported as the highest payment from each of the five insurers on the CPT code or procedure; and
- (E) the identity of the top five largest health insurers shall be redacted prior to submission.

(e) The data reported, as defined in Paragraphs (c) and (d) of this Rule, shall reflect the payments received from patients and health insurers for all closed accounts. For the purpose of this Rule, "closed accounts" are patient accounts with a zero balance at the end of the data reporting period.

(f) A minimum of three data elements shall be required for reporting under Paragraph (c) of this Rule.

(g) The information submitted in the report shall be in compliance with the federal Health Insurance Portability and Accountability Act of 45 CFR Part 164.

(h) The Department shall provide all specific ambulatory surgical facility data reported pursuant to this Rule on its website.

History Note: Authority G.S. 131E-147.1; 131E-214.4; 131E-214.13;
Temporary Adoption Eff. December 31, 2014;
Eff. September 30, 2015.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02D .0410 PM2.5 PARTICULATE MATTER

(a) The national primary ambient air quality standards for PM2.5 are 12.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration and 35 $\mu\text{g}/\text{m}^3$ 24-hour average Concentration measured in the ambient air as PM2.5 (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

- (1) A reference method based on appendix L to 40 C.F.R. Part 50 and designated in accordance with 40 C.F.R. Part 53; or
- (2) An equivalent method designated in accordance with 40 C.F.R. Part 53.

(b) The primary annual PM2.5 standard is met when the annual arithmetic mean concentration, as determined in accordance with appendix N of 40 C.F.R. Part 50, is less than or equal to 12.0 $\mu\text{g}/\text{m}^3$.

(c) The primary 24-hour PM2.5 standard is met when the 98th percentile 24-hour concentration, as determined in accordance with appendix N of 40 C.F.R. Part 50, is less than or equal to 35 $\mu\text{g}/\text{m}^3$.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);
Eff. April 1, 1999;
Amended Eff. September 1, 2015; January 1, 2010.

15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions of Rule .0530 of this Section. A major stationary source or major modification shall not be required to obtain a prevention of significant deterioration (PSD) permit on the sole basis of its greenhouse gases emissions. For all other regulated new source review (NSR) pollutants, the provisions of Rule .0530 of this Section apply.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

(1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

- (A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (C) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source shall currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an

emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and

(F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph;

(2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

(3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.

(c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.

(d) In the definition of "subject to regulation", a greenhouse gas's global warming potential is the global warming potential published at Table A-1 of Subpart A of 40 CFR Part 98 and shall include subsequent amendments and editions.

(e) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(f) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule.

The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(g) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(h) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(k) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(l) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(m) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(n) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;

- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his or her findings. The owner or operator shall not make the modification until the owner or operator has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(o) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of July 20, 2011 as set forth here <http://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol2/pdf/CFR-2011-title40-vol2-sec51-166.pdf>, <http://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol3/pdf/CFR-2011-title40-vol3-sec52-21.pdf>, and with the amendment set forth on 76 FR 43507 at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-17256.pdf> and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;

Eff. January 28, 2011 pursuant to E.O. 81, Beverly E. Perdue; Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule;

Temporary Amendment Eff. December 23, 2011;

Amended Eff. July 1, 2012;

Temporary Amendment Eff. December 2, 2014;

Amended Eff. September 1, 2015.

15A NCAC 02Q .0206 PAYMENT OF FEES

- (a) Payment of fees required under this Section may be by check or money order made payable to the N.C. Department of Environment and Natural Resources. Annual permit fee payments shall refer to the permit number.
- (b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required under this Section, the Director may initiate action to terminate the permit under Rule .0309 or .0519 of this Subchapter, as appropriate.
- (c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.
- (d) The payment of the permit application fee required by this Section shall accompany the application and is non-refundable.
- (e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected under this Section from facilities which have obtained or will obtain permits under Section .0500 of this Subchapter except synthetic minor facilities and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. September 1, 2015.

15A NCAC 02Q .0304 APPLICATIONS

- (a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing according to Rule .0104 of this Subchapter.
- (b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:
 - (1) for a new facility or an expansion of existing facility, a consistency determination according to G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
 - (2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required under Rule .0113 of this Subchapter;
 - (3) for permit renewal, an emissions inventory that contains the information specified under 15A NCAC 02D .0202, Registration of Air Pollution Sources (the applicant may use emission inventory forms provided by the Division to satisfy this requirement); and
 - (4) documentation showing the applicant complies with Parts (A) or (B) of this Subparagraph if the Director finds this information necessary to evaluate the source, its air pollution abatement equipment, or the facility;

- (A) The applicant is financially qualified to carry out the permitted activities, or
- (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal, name, or ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The permit renewal, name, or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information, if the Director finds the following information necessary to evaluate the applicant for ownership change, showing that:

- (1) The applicant is financially qualified to carry out the permitted activities, or
- (2) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(3) or (4) of this Section signed by a person specified in Paragraph (j) of this Rule.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(5) of this Section signed by a person specified in Paragraph (j) of this Rule.

(f) When to file applications for permit renewal. Applicants shall file applications for renewals such that they are mailed to the Director at the address specified in Rule .0104 of this Subchapter and postmarked at least 90 days before expiration of the permit.

(g) Name, or ownership change. The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Signature on application. Permit applications submitted pursuant to this Rule shall be signed as follows:

- (1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;
- (2) for partnership or limited partnership, by a general partner;
- (3) for a sole proprietorship, by the proprietor;
- (4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(k) Application fee. With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. A permit application is incomplete until the permit application processing fee is received.

(l) Correcting submittals of incorrect information. An applicant has a continuing obligation to submit relevant facts pertaining to his permit application and to correct incorrect information on his permit application.

(m) Retaining copy of permit application package. The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. September 1, 2015; January 1, 2009; December 1, 2005; July 1, 1999.

15A NCAC 02Q .0502 APPLICABILITY

(a) Except as provided in Paragraph (b) or (c) of this Rule, the following facilities are required to obtain a permit under this Section:

- (1) major facilities;
- (2) facilities with a source subject to 15A NCAC 02D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (3) facilities with a source subject to 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;

(4) facilities with a source subject to 15A NCAC 02D .1111 or 40 CFR Part 63 or any other standard or other requirement under Section 112 of the federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to rules or requirements under Section 112(r) of the federal Clean Air Act;

(5) facilities to which 15A NCAC 02D .0517(2), .0528, .0529, or .0534 applies;

(6) facilities with a source subject to Title IV or 40 CFR Part 72; or

(7) facilities in a source category designated by EPA as subject to the requirements of 40 CFR Part 70.

(b) This Section does not apply to minor facilities with sources subject to requirements of 15A NCAC 2D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63 until EPA requires these facilities to have a permit under 40 CFR Part 70.

(c) A facility shall not be required to obtain a permit under this Section on the sole basis of its greenhouse gas emissions.

(d) Once a facility is subject to this Section because of emissions of one pollutant, the owner or operator of that facility shall submit an application that includes all sources of all regulated air pollutants located at the facility except for insignificant activities because of category.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. December 2, 2014; Amended Eff. September 1, 2015.

15A NCAC 02Q .0507 APPLICATION

(a) Except for:

- (1) minor permit modifications covered under Rule .0515 of this Section,
- (2) significant modifications covered under Rule .0516(c) of this Section, or
- (3) permit applications submitted under Rule .0506 of this Section,

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision. However, the owner or operator of the source shall not begin construction or operation until he has obtained a construction and operation permit pursuant to Rule .0501(c) or (d) and Rule .0504 of this Section.

(b) The application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate; but not including insignificant activities because of category. The application form shall be certified by a responsible official for truth, accuracy, and completeness. In the application submitted pursuant to this Rule,

the applicant may attach copies of applications submitted pursuant to Section .0400 of this Subchapter or 15A NCAC 02D .0530 or .0531, provided the information in those applications contains information required in this Section and is current, valid, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with Rule .0104 of this Subchapter on forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. Whenever the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required under Rule .0113 of this Subchapter; and
- (3) if required by the Director, information showing that:
 - (A) the applicant is financially qualified to carry out the permitted activities, or
 - (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

- (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, six copies plus one additional copy for each affected state that the Director has to notify pursuant to Rules .0521 and .0522 of this Section;
- (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, four copies plus one additional copy for each affected state that the Director has to notify pursuant to Rules .0521 and .0522 of this Section.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a preconstruction permit under 15A NCAC 02D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(i) The Director shall give priority to permit applications containing early reduction demonstrations under Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications as soon as practicable after receipt of the complete permit application.

(j) With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995; Temporary Amendment Eff. December 1, 1999; Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000.

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 60; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120

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

- (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
- (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
 - (b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean

erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photocopies are available at no charge.

- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:
 - (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-Item (1)(a) of this Rule.
 - (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified, or re-establishment of the vegetation, the area shall return to its pre-storm designation.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985; Temporary Amendment Eff. October 10, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997; Temporary Amendment Eff. October 22, 1997; Amended Eff. September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

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

History Note: Authority G.S. 113A-103(5)(a); 113A-113(b)(6); 113A-118(d)(2); 113A-119.1; Eff. August 1, 2002; Repealed Eff. September 1, 2015.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

21 NCAC 19 .0201 FEES

(a) The following fees are payable to the Board for licensure as an electrologist:

- (1) Application for licensure \$125.00
- (2) Initial licensure \$125.00
- (3) Renewal of licensure \$125.00

(b) The following fees are payable to the Board for licensure as a laser hair practitioner:

- (1) Application for licensure \$125.00
- (2) Initial licensure \$125.00
- (3) Renewal of licensure \$150.00

(c) The following fees are payable to the Board for certification as an instructor:

- (1) Application for Electrology instructor \$150.00
- (2) Renewal of Electrology instructor \$125.00
- (3) Application for laser hair practitioner instructor \$150.00
- (4) Renewal of laser hair practitioner instructor \$125.00

(d) The following fees are payable to the Board for certification as a Board approved school:

- (1) IN STATE SCHOOL
 - (A) Application for certification as an Electrology school \$250.00
 - (B) Renewal of certification as an Electrology school \$150.00
 - (C) Application for certification as a laser, light source, or pulse light treatment school \$250.00
 - (D) Renewal of certification for a laser, light source, or pulse light treatment school \$150.00
- (2) OUT-OF-STATE SCHOOL
 - (A) Application for certification as an Electrology school \$400.00
 - (B) Initial certification as an Electrology school \$100.00
 - (C) Renewal of certification for an Electrology school \$100.00
 - (D) Application for certification as a laser, light source, or pulse light treatment school \$350.00

- (E) Initial certification as a laser, light source, or pulse light treatment school \$75.00
 - (F) Renewal of certification as a laser, light source, or pulse light treatment school \$100.00
- (e) The following other fees are payable to the Board:
- (1) Electrologist Examination or reexamination \$125.00
 - (2) Office inspection or re-inspection
 - (A) Electrologist – per licensee, for each office site \$100.00
 - (B) Laser Hair Practitioner – per licensee, for each office site \$100.00
 - (3) License by reciprocity \$125.00
 - (4) Late renewal charge \$50.00
 - (5) Reinstatement of expired license \$250.00
 - (6) Reinstatement of instructor licensure \$250.00
 - (7) Reactivation of license \$150.00
 - (8) Reactivation of instructor licensure \$150.00
 - (9) Duplicate license \$25.00
- (f) All fees shall be paid by check or money order, made payable to "The North Carolina Board of Electrolysis Examiners."
- (g) Renewal fees required for Subparagraphs (a)(3), (b)(3), (c)(2), (c)(4), (e)(2), and (e)(9) of this Rule shall be waived for licensees under this Chapter that are exempt from renewal fees under G.S. 93B-15.

History Note: Authority G.S. 88A-9; 93B-15; Temporary Adoption Eff. December 1, 1991 for a period of 62 days to expire on February 1, 1992; Eff. January 1, 1992; Temporary Amendment Eff. September 17, 2001; Amended Eff. September 1, 2015; October 9, 2010; December 4, 2002.

21 NCAC 19 .0202 APPLICATION FOR LICENSURE

(a) All applicants for licensure as an electrologist shall submit an application on the form provided by the Board, accompanied by proof of being 21 years of age, a passport acceptable photograph (see photo requirements for U.S. passports at www.travel.state.gov) taken within the past two years, the required application fee, as set forth in Rule .0201 of this Section, any information required by Paragraphs (b), (c) and (d) of this Rule, and certification of completion from each electrology and laser institution attended with verification of the number of hours completed in theory and clinical training. The Initial Electrolysis License Application may be obtained by contacting the Board or accessing it online at www.ncbee.com.

- (b) All applications for licensure under G.S. 88A-11(2) shall be accompanied by:
- (1) the address of the licensing agency in the other state or jurisdiction;
 - (2) any information such as a license number needed to identify the applicant in correspondence with that agency; and

- (3) a statement authorizing that agency to certify to the Board that the applicant is currently licensed or certified by the other state or jurisdiction and is in good standing, to inform the Board whether there are any pending complaints about the applicant, and to provide the Board with a copy of the licensing requirements in that state or jurisdiction.

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

(d) Applicants from states that do not license electrologists or applicants from states that require less than 600 hours of certified education shall submit proof of practice as required by G.S. 88A-10(a1) supported by tax records or a copy of a privilege license that will document previous practice of electrolysis prior to date of application.

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

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

- (1) proof of completion of a 30-hour laser, light source, or pulsed light treatment certification course approved by the Board that encompasses the laser or light device being used by the laser hair practitioner; and
- (2) a Supervisory Agreement between the laser hair practitioner and a supervising physician licensed with the North Carolina Medical Board (NCMB) as defined under G.S. Article 1 Chapter 90. The Agreement shall be in accordance with Rule .0501 of this Chapter.

(g) A copy of the Supervisory Agreement shall be filed with the Board and a copy shall be available in the office of the supervising physician and the laser hair practitioner for inspection by the Board or its agent.

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

History Note: Authority G.S. 88A-6; 88A-9; 88A-10; 88A-11; 88A-11.1; 88A-19; 88A-19.1; 88A-21;

Temporary Adoption Eff. December 1, 1991 for a period of 62 days to expire on February 1, 1992;

Eff. February 1, 1992;

Temporary Amendment Eff. October 13, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. October 1, 2015; September 1, 2010; February 1, 1994.

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

(a) Unless an applicant electrolysis' license expired more than 90 days prior to the filing of an Electrolysis Annual Renewal application, (available online at www.ncbee.com), each applicant for license renewal pursuant to G.S. 88A-12 shall pay the required renewal fee, including the late renewal charge if applicable, and shall provide proof of compliance with Rule .0701(a)(1) of this Chapter.

(b) An electrologist whose license has been expired for more than 90 days but less than five years may apply for reinstatement by submitting an Electrolysis Reinstatement application (available online at www.ncbee.com), paying the reinstatement fee, and providing proof of competence pursuant to Rule .0701(a)(3) of this Chapter.

(c) An electrologist who has been on the inactive list for less than five years and desires to be returned to active status shall submit an Electrolysis Reactivation application (available online at www.ncbee.com), pay the reactivation fee, and provide proof of competence pursuant to Rule .0701(a)(2) of this Chapter.

(d) Proof of compliance with Rule .0701 of this Chapter shall be provided by a copy of a certificate of course completion issued by the course provider that identifies the course and includes the date, location, and number of hours taken by the applicant. The Board may request confirmation of the number of hours from the course provider if there are questions regarding the authenticity of the documentation and shall not give credit for hours that the entity does not confirm as hours actually taken by the applicant.

(e) Electrolysis Instructor Certification:

- (1) Renewal of Electrolysis Instructor Certification: Unless the applicant's instructor certification expired more than 90 days prior to the filing of an application for renewal, each applicant for instructor certification renewal pursuant to G.S. 88A-18 may apply for renewal by:

- (A) submitting an Electrolysis Instructor Renewal application (available online at www.ncbee.com);
- (B) paying the renewal fee; and
- (C) providing proof of current electrolysis licensure.

- (2) Reactivation of Electrolysis Instructor Certification: An instructor whose certification has been expired for more than 90 days but less than 3 years may apply for reactivation of the expired certification by:

- (A) submitting an Electrolysis Instructor Reactivation application (available online at www.ncbee.com);
- (B) paying the reactivation fee; and
- (C) providing proof of competence as described in Rule .0701(b)(1) of this Chapter.

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

- (A) taking and passing the instructor's examination;
- (B) submitting an Electrolysis Instructor Reinstatement application (available online at www.ncbee.com);
- (C) paying the reinstatement fee; and
- (D) providing proof of competence pursuant to Rule .0701(b)(2) of this Chapter.

- (2) Reactivation of Laser Hair Removal Instructor Certification: An instructor whose certification has been expired for less than 3 years but more than 90 days may apply for reactivation of the expired certification by:

- (A) submitting a Laser Instructor Reactivation application (available online at www.ncbee.com);
- (B) paying the reactivation fee; and
- (C) providing proof of competence as described in Rule .0701(b)(1) of this Chapter.

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

- (A) submitting a Laser Instructor Reinstatement application (available online at www.ncbee.com);
- (B) paying the reinstatement fee; and
- (C) providing proof of competence pursuant to Rule .0701(b)(2) of this Chapter.

History Note: Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18; Eff. March 1, 1995; Amended Eff. October 1, 2015.

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

(a) Unless an applicant laser hair practitioner's license expired more than 90 days prior to the filing of an application for renewal, each applicant for license renewal pursuant to G.S. 88A-12 shall file a Laser Annual Renewal application (available online at www.ncbee.com), pay the required renewal fee, including the late renewal charge if applicable, and shall provide proof of compliance with Rule .0701(a)(1) of this Chapter.

(b) A laser hair practitioner who has been on the inactive list for less than five years who desires to be returned to active status, shall apply for reactivation by submitting a Laser Reactivation application (available online at www.ncbee.com), paying the reactivation fee, and providing proof of competence pursuant to Rule .0701(a)(2) of this Chapter.

(c) A laser hair practitioner whose license has been expired for more than 90 days but less than five years shall apply for reinstatement by submitting a Laser Reinstatement application (available online at www.ncbee.com), paying the reinstatement fee, and providing proof of competence pursuant to Rule .0701(a)(3) of this Chapter .

(d) Proof of compliance with Rule .0701 of this Chapter shall be provided by a certificate of course completion issued by the entity that offered the program or course, that identifies the course and includes the date, location, and number of hours taken by the applicant. The Board may request confirmation of the number of hours from the course provider if there are questions regarding the authenticity of the documentation and shall not give credit for hours that the entity does not confirm as hours actually taken by the applicant.

(e) Laser Hair Removal Instructor Certification:

- (1) Renewal of Laser Hair Removal Instructor Certification: Unless the applicant's instructor certification expired more than 90 days prior to the filing of an application for renewal, each applicant may apply for renewal by:

- (A) submitting a Laser Instructor Renewal application (available online at www.ncbee.com);
- (B) paying the renewal fee; and
- (C) providing proof of current laser hair removal licensure.

History Note: Authority G.S. 88A-6; 88A-12; 88A-13; 88A-14; 88A-18; Eff. September 1, 2010; Amended Eff. October 1, 2015.

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

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

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

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

- (1) Coordinate sterilized instruments and supplies needed for each treatment in a manner whereby adherence to aseptic technique is maintained;
- (2) Wear gloves when handling soiled instruments; and
- (3) Avoid puncture injury from instruments.

(c) As used in this Rule, instruments and other items include:

- (1) Needles that are:
 - (A) single-use, pre-sterilized, and disposable;
 - (B) stored in a manner that will maintain sterile conditions of contents;
 - (C) not recapped, bent, or otherwise manipulated by hand prior to disposal;
 - (D) placed in a puncture-resistant sharps container after use, when opened or

- found damaged, when contaminated before use, or when not used before pre-printed expiration date; and
- (E) disposed of in accordance with State and local regulations when the sharps container is no more than three quarters full;
- (2) Forceps, phoresis rollers, and epilator tips that are:
- (A) disinfected before initial use and after use on the client;
- (B) disinfected after a 24-hour period when packaging is opened and instruments are unused or when packaging is contaminated before use, for example, dropped or placed on a surface not protected by barriers;
- (C) accumulated after use and before cleaning and sterilization in a covered holding container by submersion in a solution of a protein-dissolving enzyme detergent and water, following manufacturer's instruction for dilution, then rinsed and drained; and
- (D) cleaned and sterilized in accordance with the standards in Paragraphs (d) and (e) of this Rule.
- (d) Electrologists shall observe the following standards for cleaning:
- (1) Place items and other instruments in the basket of a covered ultrasonic cleaning unit containing a fresh solution of a protein-dissolving enzyme detergent and water;
 - (2) Follow manufacturer's instructions for dilution and ultrasonic running times;
 - (3) Remove basket from ultrasonic unit rinse under running water and drain;
 - (4) Drain and air dry items on a clean, disposable, absorbent, non-shedding cloth in an area protected from exposure to contaminants with a hot-air dryer or by placement into a drying cabinet;
 - (5) Package forceps, rollers, and heat-stable tips individually in woven or non-woven wraps, paper or film pouches, or rigid container systems for the sterilization process;
 - (6) Place packaged instruments and items in an autoclave or dry-heat sterilizer with a chemical indicator;
 - (7) If dry-heat sterilizers are used, subject the heat-sensitive tips to an intermediate-level disinfectant, after which the tips are rinsed and dried; and
 - (8) Store instruments and items in a clean and dry covered container, drawer or closed cabinet after the cleaning process.
- (e) Electrologists shall observe the following standards for sterilization:
- (1) The required minimum time and temperature relationship for sterilization methods shall be:
 - (A) for the dry heat method, the minimum time-temperature relationship required to be attained is 340° F (170° C) for one hour or 320° F (160° C) for two hours; and
 - (B) for the autoclave (steam under pressure) method, the minimum time-temperature-pressure relationship required to be attained is 15 to 20 minutes at 121°C (250°F) and 15 psi (pounds per square inch) for unpackaged instruments and items and 30 minutes at 121° C (250° F) and 15 psi (pounds per square inch) for packaged instruments and items.
 - (C) temperature and exposure requirements in Parts (A) and (B) of this Subparagraph relate to the time of exposure after attainment of the required temperature and do not include a penetration of heat-up lag time, drying time, or cool-down time;
 - (2) Sterilizers shall have visible physical indicator gauges, for example, thermometers, timers, on the devices that shall be monitored during the sterilization cycle;
 - (3) The interior of the sterilization devices shall be cleaned according to the manufacturer's instructions;
 - (4) Packaging for sterilization shall:
 - (A) accommodate the size, shape, and number of instruments to be sterilized;
 - (B) be able to withstand the physical conditions of the selected sterilization process;
 - (C) allow enough space between items in each package for the sterilization of all surfaces to occur; and
 - (D) chemical indicators shall be visible on the outside of each package sterilized that indicates the instruments and items have been exposed to a sterilization process.
 - (5) Manufacturer's recommendations shall be followed for aseptic removal of contents in the sterilized packages;
 - (6) Biological monitors shall be used no less than once a month for each sterilization device according to manufacturer's instruction in order to ensure that proper mechanical function of the sterilizer is maintained; and
 - (7) Recorded laboratory reports from the biological monitors shall be filed in a permanent sterility assurance file.
- (f) Safety precautions shall be observed for other treatment related items as follows:

- (1) Indifferent electrodes, epilator cords, and eye shields shall be cleaned, dried, and subjected to intermediate-level disinfection before initial use and after each treatment and replaced when showing signs of wear and tear;
- (2) Ultrasonic cleaning units and all other containers and their removable parts shall be used during soaking and cleaning procedures, cleaned, dried daily, and used and maintained according to manufacturer's instructions; and
- (3) Environmental surfaces directly related to treatment shall be cleaned and subjected to low-level disinfection daily and whenever visibly contaminated.

History Note: Authority G.S. 88A-6(9); 88A-16; Eff. December 1, 2010; Amended Eff. September 1, 2015.

21 NCAC 19 .0409 CLIENT EVALUATION

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

- (1) Prepare a Health History Assessment File that contains:
 - (a) the date, name, address, contact information, date of birth, and names of family physician, gynecological physician, and dermatologist;
 - (b) the areas of face and body to be treated;
 - (c) the hirsute family history;
 - (d) any current and previous methods of hair removal;
 - (e) any current and previous medications;
 - (f) any current and previous physical examination dates and results;
 - (g) any skin irregularities; and
 - (h) the date and signature of client.
- (2) Update and evaluate the client's health status to determine if the client should be referred to a physician.
- (3) Examine the client's skin for signs of infection or rashes prior to each treatment and delay treatment if actual or potential signs or symptoms of infection are present.
- (4) Refer the client to a physician when evaluation of health history or skin examination indicates.
- (5) Instruct the client on post-treatment care to promote healing of the treated skin site.

History Note: Authority G.S. 88A-2; 88A-6; Eff. December 1, 2010; Amended Eff. September 1, 2015.

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

(a) Each person applying for a school certification shall submit to the Board the information required by G.S. 88A-19 and 88A-19.1, and:

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

(b) Applicants for renewal of a school certification shall pay the required renewal fee and update the information that was submitted in accordance with Paragraph (a) of this Rule when the school initially applied. This update shall include any information required by virtue of amendments to this Rule in effect as of the date of renewal.

(c) Pursuant to G.S. 88A-20, school certifications that are not renewed within 90 days after the expiration date will be automatically forfeited. Reactivation or reinstatement of an expired school certificate are not allowed under the governing statute. Upon forfeiture, a school may reapply for certification by submitting an Electrolysis School Application or Laser School Application and paying the required application fee. Applications are available at www.ncbee.com.

History Note: Authority G.S. 88A-6; 88A-19; 88A-19.1; 88A-20; Eff. November 1, 1993; Amended Eff. September 1, 2015.

21 NCAC 19 .0608 SCHOOL EQUIPMENT

(a) Every electrolysis school certified by the Board shall provide and maintain the following equipment in accordance with manufacturers' instructions:

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

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

(c) All epilators, laser equipment, autoclaves and dry heat sterilizers shall be monitored monthly by the school to ascertain effectiveness. Any changes from the list of equipment provided to the Board pursuant to G.S. 88A-19(a)(3) and 88A-19.1(a)(3) shall be reported to the Board.

History Note: Authority G.S. 88A-6; 88A-19; 88A-19.1; 88A-20; Eff. November 1, 1993; Amended Eff. September 1, 2015; December 1, 2010.

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

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

- (1) The school applies for certification, submits the information required by G.S. 88A-19(a)(1) through (7) or 88A-19.1(a)(1) through (7), and meets the requirements of, and remains in compliance with, all other applicable provisions of this Section;
(2) If the school is in a state or jurisdiction that approves electrolysis schools, the school is approved by the proper agency for that state or jurisdiction;
(3) The electrology school has a curriculum of 600 hours; and
(4) The laser hair removal school has a laser, light source, or pulsed-light curriculum of 30 hours.

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

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

(d) Applications for electrolysis and laser schools may be accessed online at www.ncbee.com.

History Note: Authority G.S. 88A-6; 88A-19; 88A-19.1; 88A-21(b); Eff. February 1, 1994; Temporary Amendment Eff. September 1, 2001; Amended Eff. September 1, 2015; December 1, 2010; December 4, 2002.

21 NCAC 19 .0702 BOARD APPROVAL OF COURSES

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

- (1) In any subject required by 21 NCAC 19 .0601; and
(2) Offered by one of the following entities:
(A) a college or university authorized to grant degrees in this State;
(B) a national professional electrolysis or laser association;
(C) a school or Continuing Education (CE) provider certified by the Board;
(D) American Society of Laser Medicine (ASLM);
(E) American Academy of Dermatology (AAD); or
(F) an entity providing a program of Certified Medical Education (CME).

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

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

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

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

(e) The Board shall approve a program or course if requested pursuant to Paragraph (d) of this Rule on a finding that it offers an educational experience designed to enhance the practice of electrology or laser hair reduction as required by G.S. 88A-13. In determining whether or not to make this finding, the Board shall consider the program or course in light of the criteria set forth in The Continuing Education Unit Criteria and Guidelines, current edition, as adopted by the International Association for Continuing Education and Training (IACET) in conjunction with the American Standards National Institute (ANSI) and incorporated herein by reference including subsequent amendments or editions. The presence of all criteria or the absence of individual criteria shall not be conclusive, and the Board shall have discretion in the approval of programs, courses, or providers on a case-by-case basis. Copies of The Continuing Education Unit Criteria and Guidelines, current edition, may be obtained at a cost of twenty-nine dollars and ninety-five cents (\$29.95) at http://www.IACET.org.

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

History Note: Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18; Eff. March 1, 1995; Amended Eff. September 1, 2015; December 1, 2010.

CHAPTER 66 – VETERINARY MEDICAL BOARD

21 NCAC 66 .0209 LIMITED LIABILITY COMPANIES

(a) Veterinary medical services may be provided through a limited liability company that complies with this Rule, Article 11, G.S. 90, the rules of the Board, and statutes governing limited liability companies, including G.S. 57D-2-01.

(b) The name of a limited liability company organized to practice veterinary medicine shall not include any adjectives or other words not in accordance with Article 11, G.S. 90 and the rules of the Board.

(c) The corporate name of a professional limited liability company registered under these Rules shall contain the wording "professional limited liability company," "professional ltd. liability co.," "professional limited liability co.," or "professional ltd. liability company," or an abbreviation of one of the foregoing: "P.L.L.C." or "PLLC."

(d) Domestic professional limited liability companies shall be formed and all limited liability companies shall be operated in accordance with the requirements set out in G.S. 57D.

(e) Before filing the articles of organization for a professional limited liability company organized to practice veterinary medicine with the Secretary of State, the organizing members shall submit the following to the Board:

- (1) A registration fee as set by Rule .0108 of this Chapter; and
- (2) A certificate certified by all organizing members:
 - (A) setting forth the names and addresses of each person who will be employed by the professional limited liability company to practice veterinary medicine;
 - (B) stating that all such persons are duly licensed to practice veterinary medicine in North Carolina; and
 - (C) representing that the company will be conducted in compliance with the North Carolina Limited Liability Company Act (G.S. 57D), this Chapter, Article 11, G.S. 90 and the rules of the Board.

(f) A certification that each of the organizing members is licensed to practice veterinary medicine in North Carolina shall be returned by the Board to the organizer of the professional limited liability company for filing with the Secretary of State.

(g) A Certificate of Registration for a professional limited liability company shall be renewed annually. The Certificate of Registration shall expire on the last day of December following

its issuance by the Board and shall become invalid on that date unless renewed. Upon written application signed by its manager on a renewal form prescribed by the Board accompanied by the prescribed fee as set by Rule .0108 of this Chapter, the Board shall renew the Certificate of Registration providing that the professional limited liability company has complied with Article 11, G.S. 90, the rules of the Board and applicable General Statutes of North Carolina. The renewal form shall require the applicant to set forth:

- (1) the legal name, address and telephone number of the company;
- (2) the legal names of all members;
- (3) the legal names of all officers; and
- (4) the veterinary practice facilities operated by the company.

(h) If the Board determines that the reports filed in Paragraph (e) or (g) of this Rule, are unclear or incomplete the Board may request in writing such supplemental reports as it deems appropriate from any professional limited liability companies registered with the Board pursuant to G.S. 57D, Article 11, G.S. 90, and these Rules. The professional limited liability company shall file such reports with the Board's office within 30 days from the date it receives the request.

(i) Professional limited liability companies registered with the Board pursuant to G.S. 57D shall file a certified copy of all amendments to the articles of organization within 30 days after the effective date of each amendment. They shall also file a copy of any amendment to the bylaws, certified to be a true copy by the manager(s) of the professional limited liability company within 30 days after adoption of the amendment.

(j) The Board shall issue a certificate authorizing transfer of membership when membership is transferred in the professional limited liability company. This certificate of transfer shall be permanently retained by the company. The membership books of the company shall be kept at the principal office of the company and shall be subject to inspection by authorized agents of the Board. Transfer of membership shall only be to a person licensed to practice veterinary medicine in this State.

(k) All documents required by these Rules to be submitted to the Board by the professional limited liability company shall be executed by the manager(s) of the professional limited liability company, and duly acknowledged before a notary public or some other officer qualified to administer oaths.

History Note: Authority G.S. 57D-2-01; 90-181.1; 90-186; 90-187.11; Eff. May 1, 1996; Amended Eff. September 1, 2015.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission October 15, 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

October 15, 2015 November 19, 2015
December 17, 2015 January 21, 2016

AGENDA

**RULES REVIEW COMMISSION
THURSDAY, OCTOBER 15, 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. Environmental Management Commission – 15A NCAC 02B .0295 (Reeder)
 - B. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
 - C. Board of Massage and Bodywork Therapy – 21 NCAC 30 .0702, .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015 (May)
 - D. Building Code Council – 2011 NC Electrical Code – 300.9 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between August 21, 2015 and September 21, 2015
 - NC Rural Electrification Authority (Reeder)
 - Department of Health and Human Services (May)
 - Criminal Justice Education and Training Standards Commission (Thomas)
 - Department of Labor (Reeder)
 - Environmental Management Commission (May)
 - Board of Pharmacy (May)
 - Board of Podiatry Examiners (Hammond)
- V. Existing Rules Review
 - Review of Reports
 - 1. 06 NCAC 01 – Council of State (Reeder)
 - 2. 06 NCAC 02 – Council of State (Reeder)
 - 3. 06 NCAC 03 – Council of State (Reeder)
 - 4. 06 NCAC 04 – Council of State (Reeder)
 - 5. 10A NCAC 40 – Commission for Public Health (Hammond)
 - 6. 10A NCAC 47 – Commission for Public Health (Hammond)
 - 7. 11 NCAC 11 – Department of Insurance (Hammond)

- 8. 11 NCAC 19 – Department of Insurance (Hammond)
- 9. 18 NCAC 01 – Department of the Secretary of State (Hammond)
- 10. 18 NCAC 04 – Department of the Secretary of State (Hammond)
- 11. 18 NCAC 13 – Department of the Secretary of State (Hammond)
- 12. 25 NCAC 01D – State Human Resources Commission (May)

- VI. Commission Business
- Legislative Update
 - Next meeting: Thursday, November 19, 2015
-
-

Commission Review
Log of Permanent Rule Filings
August 21, 2015 through September 21, 2015

NC RURAL ELECTRIFICATION AUTHORITY

The rules in Chapter 8 concern rural electrification authority including general provisions (.0100); electric Membership Corporations (.0200); telephone membership corporations (.0300); petitions: hearings: temporary rules: declaratory rulings: contested cases.

Loan Applications and Categories 04 NCAC 08 .0304
Amend/*

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

The rules in Chapter 14 are from the Director of the Division of Health Service Regulation.

The rules in Subchapter 14D concern overnight respite in certified day care programs including scope and definitions (.0100); physical plant rules (.0200); program management (.0300); enrollment to overnight respite services (.0400); staffing (.0500); medication administration (.0600); nutrition and food service (.0700); and program activities (.0800).

Scope and Definitions 10A NCAC 14D .0101
Repeal/*

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission.

This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Documentation of Educational Requirements 12 NCAC 09B .0106
Amend/*

Minimum Standards for Law Enforcement Officers 12 NCAC 09B .0111
Amend/*

Minimum Standards for Local Confinement Personnel 12 NCAC 09B .0114
Amend/*

Minimum Standards for Juvenile Justice Officers 12 NCAC 09B .0117
Amend/*

Admission of Trainees 12 NCAC 09B .0203
Amend/*

<u>General Instructor Certification</u> Amend/*	12	NCAC 09B .0302
<u>Certification of School Directors</u> Amend/*	12	NCAC 09B .0501

The rules in Subchapter 9F cover concealed handgun training.

<u>Instructor Qualifications</u> Amend/*	12	NCAC 09F .0104
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The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

<u>Education</u> Amend/*	12	NCAC 09G .0204
<u>General Instructor Certification</u> Amend/*	12	NCAC 09G .0308

LABOR, DEPARTMENT OF

The rules in Subchapter 7G concern incorporated standards for handling of antineoplastic agents.

<u>Handling of Antineoplastic Agents</u> Adopt/*	13	NCAC 07G .0101
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ENVIRONMENTAL MANAGEMENT COMMISSION

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

<u>Water Quality Management Plans</u> Amend/*	15A	NCAC 02B .0227
<u>Cape Fear River Basin</u> Amend/*	15A	NCAC 02B .0311

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Storage of Devices and Medical Equipment</u> Amend/*	21	NCAC 46 .2612
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PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); general provisions (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners; the board of podiatry examiners constituting a board of podiatry elections; and procedures for holding an election (.1300); and scope of practice (.1400).

<u>License Re-Instatement</u>	21	NCAC	52	.0215
Adopt/*				
<u>Forms and Applications</u>	21	NCAC	52	.0611
Amend/*				

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

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

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May

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

J. Randolph Ward

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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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	
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<u>BOARD OF BARBER EXAMINERS</u>			
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<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>BOARD FOR THE LICENSING OF GEOLOGISTS</u>			
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<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

CONTESTED CASE DECISIONS

Yessika Murga Martinez v. Crime Victims Compensation Commission	14 CPS 07544	05/29/15	
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	

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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	

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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
Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare	14 DHR 02198	06/17/15	30:07 NCR 794
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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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Erica Chante Johnson v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 06571	03/10/15	30:02 NCR 236
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Sandy's Playschool LLC, Michelle Bailey-Motley v. DHHS, Division of Child Development	14 DHR 08580	02/16/15	
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Tiffany Leary v. NCDHHS, Division of Health Services, Health Care Personnel Registry	14 DHR 08785	01/06/15	
Patrician Shearin v. NCDHHS	14 DHR 09012	06/29/15	
Tomika Jones Moore v. NCDHHS, Division of Health Service Regulation	14 DHR 10137	04/06/15	
Jones Country Mart, Inesar M Ahmad v. NCDHHS, WIC	14 DHR 10138	02/03/15	
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Shawn Williams v. Rutherford-Polk-McDowell District Health Department, Environmental Health Division	14 DHR 10277	08/21/15	
Sophia B Pierce and Associates d/b/a Sunny Acres Group Home v. DHHS, Division of Facility Services, Mental Health Licensure and Certification Section	14 DHR 10281	04/02/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	15 DHR 00462	04/27/15	

DEPARTMENT OF JUSTICE

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Thomas Eliza Anderson v. Private Protective Services Board	11 DOJ 10367	06/24/14	
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Tobias La'Trell Clagon v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05117	07/01/15	
Arthur Randall Griffin v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05118	04/27/15	
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Ronald Corbett Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00055	05/04/15	30:05 NCR 587
Billy-Dee Greenwood v. NC Private Protective Services Board	15 DOJ 00520	06/02/15	30:07 NCR 833
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Barnhill Contracting Co. Inc v. Department of Transportation, Division of Highways	12 DOT 04647	02/03/15	
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<u>DEPARTMENT OF STATE TREASURER</u>			
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Candace Collins v. NC Retirement Agency	14 DST 06428	12/02/14	
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Bannor Michael Macgregor v. Durham County Department of Health, Environmental Health Division	14 EHR 02900	04/13/15	
Brian T Jackson, Rosemary Jackson v. NCDHHS, Environmental Health Section, Doug Mcvey and/or Harry Lewis	14 EHR 02843	01/13/15	
Garrett Adam Couick v. Cabarrus County Health Alliance	14 EHR 07603	07/24/15	
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Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 11438	04/28/15	30:01 NCR 62
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14194	08/14/14	
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14195	08/14/14	
Willie Joyce Partin v. DOT, Division of Motor Vehicles, Traffic Records, Crash Report Unit	13 OSP 17728	12/04/13	
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 19135	04/28/15	30:01 NCR 62
Matthew Lennon v. NC Department of Justice and NC Department of Public Safety	14 OSP 06377	02/16/15	
Raymond Gene Gonzales v. NCDHHS, Division of Vocational Rehabilitation Services	14 OSP 07804	02/27/15	30:04 NCR 534
Joseph Tenhagen v. NC Department of Public Safety, Employee Advisory Committee	14 OSP 07837	03/23/15	30:05 NCR 571
Stephen Dale Brown v. NC State University	14 OSP 09759	06/25/15	30:07 NCR 812
Zoila Brock v. Nanette Outlaw, Director Duplin County Social Services	14 OSP 10048	04/17/15	30:06 NCR 711
 <u>OFFICE OF THE SECRETARY OF STATE</u>			
Carolyn Marie Aikens v. Secretary of State, Notary Public	13 SOS 15500	11/05/13	

Filed

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

2015 JUN 12 PM 11:08

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 BOG 03255

Office of
Administrative Hearings

Robert Payne, P.G.,)
Petitioner,)
v.)
N.C. Board for the Licensing of)
Geologists,)
Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, 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.

After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals after receipt of the official transcript. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. Petitioner and Respondent filed timely materials on April 29, 2015 and March 23, 2015 respectively with receipt to the Undersigned of the later submission from the Office of Administrative Hearing's (OAH) Clerk's Office being April 30, 2015 at which time the record was closed for further submissions.

APPEARANCES

For Petitioner: Daniel S. Bullard
Attorney for Petitioner
Walker & Bullard, P.A.
P.O. Box 223
Gibsonville, NC 27249

For Respondent: Nancy Reed Dunn
Assistant Attorney General
N. C. Department of Justice
Environmental Division
Post Office Box 629
Raleigh, NC 27602-0629

ISSUES

1. Whether the disciplinary action proposed by the Board, a letter of reprimand, is supported by the evidence presented to the Board.
2. Whether Petitioner acted in a manner which warranted disciplinary action.
3. Whether the Board properly proposed issuing a letter of reprimand to Petitioner.

APPLICABLE STATUTES and RULES

(including but not limited to the following)

N. C. Gen. Stat. §§ 89E-1 through 89E-24 (1998) (Geologists Licensing Act prior to 1999 revisions),
North Carolina Administrative Code, Title 21, Chapter 21 (consolidated)

EXHIBITS

(Transcript Page 5)

For Petitioner:

Petitioner's Exhibit 1 March 29, 2014 letter to Petitioner

For Respondent:

Respondent Exhibit 1 Report Prepared by Neil Gilbert
Respondent Exhibits 1A through 1L including the following:
 Complaint and emails submitted with complaint
 Notice of Investigation
 Response to Notice of Investigation
 Notice of Investigation sent to Stephen and Laura Savage
 Statement of Frank Siler
 Emails between Frank Siler and NCDENR
 UST Closure Report Prepared by Engineering and Environmental Science Company
 Letters submitted by Robert Payne re: previous incident
 Printout of web advertisement page for Cedar Rock Environmental
 Letter from website developer re: changes made to site
 Review of report by Bill Miller
 Review of report by George Bain
Respondent Exhibit 2 Report of additional Investigation prepared by Neil Gilbert
Respondent Exhibit 4 Notice of Proposed Disciplinary Action

WITNESSES

For Petitioner: Captain Ed Siler
Hadley Dullnig
Robert Payne

For Respondent: Neil Gilbert
John "Bill" Miller
George Bain
Lindsey Walata

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

FINDINGS OF FACT

1. Petitioner is a licensed geologist holding North Carolina license number 970.
2. Respondent is an occupational licensing board established under the North Carolina Geologists Licensing Act to administer and enforce the provisions of the North Carolina Geologists Licensing Act. The Board consists of the State Geologist as an *ex officio* member and a permanent member of the Board, an academic geologist, a mining geologist, a consulting geologist, a company geologist and a lay person.
3. The North Carolina Geologists Licensing Act's purposes are to protect life, property, health and public welfare through the regulation of the practice of geology in the State of North Carolina; to define the practice of geology as a profession, establishing minimum professional standards of ethical conduct, professional responsibility, educational and experience background; and to prevent abuses of the practice of geology by untrained or unprincipled individuals.
4. The North Carolina Geologists Licensing Act required the Board to prepare and adopt a code of professional conduct which was made known in writing to every licensee and applicant for licensing under the North Carolina Geologists Licensing Act and was published by the Board.

The code of professional conduct may be amended from time to time after due notice and opportunity for hearing to all licensed members and the public for comment before adoption of the revision or amendments. The Code of Professional Conduct is located in Chapter 21 of Title 21 of the North Carolina Administrative Code. Petitioner is charged with being aware of the requirements of the North Carolina Geologists Licensing Act, the Rules and Regulations of the North Carolina Board for Licensing of Geologists, including the Code of Professional Conduct adopted by the Board

5. 21 NCAC 21 .1101 states that the geologist shall conduct his practice in order to protect the public health, safety, and welfare.
6. 21 NCAC 21 .1102 states that the “prohibitions listed in this Rule include, but are not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing a prediction of future success; or statements containing an opinion as to the quality of services.”
7. The Board requires complaints about licensed geologists to be in writing and notarized. Once a valid complaint is received by the Board, it has the authority and duty to investigate the complaint. The Board is specifically authorized to appoint, employ, or retain investigators for the purpose of conducting such investigations.
8. 21 NCAC 21 .0501, states that:
 - (a) Any person may file with the Board a charge of negligence, incompetence, dishonest practice, or other misconduct or of any violation of Chapter 89E of the North Carolina General Statutes or of these Rules.
 - (b) Upon receipt of such charge or upon its own initiative, the Board may, consistent with procedures required by G.S. 150B, suspend or revoke the license or certificate of registration, may issue a reprimand as provided in Rule .0502 of this Section or may, upon a statement of the reasons therefore, dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the charge.
9. 21 NCAC 21 .0502(a) states that “if evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a Hearing be held pursuant to G.S. 150B.”
10. On February 20, 2013, a complaint was lodged against Petitioner by Laura Savage. Petitioner had been hired by a prospective purchaser of Ms. Savage’s property, Captain Ed Siler,

to investigate Ms. Savage's property for potential petroleum contamination from an underground storage tank.

11. Ms. Savages complaint alleged the following:
 - a. Petitioner, who had been hired by a prospective purchaser to investigate the subject property for potential petroleum contamination from an underground storage tank, had conducted testing on her property without her knowledge;
 - b. Petitioner conducted said tests, using a hand auger, and claimed to find soil dripping with oil, however, no samples were submitted for laboratory analysis;
 - c. Petitioner made represented several times that "he knows the manager of the Fayetteville Environmental/Waste Management office and his word would stand for requiring action;" and
 - d. That when Ms. Savage removed the petroleum underground storage tanks and conducted testing using a different environmental professional, no contamination could be found at the site.

12. Based upon her allegations, Ms. Savage stated the following conclusions:
 - a. "Mr. Payne's findings were grossly false and ended up costing us money."
 - b. "[T]he state regulator just took Mr. Payne's report (with no tests or "Proof") and required action on our part."
 - c. "[Mr Payne's] work was not unbiased and he stood to gain financially from doing any "work" he deemed was necessary."

13. Ms. Savage included with her complaint emailed correspondence and documents reflecting subsequent testing performed. She also included emailed correspondence and copies of reports reflecting that an environmental professional that was subsequently hired by Ms. Savage had found no contamination at the site.

14. Petitioner received an email from Ms. Savage indicating her intent to file a complaint with the Board based on her belief that Petitioner had erroneously reported contamination on her property. Upon receipt of that email, Petitioner forwarded that email that same day to the Board, to the attention of Barbara Geiger. Petitioner included in the email a statement that he understood the seller's concern, but that the soil sample he took was clearly contaminated and was observed by Captain Siler, who also has knowledge in the field. Petitioner stated that he still had the sample stored at his place of business.

15. Ed Siler is a Captain in the Army Chemical Corps. He is a certified Department of Defense and Civilian Hazmat Technician, holds a Bachelor's degree in Archeology, has completed a Masters in Environmental Management, and is familiar with procedures involved in taking soil samples. Captain Siler, along with his wife, were both present on Ms. Savage's property when Petitioner took the soil sample.

16. The complaint was given to Neil Gilbert, an investigator retained by the Board, for investigation. On March 4, 2013, Mr. Gilbert notified Petitioner by letter that a Complaint against him had been received by the Board, and that an investigation had been commenced. Mr. Gilbert summarized what he felt to be the salient allegations from the Complaint as follows:

- a. That your report of Environmental Inspection for the subject UST dated December 29, 2012, purposefully and erroneously stated that subsurface soil “was saturated with fresh (red colored) fuel oil suggesting significant leakage from the UST has occurred.”
- b. That no laboratory test was done to support that contention.
- c. That as a result of your report, the property owner felt compelled to have the UST removed.
- d. That a later site inspection found levels of petroleum constituents that would not have required remedial measures.

17. On or before March 21, 2013, Petitioner responded to Mr. Gilbert by emailing numerous pages of correspondence between various parties involved in this transaction.

18. Petitioner forwarded to Mr. Gilbert a letter that he requested and received from the client who had hired him to conduct the testing, Captain Ed Siler. This letter, dated June 5, 2013, and which was included in Mr. Gilbert’s Investigation Report stated, in pertinent part:

My wife and I observed his assistant break ground on surface...We watched him probe the ground to determine the size of the tank and stick a ruler down to gauge how much oil was still in the reservoir; he said there was still 11 inches or approximately 110 or so gallons in a tank that was almost 10 feet long. The soil being brought out was normal in color and texture-sandy composition and reddish brown. At a depth of about 4 feet, the soil smelled of diesel. At a depth of about 4 and a half feet, the soil came up muddy in consistency and dripping a red tinted diesel oil that ran off in a continuous trail. The smell of diesel fuel was overwhelming. Mr. Payne took a small sample of the soil and packed it in his kit. He sent us a report shortly after. I presented this to my realtor with an amended offer, priced to reflect repairs that would have to be made to make the tank and home in compliance with this development. They refused our offer, and when nothing was done, I forwarded Mr. Payne’s report and a description of these events to Wayne Robinson [sic] at the DENR.

19. Mr. Gilbert received during his investigation a copy of an email Captain Siler sent to the North Carolina Department of Environment and Natural Resources (DENR) Fayetteville Regional Office notifying staff at that office of a suspected release from a petroleum underground storage tank on Ms. Savage’s property. That email was included in Mr. Gilbert’s Investigation Report.

20. Mr. Gilbert obtained a copy of a Notice of Regulatory Requirements (NORR) that was sent to Ms. Savage by the Fayetteville Regional Office of DENR. That NORR notified Ms. Savage that information received by that office confirms that a release or discharge had occurred from a petroleum underground storage tank on the property, and of the resulting initial response and abatement action requirements under applicable state regulations.
21. Mr. Gilbert also obtained a copy of a report prepared by Engineering & Environmental Science Company as a result of testing completed by that company following tank removal at the property. Those test results indicated that no contamination requiring action was found at the site.
22. Mr. Gilbert was provided by Petitioner with a letter prepared by Singleton Environmental, Inc. relating to an unrelated site at which Petitioner had found contamination and another company had conducted testing finding no contamination. This report was offered by Petitioner as an example of an incident in which two professionals conducted testing on a site which produced different findings.
23. In investigating Ms. Savage's claim, Mr. Gilbert noted that an email provided by Ms. Savage made reference to Petitioner's website claiming that it was company policy for a realtor to be present during testing. Accordingly, Mr. Gilbert reviewed Petitioner's website. He did not find evidence on the website that Petitioner had published such a policy on his website, and printed a page from Petitioner's website stating that "Cedar Rock prefers to perform the inspection in the presence of a realtor, seller, and/or buyer." Upon request, Petitioner provided Mr. Gilbert with a summary from his website developer showing all recent changes to the website as evidence that the language in question had not been recently altered.
24. Mr. Gilbert interviewed Ms. Savage and Mr. Payne in person as part of his investigation. Additionally, he interviewed James Brown and Wayne Randolph, DENR staff involved in issuing the NORR for the site, Michelle Downey, real estate agent for the Silers, Kenny Barefoot, real estate agent for the Savages, Captain Siler, and Pat Shillington and Chip Humphrey, environmental professionals involved with tank removal at the site. Mr. Gilbert spoke by phone with Henry Faircloth, a representative of Generations Construction who had conducted an initial walk-through inspection of the property with Captain Siler and advised him to check for contaminated soil. Mr. Gilbert testified that the excavation contractor and the one that did the subsequent hand auger sample, whose company was 301 Environmental, was not a geologist. The closure samples that were taken after tank removal were done by an engineer, so Petitioner was the only geologist in the series of events that led to the investigation.
25. Following the completion of his investigation, Mr. Gilbert was able to find no violation of the Code of Professional Conduct based on any of the complaints of Ms. Savage and the four salient points of the allegations that he set forth in his letter to Petitioner notifying him of the investigation.
26. In finding no violation Mr. Gilbert addressed the specific allegations:

- a. Allegation No. 1 - Captain Siler, who has independent knowledge and expertise in the field of soil sampling personally observed Petitioner take the sample in question, and personally observed the soil from the sample as being saturated with oil. Accordingly, Mr. Gilbert did not find that Petitioner had purposely and erroneously reported oil and suggested that the UST had leaked.
 - b. Allegation No. 2- Mr. Gilbert found that because Mr. Payne's client did not wish to pay for testing to be conducted on the sample, Petitioner had not violated the Code of Professional Conduct by failing to submit the sample for laboratory analysis.
 - c. Allegation No. 3 - Mr. Gilbert concluded, based on his interview with Ms. Savage, that it was her concern regarding liability associated with leaving the tank in place that led her to pull the tank, and, accordingly, did not find that this allegation had been substantiated.
 - d. Allegation No. 4- While testing performed by Chip Humphrey following tank removal and excavation did not reveal the presence of any contamination requiring action, the fact that a third party with experience in the area verified the presence of petroleum in Petitioner's sample, lead to a finding that there was not a violation by Petitioner of the Code of Professional Conduct.
27. As none of the claims which formed the actual basis for the complaint were found to violate the Code of Professional Conduct, those issues are not before the Undersigned.
28. While Mr. Gilbert did not conclude in his Investigation Report that Petitioner had violated the Code of Professional Conduct in the manner alleged in the complaint, Mr. Gilbert did conclude that "The investigation did reveal a concern about Payne's handling of samples; that is not labeling samples, seemingly not understanding laboratory procedures and not retaining (or losing) the sample from the subject site."
29. Mr. Gilbert noted in his report that the sample had not been retained, and that while Petitioner had initially told Mr. Gilbert that he still had the sample, when Mr. Gilbert questioned Petitioner in his interview, Petitioner told him that he "held onto the sample for at least a month and when I spoke to [Board staff] I believed I still had it but it was in an unmarked jar. I routinely dispose of unmarked sample containers of soil that collect in the garage and I probably got rid of it without knowing it." Mr. Gilbert also requested that Petitioner provide him with field records, and Petitioner responded that he had not produced any documents other than a one page project summary sheet, and two photographs.
30. Notwithstanding the fact that none of the allegations which served as the basis for the actual complaint were found to constitute a violation of the Code of Professional Conduct, Mr. Gilbert's Investigation Report concluded that Petitioner had violated the Code of Professional Conduct. The facts upon which the alleged violations are based arose during the actual investigation of the Complaint.
31. As part of the Board's investigation procedures, the Investigation Report was provided to two licensed geologists for review and comment. William Miller, license number 1130, and

George Bain, license number 6, who are familiar with the Code of Professional Conduct and standard practices for geologists, identified Petitioner's handling of the sample as problematic. Mr. Miller stated that "Although Mr. Payne did not violate any laws by foregoing testing and by losing the oil-soaked soil sample he had saved, he demonstrated a lack of common sense by not labeling the sample, not having the sample tested, a lack of knowledge about laboratory methods, and incompetence by subsequently losing the sample." Mr. Bain stated that "not labeling and keeping the sample is unprofessional, sloppy work and if an employee of mine would have been fired."

32. Mr. Gilbert's Investigation Report with attachments was submitted to staff for the Board and subsequently reviewed by Lindsey Walata, the Board's chair. Ms. Walata requested that Mr. Gilbert conduct an additional investigation. Specifically, Ms. Walata noticed the following statement on Petitioner's website: "Once soil contamination is discovered, in most cases the affected property cannot be sold until the contamination has been cleaned up to State standards and properly assessed." Ms. Walata felt that this statement was highly misleading. She believed that this statement would lead a reader to believe that such sales are prohibited, despite the fact that State regulations specifically allow property that is contaminated with petroleum from an underground storage tanks to be sold so long as a "Notice of Residual Petroleum" is filed for the property. Ms. Walata directed Mr. Gilbert's attention to the Rules of Conduct of Advertising.

33. Mr. Gilbert conducted the additional investigation as requested by the Board's chair. He notified Petitioner of his investigation and requested a response to this specific allegation by letter dated January 29, 2014.

34. As part of his investigation, Mr. Gilbert printed out copies of several pages from Petitioner's website containing the language in question on January 27, 2014. On or about February 5, 2014, Petitioner responded to Mr. Gilbert, in writing. In his letter, Petitioner agreed that there is no legal prohibition against the sell of property with petroleum contamination from an underground storage tank, and agreed that the statement "could be misleading." Petitioner explained that what he had meant to relay to readers was that, for several practical reasons, it may be difficult to convey such property. He indicated that he had removed the statement from his website. Mr. Gilbert included Petitioner's response in his Report of Additional Investigation, as well as copies of the pages from the website. The Report of Additional Investigation was submitted to staff for the Board and reviewed by Ms. Walata.

35. Upon review of Mr. Gilbert's Investigation Report (initiated by the Savage complaint) and Report of Additional Investigation (initiated by Walata), Ms. Walata determined that Petitioner had violated the Code of Professional Conduct for licensed geologists, and the Rules of Conduct for Advertising for licensed geologists. Ms. Walata found that Petitioner had failed to adhere to practices for Geologists regarding the handling of soil samples by failing to properly identify the exact location from which the sample was taken, failing to properly label, preserve, and maintain the sample, and failing to retain the sample. Ms. Walata further found that the statements (which had been removed) from Petitioner's website violated the Rules of Conduct for Advertising in that they were misleading.

36. Ms. Walata determined that these violations did not rise to such a level as to require suspension or revocation of Petitioner's license, but determined that it was appropriate to issue to Petitioner a Letter of Reprimand explaining that these practices constituted a violation of Petitioner's duty as a licensed geologist and the potential harm posed by such practices.

37. A Notice of Proposed Disciplinary Action dated March 29, 2014 was mailed to the Petitioner by the Board. This proposed disciplinary action consisted of a proposed letter of reprimand which set forth two grounds upon which the Petitioner was alleged to have violated the Code of Professional Conduct. The Petitioner gave timely appeal to this proposed letter of reprimand. It is these two allegations which are before the Undersigned. The proposed letter of reprimand alleges as a ground for reprimand that Petitioner:

- a. "In light of the totality of the factual circumstances revealed by the investigation as described more fully below, you failed to adhere to your primary obligation to conduct your practice to safeguard the life, health, property and welfare of the public, and failed to maintain a high standard of professional practice in violation of 21 NCAC 21.1101(a) and (b) by failing to properly label and maintain the soil sample at issue in the February 20, 2013 complaint, failing to retain said soil sample after being aware of the complaint and the highly relevant nature of the soil sample to it, and failing to properly document the exact location from where the soil sample was taken" and;
- b. "In violation of 21 NCAC 21.1102(b), Rules of Conduct of Advertising, you included statements in no less than three sections of Cedar Rock Environmental's website that were without legal basis and were misleading."

38. In the Letter of Reprimand (LOR), the Respondent stated that Petitioner demonstrated "a practice of not properly labeling or maintaining samples," as well as not taking "adequate field notes regarding the precise location from which the sample had been taken." The LOR also set forth that after becoming aware that a complaint was going to be filed, Petitioner initially indicated that he had retained the sample, however was "unable to produce the sample when the investigator requested it," and stated that he had "likely disposed of it" because he routinely disposed of unmarked samples that are collected in his garage

39. Petitioner received an email from Ms. Savage on February 20, 2014 concerning her intent to file a grievance with the Board. Minutes after seeing the email, he immediately forwarded the email to Barbara Geiger of the Geology Board on that same day. Along with the forwarded email, he emailed Ms. Geiger and indicated that he still had a sample of the soil. Mr. Payne had not checked to see if he actually had retained the sample, but was relying on his memory, as he did not remember disposing of the sample.

40. When the Board Investigator, Mr. Gilbert, interviewed Petitioner over three months later on June 5, 2014, Petitioner told the investigator that he was mistaken and that he did not have the

sample and that he had likely disposed of the sample because he routinely disposed of samples that are unmarked and which he no longer needs.

41. Captain Siler was accepted by the Undersigned as an expert in the field of the identification of soil contaminants, including petroleum contaminants. Captain Siler stated that he indicated to Petitioner that he did not want to test the sample, as he observed the obvious presence of petroleum in the soil. He testified that smell of petroleum was overpowering and that the soil was visibly contaminated with petroleum. He testified to the soil drawn being of a muddy texture and that the petroleum actually separated from the soil once it was placed in a sample jar by Mr. Payne.

42. Petitioner, as well as Mr. Gilbert, Mr. Miller and Mr. Bain all testified that by the time the complaint was made on February 20, 2014, the soil sample, even if it had been retained, would have been held well past the time that it could have been submitted to a lab for analysis.

43. Captain Ed Siler and his wife Hadley Dullnig testified at the hearing that they had a specific recollection that Petitioner had, in fact, labeled the jarred sample before putting it away. Captain Siler and his wife each testified that they observed Mr. Payne place a tape label on the jar and place it in his truck. Petitioner testified that he had not recalled labeling the sample as described by Captain Siler, but that when he did label a sample, he would place tape on the jar as described by Captain Siler and write down name of the client, the date and time that the sample was taken, the type of test that may be ordered, and the address from which the sample was taken.

44. Mr. Gilbert, Mr. Miller and Mr. Bain were all unaware that Captain Siler had personally observed Petitioner label the sample until Captain Siler testified to that fact.

45. Mr. Gilbert testified that when he was preparing his report, he was working under the assumption that Petitioner had not labeled the sample, based on Petitioner's statement that he had not labeled the sample. At the hearing, and after hearing the testimony of Captain Siler and Hadley Dullnig, Mr. Gilbert's opinion was different than what he wrote in his report, in that he did believe that Petitioner did label the sample.

46. The Letter of Reprimand cites the failure to properly document the exact location from where the soil sample was taken as a cause for Petitioner's failure to conduct his practice in order to safeguard the life, health, property and welfare of the public and to maintain a high standard of professional practice.

47. Petitioner had not sent in his notes from the site for review by the Board so at the time of the review of the report of investigation, Ms. Walata and others saw no photos or sketches with Mr. Payne's report. At the hearing, Petitioner possessed and testified from his report which contained photographs of the areas where the sample had been taken, flags placed by Petitioner in the area, and his notes concerning the findings. Mr. Gilbert nor any of the Board members had seen this report which indicated that Petitioner did make a contemporaneous record and photographic history of the site.

48. The statement that was repeatedly made on Petitioner's website that "in most cases the affected property cannot be sold until the contamination has been cleaned up to State standards and properly assessed," was found to be misleading by Ms. Walata, Mr. Gilbert, Mr. Miller, and Mr. Bain. Each of these witnesses (all licensed professional geologists) felt that this language could lead a reader to believe that regulations required that contamination be cleaned up before a site could be sold. Petitioner admitted that no such legal prohibition exists. Ms. Walata testified that anyone who understands the applicable statute or a Notice of Residual Petroleum would find it to be a misleading statement.

49. Petitioner testified that in his experience in dealing with contaminated property in proposed real estate transactions, lenders would not lend money to purchase property with known contamination, and in most cases would not even foreclose on a property with known contamination. He testified that in his experience, the majority of real property transactions involved the requirement of financing to facilitate the sale. He further testified that in his experience, even the minority of buyers that can purchase property without the necessity of financing would not buy property with known contamination without remediation.

50. Without agreeing that a professional standards violation existed, Petitioner did agree to change the language of his website after he was contacted by the Board as a reasonable action by a professional in response to a request by the disciplinary board of his profession.

51. Ms. Walata testified that a letter of reprimand is basically "a letter that indicates that you have violated one of the standards, and it brings it to your attention." She went on to state that the intent was to allow an individual to understand they made a mistake and amend their practice so they don't make the mistake in the future. Ms. Walata saw the letter of reprimand as instructional.

BASED UPON the foregoing Findings of Fact the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. All parties are properly before the Administrative Law Judge acting as presiding officer for the Board for Licensing of Geologists, an occupational licensing agency as defined at N.C.G.S. § 150B-2(4b). The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions or Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. 21 NCAC 21 .0502(a) states that “if evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a Hearing be held pursuant to G.S. 150B.”

3. The Board is aware of the regular standards in the geology profession since it is made up of a representative group of professionals from the geology field. In making its decision to issue a letter of reprimand to the Petitioner, the Board was unaware (through no fault of their own) of several material facts that were presented at this hearing.

4. Though certainly the Board is vested with proper authority to issue discipline, the Board’s rule cites that when a disciplinary hearing is not warranted, the Board may issue a reprimand. Black’s Law Dictionary cites that a reprimand is a public and formal censure or severe reproof administered to a person in fault by a body to which he belongs.

5. The Board for Licensing of Geologists’ rule tends to reveal that when disciplinary action is not warranted they may turn to a reprimand, yet a reprimand as it is generally understood is a disciplinary action “to reprove severely.”

6. Ms. Walata testified that a letter of reprimand’s intent was to allow an individual to understand they made a mistake and amend their practice so they don’t make the mistake in the future. Ms. Walata saw the letter of reprimand as instructional.

7. The Undersigned is aware that a letter of reprimand is the most lenient form of discipline available to the Board upon finding that a violation of its Rules has occurred. Reviewing the record in total, the preponderance of the evidence cannot support a finding of the violations set forth in the letter of reprimand nor the reprimand (a public and formal censure) of Petitioner based upon all information received and found credible at the administrative hearing.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Proposal for Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge of the Agency with respect to facts and inferences within the specialized knowledge of the Agency.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned holds that the weight of Petitioner's evidence is greater as applied in administrative hearings than the weight of evidence of Respondent and as such reprimand of Petitioner on the allegations set for in the March 29, 2014 Letter of Reprimand for License No. 970 cannot be affirmed.

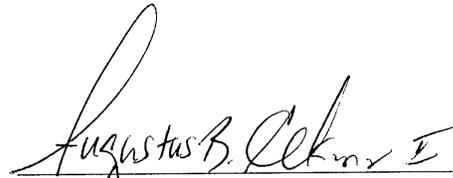
NOTICE

Final Decision authority lies with the North Carolina Board for Licensing of Geologists. The tribunal 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. N.C.G.S. § 150B-40(e).

A copy of the decision or order shall be served upon each party by one of the methods for service of process under G.S. 1A-1, Rule 5(b) and a copy shall be furnished to the party's attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 11th day of June, 2015.


Augustus B. Elkins II
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA

IN THE OFFICE OF

COUNTY OF WAKE

SEP 17 2015

ADMINISTRATIVE HEARINGS

14 DHR 02198

GENESIS PROJECT 1, INC.,

Office of
Administrative Hearings

Petitioner,

v.

FINAL DECISION

NC DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
MEDICAL ASSISTANCE, and MECKLINK
BEHAVIORAL HEALTHCARE,

Respondents.

This matter came on for hearing before Administrative Law Judge Donald W. Overby on January 29 and 30, 2015 in Raleigh, North Carolina. Petitioner Genesis Project 1, Inc. ("Genesis" or "Petitioner") was present through its agent and represented by its counsel Knicole Emmanuel and Robert Shaw; Respondent MeckLINK Behavioral Healthcare ("MeckLINK") was present through its agent and represented by its counsel Christopher W. Jones and Amanda G. Ray; and Respondent NC Department of Health and Human Services ("DHHS"), Division of Medical Assistance ("DMA") was represented by Thomas J. Campbell of the Attorney General's Office.

Appearances of Counsel

For Petitioner*:

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Williams Mullen
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*Note: Counsel for Petitioner now practices at the law firm of Gordon & Rees

For Respondent MeckLINK:

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Amanda Ray
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For Respondent DHHS/DMA: Thomas J. Campbell
 Assistant Attorney General
 N.C. Department of Justice
 Raleigh, N. C.

ISSUE

Whether MeckLINK, acting as an agent of DHHS/DMA, erred, exceeded its authority or jurisdiction, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule by determining that Community Support Team (“CST”), Intensive In-Home (“IIH”), and certain other services assessed from ten randomly-selected paid Medicaid claims, the services for which were delivered by Petitioner from March 1, 2013, through June 1, 2013 (the “Services”), were noncompliant with rules and policies applicable to providers of Medicaid services in North Carolina, and that Petitioner therefore owed a payback for the Services in the amount of \$558,746.50.

APPLICABLE STATUTES AND RULES

Title XIX of the Social Security Act
42 C.F.R. §§ 438.206 and 438.214
North Carolina General Statutes Chapter 150B, generally
N.C. Gen. Stat. § 150B-22, *et seq.*
N.C. Gen. Stat. § 108C, *et seq.*
N.C. Gen. Stat. § 108A, *et seq.*
N.C. Gen. Stat. § 122, *et seq.*
10A NCAC 27G .0104
10A NCAC 22F *et seq.*
DMA Clinical Coverage Policy 8A
The North Carolina State Plan for Medical Assistance
Implementation Update 37
DHHS/DMA Records Management and Documentation Manual
1915(b)/(c) Medicaid Waiver for MH/DD/SA Services

EXHIBITS

For Petitioner: 2, 3, 4, 6, 10, 11, 12, 14, 15, 18, 19, 19A, 20, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49, 50, 51, 52, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65.

For Respondent MeckLINK: 1, 4, 5, 6, 7, 8, 9, 10, 13, 20, 21, 22, 23.

FINDINGS OF FACT

In finding the following facts, the undersigned has weighed all of the evidence and assessed the credibility of the witnesses. The undersigned has taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness and any interests, bias, or prejudice the witness may have. Further, the undersigned has carefully considered 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 relevant and believable evidence in the case.

After careful consideration of the sworn testimony presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the undersigned makes the following FINDINGS OF FACT:

1. The parties properly received notice of hearing by certified mail more than 15 days prior to the hearing.
2. Petitioner is a North Carolina corporation, which provides treatment for mental health and substance abuse services to Medicaid recipients in Charlotte, North Carolina and surrounding areas. It has been in business since 2004.
3. Respondent, The North Carolina Department of Health and Human Services, Division of Medical Assistance (“DMA”), is the single State agency responsible for administering and managing North Carolina’s Medicaid program. Respondent DMA is authorized to adopt rules, regulations, and policy for program operation.
4. DMA has been dismissed without prejudice from this contested case.
5. At all times relevant to the issues presented in this matter, MeckLINK was a department of Mecklenburg County government and was the state-contracted LME/MCO and/or prepaid inpatient health plan (PIHP) agent of DHHS/DMA, which was hired to, among other things, manage the provision of Medicaid funded mental health, developmental disabilities and substance abuse services in Mecklenburg County, which is MeckLINK’s “catchment area.” Respondent is located in MeckLINK’s catchment area.
6. At all times relevant to the issues presented in this matter, MeckLINK was an agent of DHHS/DMA and has general authority to enter into contracts both with DMA and with Petitioner, to locally manage providers of Medicaid services, and to implement rules, regulations, and policies promulgated by DHHS/DMA.
7. By letter dated June 14, 2013, MeckLINK notified Petitioner in writing of an initial routine Gold Star Review to be held on July 10, 2013. The notice was sent via email and by US Postal Service. (Respondent’s Ex. 4.) MeckLINK was obligated to conduct the Gold Star Review pursuant to its contract with DHHS/DMA, and MeckLINK’s attendant responsibilities to manage providers of Medicaid services.

8. The time period examined in the Gold Star Review was from March 1, 2013 to June 1, 2013 (the "Audit Period"). (Tr. 28-29.) MeckLINK's correspondence to Petitioner dated June 14, 2013 specifically identified all areas of inquiry and requirements that would be assessed in the Gold Star Review, and instructed Genesis where to locate the specific template that would be used for evaluation in the Gold Star Review (the "Gold Star Tool"). Accordingly, in advance of the Gold Star Review, Petitioner had actual notice of the information and documents that MeckLINK would review, the criteria that would be used in conducting the Gold Star Review, and the requirements that the Gold Star Review was designed to confirm. (Respondent's Exs. 4, 7; Tr. 30-31, 316.)

9. Prior to the Gold Star Review Petitioner conducted a self-audit using the Gold Star Tool. (Tr. 316.)

10. The Gold Star Review was conducted by MeckLINK at Genesis' office on July 10 and 17, 2013. (Tr. 33-34.)

11. Genesis informed MeckLINK that during the Audit Period it had one CST team and three IIH teams. (Tr. 39, 48, 52.) Thus, the Gold Star Review involved review of services provided by Genesis' three IIH teams, one CST team, as well as a sample of ten paid Medicaid claims. (Tr. 26-29.)

12. The basis for MeckLINK's findings was that

It was determined that your agency has been providing Intensive In-Home (IIH) and Community Support Team (CST) services out of compliance with the DMA service definitions for these services, in that there was no evidence in your agency's personnel records that all members of each team had the required experience to provide Medicaid-billable IIH and CST. According to the documentation in your personnel records, at least one member of each IIH and CST team did not have the experience required to provide the service per the service definition staffing requirements. (Pet. Ex. 1.)

13. 10A NCAC 22F .0107 provides that all providers "shall keep and maintain all Medicaid financial, medical, or other records necessary to fully disclose the nature and extent of services furnished to Medicaid recipients and claimed for reimbursement."

14. Thus, the burden was on Petitioner to produce records necessary for the review. The notice sent, dated June 14, 2013, instructed Genesis to have all records on site prior to the review beginning. When MeckLINK conducted the Gold Star Review at Genesis' office on July 10 and 17, Genesis did not make all of the requested personnel records available. (Tr. 31-34.)

15. Genesis submitted resumes, employment verification forms, and other documents related to its CST and IIH staff to MeckLINK, but it was extremely difficult to discern from those documents that every staff member's experience involved "the functions and tasks in those roles that would be expected in the setting of the services provided," whether the experience was

with adults or children, and whether the experience was full time or part of a full time equivalent (FTE) position. Based on the documents submitted by Genesis, MeckLINK could not reasonably conclude that each member of the CST and IHH teams had the required experience with the population served at any time during the Audit Period. (Respondent's Exs. 1, 6, 20; Tr. 48-52; 73.)

16. Medicaid Clinical Coverage Policy 8A requires that Medicaid providers' IHH teams be comprised of at least three staff who each "must have a minimum of one (1) year documented experience with this population," meaning children or adolescents. (Emphasis added.) (Respondent's Ex. 1 at 36.) Each staff member on a provider's IHH team(s) must meet this requirement in order to bill Medicaid for services it provides.

17. Medicaid Clinical Coverage Policy 8A sets out the requirements that Medicaid providers' IHH teams must have including a team leader who is a licensed professional, a second member who must be a qualified professional and a third who must be a QP or AP. No member of the team can provide staffing for other services at such time as he or she is performing the IHH team services. All must possess the "knowledge, skills and abilities" to render the appropriate services to the "population and age to be served." (Respondent's Ex. 1 at 36.)

18. The documentation provided by Genesis to MeckLINK at the review showed that IHH Team 1 was comprised of Rebecca Lavoie, Jabari Adams, Susan Holtz, Ronji Hatchell, and Chandra Scott. The documentation provided by Genesis to MeckLINK at the review further showed that four of those five team members (Rebecca Lavoie (Respondent's Ex. 6E; Tr. 54-56.); Susan Holtz (Respondent's Ex. 6F; Tr. 56-58); Ronji Hatchell (Respondent's Ex. 6D; Tr. 58-60); Chandra Scott (Respondent's Ex. 6J; Tr. 61-63)) did not have the required one year of documented experience with the population served prior to providing services on that team. The experience of Jabari Adams was not challenged by MeckLINK.

19. From the documentation provided by Genesis to MeckLINK, the reviewers could not discern whether or not the experience of the team members was for adults or children, or, alternatively, if the team member provided direct services. Although Ronji Hatchell had worked for MeckLINK, the documentation provided by Petitioner did not indicate if he had provided direct services. The burden is on Petitioner to provide the information and not on the Respondent to search its own records.

20. Dr. Black offered testimony that Lavoie, Scott and Holtz had gained at least part of their experience from working with Petitioner.

21. The documentation provided by Genesis to MeckLINK at the review showed that IHH Team 2 was comprised of Andrea White, Fernando Vargas, and Lydia Covington. (Respondent's Exs. 7, 9.) The documentation provided by Genesis to MeckLINK at the review further showed that none of those team members(Fernando Vargas (Respondent's Ex. 6A; Tr. 63-64); Lydia Covington (Respondent's Ex. 6B; Tr. 64-65); Andrea White (Respondent's Ex. 6I; Tr. 65-67)) had the required one year of documented experience with the population served prior to providing services on IHH Team 2.

22. Dr. Black offered testimony that Vargas and Covington had gained at least part of their experience from working with Petitioner.

23. Dr. Black's explanation of the experience of Covington might have been sufficient to show that Covington had the requisite experience but that information was not provided to the reviewers. Additionally, even if Covington was found to have been qualified, the other team members were not qualified, thus disqualifying the entire team.

24. The documentation provided by Genesis to MeckLINK at the review showed that IIIH Team 3 was comprised of Ashley Francis, Latacia Ruff, and Benjamin Foster. (Respondent's Exs. 7, 9.) The documentation provided by Genesis to MeckLINK at the review further showed that two of those three team members (Benjamin Foster (Respondent's Ex. 6H; Tr. 67-69) and Latacia Ruff (Tr. 69-70; Respondent's Ex. 6B)) did not have the required one year of documented experience with the population served prior to providing services on IIIH Team 3. The experience of Ashley Francis was not challenged by MeckLINK.

25. Dr. Black offered testimony that Ruff and Foster had gained at least part of their experience from working with Petitioner.

26. Medicaid Clinical Coverage Policy 8A requires that "[a]ll staff providing CST services shall have a minimum of one year of documented experience with the adult MHSA population." (Emphasis added). (Respondent's Ex. 1 at 56.) Each staff member on a provider's CST team(s) must meet this requirement in order to bill Medicaid for services it provides.

27. Medicaid Clinical Coverage Policy 8A sets out the requirements that Medicaid providers' CST teams must have including a team leader who is a licensed professional, a second member who must be a qualified professional and a third who must be a QP or AP or other specifically listed skilled staff member. All must possess the "knowledge, skills and abilities" to render the appropriate services to the "population and age to be served." (Respondent's Ex. 1 at 54, 56.) The third staff member may be a "certified peer support specialist" which does not require one year of experience because that person is required to have personally received either mental health or substance abuse services. There is no evidence any of the Petitioner's CST team members were certified peer support specialists.

28. The documentation presented by Genesis to MeckLINK at the review during the Gold Star Review showed that its CST team was comprised of Ryan Adamczyk, Darryl Frost, Angela Hayes, Shamira Moore, and Michelle Phillips. The documentation presented by Genesis to MeckLINK at the review further showed that CST team member Shamira Moore did not have the required one year of documented experience with the population served prior to providing services on that team. (Respondent's Ex. 16G; Tr. 48-52.)

29. Dr. Black offered testimony at the contested case hearing explaining the experience of the various members of the teams to justify their experience. The requirement is for the Petitioner Genesis to have the information available to the reviewers at the time of the audit. MeckLINK made significant efforts to try to make the teams meet the standards and to find the team members to have the requisite experience.

30. After the Gold Star Review was completed, MeckLINK concluded that Petitioner had failed to properly comply with applicable policy and staffing requirements, and on August 13, 2013, MeckLINK notified Genesis that it intended to terminate the parties' contract for provision of Medicaid services for cause. (Tr. 34-35.)

31. Also on August 13, 2013, MeckLINK notified Genesis that it owed a payback in the amount totaling \$558,746.50 for the Services provided during the Audit Period that did not meet the staffing and other documentation and policy requirements, and for which MeckLINK had paid Genesis in Medicaid funds. (Tr. 36-37.)

32. On August 28, 2014, Petitioner filed a Contested Case Petition bearing case number 13 DHR 17094 which contested the termination of its contract with MeckLINK. On December 16, 2013, this Court dismissed that matter on the grounds that Petitioner had failed to exhaust its administrative remedies through the local reconsideration process with MeckLINK prior to filing its petition.

33. Genesis completed the local reconsideration process, which also resulted in a finding by MeckLINK that Genesis' contract for the provision of Medicaid services should be terminated for cause. On January 7, 2014, Genesis filed a second Contested Case Petition bearing case number 14 DHR 142, which also requested that MeckLINK be prevented from terminating its contract with Genesis.

34. On March 14, 2014, MeckLINK informed Petitioner that local reconsideration confirmed the result of the Gold Star Review, and that Petitioner owed a payback of \$558,746.50 for the Services, which MeckLINK determined were improperly billed to, and paid by, MeckLINK with Medicaid funds.

35. On April 30, 2014, the parties filed a Stipulation of Dismissal of 14 DHR 142 on the basis that "Petitioner's claims have been rendered moot due to Cardinal Innovations Healthcare Solutions' assumption of the role of LME/MCO for the Mecklenburg County catchment area from MeckLINK as of April 1, 2014[.]"

36. No decision on the merits of the validity of MeckLINK's termination of its contract with Genesis or the validity of the assessed payback was reached in 13 DHR 17094 or 14 DHR 142.

37. On March 24, 2014, Petitioner filed the instant Contested Case Petition, contesting the payback for the Services that was requested by MeckLINK on March 14, 2014.

38. On January 29, 2015, the Court granted DHHS/DMA's oral motion to dismiss without prejudice, leaving MeckLINK as the sole Respondent in this matter.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. Petitioner is an aggrieved person under Chapter 150B and is entitled to commence a contested case. Petitioner has satisfied all conditions precedent and all timeliness requirements for initiating this contested case.
3. MeckLINK has the burden of proof in this case pursuant to N.C. Gen. Stat. § 108C.
4. At all times relevant to this matter, MeckLINK had the authority to conduct auditing and monitoring reviews, such as the Gold Star Review, through its role as the state-contracted LME/MCO for the Mecklenburg County catchment area.

Clinical Coverage Policy 8A and Implementation Update 37

5. Petitioner is obligated to comply with: 1) Medicaid Clinical Coverage Policy 8A; 2) all directives and policies promulgated by DHHS/DMA applicable to Medicaid-reimbursable services; and 3) all other applicable federal or state laws, rules, or regulations, in effect at the time the service is rendered and concerning the provision or billing of Medicaid-reimbursable or State-funded services.
6. Medicaid Clinical Coverage Policy 8A requires that “[a]ll staff providing CST services shall have a minimum of one year of documented experience with the adult MHSA population.” (Emphasis added). (Respondent’s Ex. 1 at 56.) Each staff member on a provider’s CST team(s) must meet this requirement in order to bill Medicaid for services it provides.
7. Medicaid Clinical Coverage Policy 8A requires that Medicaid providers’ IIH teams be comprised of at least three staff who each “must have a minimum of one (1) year documented experience with this population,” meaning children or adolescents. (Emphasis added.) (Respondent’s Ex. 1 at 36.) Each staff member on a provider’s IIH team(s) must meet this requirement in order to bill Medicaid for services it provides.
8. Medicaid Clinical Coverage Policy 8 very specifically requires certain people with certain experience and training for the positions on both the CST and IIH teams; for example, both require a Licensed Professional as team leader. The definitions and requirements for each such position required in Policy 8 are set forth in 10A NCAC 27G .0104.
9. Genesis acknowledges that it was obligated to follow Clinical Coverage Policy 8A in the provision of the Services. (Tr. 262-63.)
10. Implementation Update 37 issued by DHHS/DMA on December 3, 2007, provides guidance as to how providers should determine staff members’ experience with the population served for purposes of meeting the staffing requirements of Medicaid Clinical Coverage Policy 8A and 10A NCAC 27G .0104. (Emphasis added) Implementation Update 37 “outlines the

DHHS interpretation of th[e] concept” of “experience with the population served.” (Respondent’s Ex. 22.)

11. Pursuant to Implementation Update 37, the one year of required experience with the population served must involve actually providing mental health, substance abuse, or developmental disability services to the specific population the staff member will be serving in his or her potential employment with a provider. Experience in position(s) that merely involve some unspecified interaction or involvement with the target population is insufficient to meet this requirement. (Respondent’s Ex. 22; Tr. 41-42.)

12. Provider organizations were copied on Implementation Update 37 when it was issued in December 2007, and it was otherwise available and accessible by them. Providers are required to keep up with and be informed about implementation updates. Although Petitioner has been billing Medicaid since 2005, Dr. Black said that she was unfamiliar with Update 37 and had not seen it until the matters in this contested case. If nothing else she should have been familiar with the Update when it was issued.

13. Genesis contends that Update 37 has no applicability to the matters herein. Genesis is correct in that the Update 37 is not a properly promulgated “rule.” Whether or not Update 37 meets the definition of “medical coverage policy” as defined in N. C. Gen. Stat. 108A-54.2 is of no consequence because it is beyond question that Update 37 is at the very least guidance. Further, as discussed below, the plain language of Clinical Coverage Policy 8A is instructive of what is expected of Providers. Implementation Update 37 was applicable to providers of Medicaid services in North Carolina at all times relevant to the instant matter, and was in effect during the Audit Period. (Respondent’s Ex. 22; Tr. 43-44, 97-98, 134-35.)

14. While Update 37 was in effect and was relevant during the audit period, the real guidance is from the plain English of the words “documented experience” in Clinical Coverage Policy 8A.

15. Merriam-Webster defines “experience” thusly: “1) direct observation of or participation in events as a basis of knowledge; the fact or state of having . . . gained knowledge through direct observation or participation; 2) practical knowledge, skill, or practice derived from direct observation of or participation in events or in a particular activity; 4) something personally encountered, undergone, or lived through.” (Merriam-Webster at merriam-webster.com/dictionary/experience).

16. Obviously, “experience” is something you get from having gone through an event. Experience is gained as you go through the event. Since the requirement is for documented (i.e. written) experience with certain groups of individuals, it very obviously is requiring that “experience” prior to being engaged with Petitioner Genesis. One does not get hired and then get the experience—the experience is a prerequisite. While it is conceivable that someone could “work” as an intern and gain experience, that person could not of necessity be a part of a team. That “experience” would have to be gained prior to being part of a team.

17. Genesis' contention that Update 37's requirement that the positions be "full time equivalent (FTE)" is not found in Coverage Policy 8A is just plain wrong. Medicaid Clinical Coverage Policy 8A, page 36 in reference to IHH staffing requirements states: "This service model is delivered by an IHH team comprised of one full-time equivalent (FTE) team leader and at least two additional full-time equivalent positions."

18. Similarly, Medicaid Clinical Coverage Policy 8A, page 54 in reference to CST staffing requirements states: "CST shall be composed of three full-time staff positions as follows: A. One full-time equivalent (FTE) team leader who is a Licensed Professional. . . B. One FTE QP . . . C. One FTE who is a QP, AP, Paraprofessional, or Certified Peer Support Specialist . . ."

19. Genesis acknowledges that it was obligated to follow the Records Management and Documentation Manual promulgated by DHHS/DMA (also known as "APSM-45.2"). APSM-45.2 was applicable to providers of Medicaid services at all times relevant to the instant matter, was distributed to provider organizations, and was in effect during the Audit Period. Genesis acknowledges that the requirements of APSM-45.2 are mandatory. (Respondent's Ex. 20; Tr. 257-59.)

20. APSM-45.2 requires that providers of Medicaid services must maintain records of all the required educational credentials and other applicable qualifications of their staff, and that those records must be made available in the event of an audit by the LME/MCO or the State. (Respondent's Ex. 20, App. A; Tr. 257-59.)

21. An essential aspect of the North Carolina Medicaid program is that Medicaid providers comply with APSM-45.2, the applicable Clinical Coverage Policies, administrative rules, and DHHS/DMA policies. Such compliance is necessary in order for the State to effectively implement Medicaid services, to ensure that auditors and LME/MCOs may complete the tasks that they have contracted with the State to perform; and to prevent misuse or misallocation of taxpayer funds.

22. 10A NCAC 22F .0107 provides that all providers "shall keep and maintain all Medicaid financial, medical, or other records necessary to fully disclose the nature and extent of services furnished to Medicaid recipients and claimed for reimbursement."

23. Thus in post payment reviews, the burden is on the provider to produce certain documentation to validate that the provider has indeed complied with state and federal requirements. While the ultimate burden of proof is on Respondent in the contested case hearing, provider cannot rest on its laurels in at least the initial phases of the post payment reviews and must produce the information to substantiate with particularity the work experience each team member had prior to joining the team.

24. The burden is on the Provider to produce the requisite information to verify the documented experience with the population served. The plain English language of this provision is that not only is the Provider required to have written documentation of the experience prior to joining the team, that experience has to be specific to the population served. To merely identify

that someone worked at a facility or business that provided services that might fit the requirement is NOT sufficient. It must be shown that the individual actually did the direct work serving the particular population, whether it is IHH or CST services.

25. This is not “best practices” requirements—this is the plain language of Clinical Coverage Policy 8A. The records should be clear as to the prior experience and that it was to the population to be served. It is not up to the reviewers to try to figure it all out or to guess or speculate—it is up to the provider to produce the required information to substantiate.

26. Genesis’ oral testimony and attempted explanation of its staff’s experience, without written documentation of the same, is insufficient to meet the mandatory and unambiguous documentation requirement(s) of APSM-45.2 and Clinical Coverage Policy 8A. (Respondent’s Exs. 20; 1 at 36, 56.)

Recoupment

27. A significant part of the issue in this contested case is whether MeckLINK should be allowed to recoup money from Petitioner when services have been rendered by Petitioner and there is no issue of the quality of the services, but the recoupment is based on MeckLINK’s contention that the documentation of staff qualifications to provide the services has not been sufficiently produced by Genesis.

28. The North Carolina Administrative Code requires proper documentation. 10A NCAC 22F .0107

29. The Code has two provisions which are entitled “Recoupment”: 10A N.C.A.C. § 22F .0601 and 10A N.C.A.C. § 22F .0706.

30. 10A N.C.A.C. § 22F .0706 speaks to recoupment of overpayments and how the money will be distributed.

31. The Code states at 10A N.C.A.C. § 22F .0601 that “the Medicaid agency will seek full restitution of any and all improper payments made to providers by the Medicaid program.” The phrase “improper payments” is not defined in the Code. However, in reading *in pari materia* other sections, one may discern its meaning and intent.

32. 10A N.C.A.C. § 22F .0103 also similarly states that the Division shall institute methods and procedures to, among other things, “recoup improperly paid claims.”

33. The Administrative Code states at 10A N.C.A.C. § 22F .0103 that “[t]he Division shall develop, implement and maintain methods and procedures for preventing, detecting, investigating, reviewing, hearing, referring, reporting, and disposing of cases involving fraud, abuse, error, overutilization or the use of medically unnecessary or medically inappropriate services.”

34. There has been no assertion or allegation in this proceeding that Petitioner was in any way responsible for fraud as defined in N.C.G.S. § 108A-63, i.e., there is no allegation or assertion of Petitioner “knowingly and willfully making or causing to be made any false statement or representation of material fact” or other type of fraud as defined therein.

35. There is no allegation or assertion of overutilization or that Petitioner provided medically unnecessary or medically inappropriate services.

36. 10A N.C.A.C. § 22F .0301 defines provider abuse as including, among other things, “[b]illing for care and services that are provided by an unauthorized or unlicensed person.” Services provided by someone who lacks the proper credentials or who does not meet minimum requirements to provide the service would be an “unauthorized or unlicensed person.”

37. 10A N.C.A.C. § 22F .0103 also lists measures and procedures to be taken whenever a provider has violated any of the listed missteps or misdeeds. Among the items listed that the Respondent shall institute are methods and procedures to “establish remedial measures including but not limited to monitoring programs, referral for provider peer review those cases involving questions of professional practice, and analyze and evaluate data and information to establish facts and conclusions concerning provider and recipient practices” as well as recoup improperly paid claims.

38. In section 10A N.C.A.C. § 22F .0501 (captioned “general”) it is stated that the Division will safeguard against providers' practices that provide medically unnecessary and medically inappropriate health care and services, and to ensure that quality of care rendered recipients meets acceptable standards.

39. In section 10A N.C.A.C. § 22F .0602, the Code addresses “administrative sanctions and remedial measures” for program abusers that the reviewers may consider. Among those sanctions and remedial measures are warning letters, suspension or termination as a provider, probation with close monitoring, or “flagging” a provider for manual review.

40. 10A N.C.A.C. § 22F .0602 does not provide for any monetary assessment among the remedial measures listed because that is incorporated into the previous section, 10A N.C.A.C. § 22F .0601, which is set forth in paragraph 31 above. The provisions of 10A N.C.A.C. § 22F .0602 are discretionary (“may”) and the provisions of 10A N.C.A.C. § 22F .0601 are mandatory (“will”).

41. Petitioner Genesis contends that this case is similar to the case of *At Home Personal Care Services, Inc. v. N.C. Department of Health & Human Services, Division of Medical Assistance*, No. 11 DHR 08755, 26 N.C. Reg. 1607 (N.C.O.A.H. Apr. 16, 2012), a case decided by the Undersigned. The matters in this contested case hearing are significantly different in that the issues are not just about record-keeping as in *At Home Personal Care*, but actually meet the definition of “abuse.”

42. MeckLINK did not commit error by failing to utilize the administrative or remedial remedies in 10A N.C.A.C. § 22F .0602.

Gold Star Review

43. During the Gold Star Review, Genesis failed to produce documentation sufficient to demonstrate that it had three staff members on each IIH team with one year of full time or full time equivalent experience with the population served, as required by Clinical Coverage Policy 8A. Based on the documents submitted by Genesis, MeckLINK could not reasonably conclude that each member of the IIH teams had the required experience with the population served at any time during the Audit Period. (Respondent's Exs. 1, 6, 20; Tr. 48-52; 73.)

44. During the Gold Star Review, Genesis did produce documentation sufficient to demonstrate that four members of its CST team had one year of full time or full time equivalent experience with the population served. There was not sufficient documentation to show that Shamira Moore had the requisite experience. A team is only required to have three members. Teams that were properly comprised of three members that did not include Shamira Moore would be entitled to have been compensated.

45. Clinical Coverage Policy 8A provides that IIH and CST services are team-delivered services. Specifically, Clinical Coverage Policy 8A provides that a CST team works "though a team approach to assist adults in achieving rehabilitative and recovery goals" and "maintain[s] contact and intervenes as one organizational unit." (Respondent's Ex. 1 at 52.) It further provides that an IIH team "is a team approach designed to address the identified needs of children and adolescents[.]" and that IIH staff "maintain contact and intervene as one organizational unit." (Respondent's Ex. 1 at 34.)

46. Accordingly, CST and IIH services are considered to be provided not by one staff member or individual staff members, but by the team as a whole. A team is comprised of three members as set forth in Clinical Coverage Policy 8A. If any member of the three member team is noncompliant with a requirement in Clinical Coverage Policy 8A, then the services billed by the team are noncompliant. (Tr. 31-35.)

47. Because Genesis failed to present sufficient documentation to MeckLINK showing that it had fully qualified IIH teams during the Audit Period, all IIH services provided during the Audit Period were noncompliant. All CST services provided during the Audit Period which included Shamira Moore were noncompliant.

48. During the reconsideration review as provided in 10A N.C.A.C. § 22F .0402, Genesis was given an opportunity to clarify and supplement the information provided during the review, but failed to do so satisfactorily. During the reconsideration review, possible administrative measures and restitution could have been considered.

49. Genesis also failed to provide appropriate documentation for ten paid claims that MeckLINK examined during the Gold Star Review, which were part of the Services (and which

Genesis was informed would be evaluated in the Gold Star Review). These paid claims were noncompliant because, among other things, services billed to Medicaid were not signed within seven days of the date of service rendered as required by APSM-45.2; services that were not a billable function of IIH or CST teams were improperly billed to Medicaid; and services that were allegedly provided over the phone and not face-to-face were improperly billed to Medicaid. (Respondent's Ex. 7; Tr. 76-79.)

50. An auditor, such as MeckLINK during the Gold Star Review, does not have discretion to simply assume that providers' staff have the required experience with the population served if that experience is not clearly documented in the providers' records as required by APSM-45.

51. With the exception of CST services that may have been provided by a team without Shamira Moore, the services rendered during the Audit Period were noncompliant with Clinical Coverage Policy 8A, Implementation Update 37, and APSM-45.2.

52. Genesis billed MeckLINK for Medicaid reimbursement for the services and was paid for the services through Medicaid funds.

53. MeckLINK has established by a preponderance of the evidence that the services delivered to Medicaid recipients by Genesis to the degree set forth herein and paid by MeckLINK through Medicaid funds were in fact not appropriately billed to Medicaid due to their noncompliance with Clinical Coverage Policy 8A, Implementation Update 37, and APSM-45.2.

54. There is no evidence that all CST teams' services were noncompliant when there were possibly teams that could have been properly constructed so as to exclude Shamira Moore. MeckLINK committed error by finding that all CST teams were noncompliant. Otherwise MeckLINK has established by a preponderance of the evidence that at no time relative to the Gold Star Review or in its determination of the Services' noncompliance did it exceed its authority or jurisdiction, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule.

55. MeckLINK has established by a preponderance of the evidence that all IIH services rendered were out of compliance during the audit period and that payback for those services is owed. Credit should be given to Genesis for services rendered by CST teams properly comprise of three team members that did not include Shamira Moore and were otherwise properly composed. Any CST team that included Shamira Moore was out of compliance and therefore payback for those services during the audit period is owed.

56. The calculated amount of payback as \$558,746.50 for the out-of-compliance services delivered may be incorrect. MeckLINK is required to calculate the amount owed by Genesis as payback for all IIH services during the audit period. MeckLINK is required to determine the amount of payback owed by Genesis for CST services rendered during the audit period that included Shamira Moore or were improperly constituted.

57. The undersigned finds and concludes that MeckLINK committed error by finding that all CST teams were noncompliant. The undersigned finds and concludes that MeckLINK did not otherwise err, exceed its authority or jurisdiction, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law in connection with its Gold Star monitoring review conducted on July 10 and 17, 2013, that the services were noncompliant as set forth herein with rules and policies required for the services to be billable to Medicaid; that the services were improperly billed to Medicaid; that MeckLINK's assessment of a payback for the services was proper; and that Petitioner owes MeckLINK a repayment of Medicaid funds in the amount of \$558,746.50 for the services, less any amount to be determined for CST services performed by properly constituted three member CST teams.

DECISION AND ORDER

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that MeckLINK shall determine within 30 days of this ORDER the amount of payback Genesis owes for all of the IIH services performed for the audit period. Within 60 days of Petitioner's receipt from MeckLINK of the amount of the overpayment due for IIH services, Petitioner shall remit to MeckLINK payment in full the amount determined to be owed for IIH services that were inappropriately billed during the audit period.

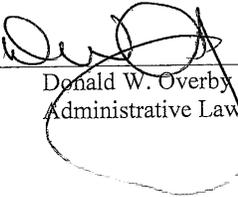
It is further ORDERED that Genesis shall have 30 days from the date of this ORDER to submit to MeckLINK documentation to show properly constituted CST teams during the audit period that do not include Shamira Moore as having been a team member. Genesis is to submit the amount it was reimbursed in Medicaid funds for the services of those identified CST teams. MeckLINK shall have 15 days to verify those teams through the records produced by Genesis. The parties shall have an additional 15 days to work through any discrepancies in determining a final amount of payback. Once MeckLINK makes the final determination of the amount of payback for CST services, Genesis shall be given credit against the total payback amount of \$558,746.50 for the services provided by the properly constituted CST teams. Within 60 days of receipt of the final amount due, Petitioner shall remit to MeckLINK payment in full the amount determined to be owed for CST services that were inappropriately billed during the audit period.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was**

served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 17th day of June, 2015


Donald W. Overby
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA

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IN THE OFFICE OF

COUNTY OF WAKE

ADMINISTRATIVE HEARINGS

14 DHR 02198

GENESIS PROJECT 1, INC.,

Office of
Administrative Hearings

Petitioner,

v.

NC DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
MEDICAL ASSISTANCE, and MECKLINK
BEHAVIORAL HEALTHCARE,

Respondents.

**FINAL DECISION REGARDING
AMOUNT OF PAYBACK OWED BY
PETITIONER FOR NONCOMPLIANT
COMMUNITY SUPPORT TEAM
SERVICES**

This matter came on for hearing before Administrative Law Judge Donald W. Overby on January 29 and 30, 2015 in Raleigh, North Carolina, and the Court issued a Final Decision in this case on June 18, 2015 (the "Final Decision"). The Final Decision requested that Respondent MeckLINK Behavioral Healthcare ("MeckLINK") and Petitioner Genesis Project 1, Inc. ("Genesis") (collectively, the "Parties") take the following action regarding the amount of the payment due for noncompliant Community Support Team ("CST") services from the audit period at issue (March 1, 2013 to July 17, 2013) to MeckLINK by Genesis:

- 1) "Genesis shall have 30 days from the date of this ORDER to submit to MeckLINK documentation to show properly constituted CST teams during the audit period that do not include Shamira Moore as having been a team member. Genesis is to submit the amount it was reimbursed in Medicaid funds for the services of those identified CST teams. MeckLINK shall have 15 days to verify those teams through the records produced by Genesis."
- 2) "The parties shall have an additional 15 days to work through any discrepancies in determining a final amount of payback."
- 3) "Within 60 days of receipt of the final amount due, Petitioner shall remit to MeckLINK payment in full the amount determined to be owed for CST services that were inappropriately billed during the audit period."

On July 17, 2015, counsel for Genesis communicated to counsel for MeckLINK that "Genesis Project 1 has determined that Shamira Moore was on the Genesis Project 1 CST team for the entire audit period." Also on July 17, 2015, MeckLINK submitted an Affidavit of Dana

Frakes stating that Genesis owed MeckLINK \$28,420.50 for all noncompliant CST services provided during the audit period.

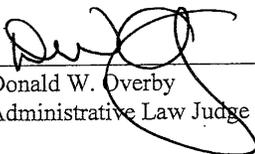
DECISION AND ORDER

It is hereby ORDERED that Genesis shall remit to MeckLINK \$28,420.50 for CST services that were inappropriately billed during the audit period on or before September 15, 2015 (60 days from Genesis' receipt of the final amount due for these services).

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 14th day of August, 2015



Donald W. Overby
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 OSP 09759

STEPHEN DALE BROWN,

Petitioner,

v.

NORTH CAROLINA STATE UNIVERSITY,

Respondent.

FINAL DECISION

Office of
Administrative Hearings

2015 JUN 25 PM 4:42

Filed

This contested case was heard before the Honorable Donald W. Overby, Administrative Law Judge, on 23 February 2015, 5 March 2015, and 6 March 2015 in Raleigh, North Carolina.

APPEARANCES

FOR PETITIONER: David G. Schiller
Schiller & Schiller
5540 Munford Rd., Suite 101
Raleigh, N.C. 27612

FOR RESPONDENT: Matthew Tulchin
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602

EXHIBITS

Admitted for Petitioner:

Exhibit	Description
1	December 14, 2011 Petitioner Response to Interim Appraisal
2	December 21, 2011 Petitioner Response to Interim Appraisal

Admitted for Respondent:

EXHIBIT	DESCRIPTION
1	Stephen Brown's SPA Career-Banded Work Plan and Appraisal Form with Attachment
2	Letter from Paul McConocha to Stephen Brown serving as a written warning for unsatisfactory job performance and unacceptable personal conduct <ul style="list-style-type: none"> • Attachment 1 (unsatisfactory job performance and inappropriate communication on Partners II utility metering installation) • Attachment 2 (unsatisfactory job performance and inappropriate communication on Partners II utility metering installation) • Attachment 3 (inappropriate internal and external time sheet communications) • Attachment 4 (Datamatic Mosaic Firefly installation project inappropriate communication and inadequate planning)
4	E-mail chain between Stephen Brown and Blake Holmes RE: Partners II Metering Project
5	North Carolina Department of Administration State Construction Office Electrical Inspection Form
7	E-mail chain between Angela Ward and Stephen Brown RE: Position 62087 Submitted for Approval
8	E-mail chain between Angela Ward and Stephen Brown RE: Philip Tabor
9	Job Description and Evaluation Standards for "Electronics Specialist" job position
10	Stephen Brown's letter to Paul McConocha discussing issues concerning the hiring process for Philip Tabor
11	E-mail chain between Paul McConocha, Stephen Brown, and Ewan Pritchard RE: EV for Campus Utility Meter Pilot
12	Paul McConocha's Affidavit on Stephen Brown's behavior during a meeting on 1/6/12
13	Paul McConocha's E-mail to Alan Daeke and Magnolia Lugo, copying Nikki Price RE: Friday 8 AM Weekly Meeting
14	Paul McConocha's E-mail to Alan Daeke RE: Steve Brown Update
15	Energy Management Shop Weekly Progress Meeting Ground Rules
16	Paul McConocha's E-mail to Nikki Price and Alan Daeke RE: Stephen D. Brown's Tape Recording Today, 6/4
18	Alan Daeke's E-mail to Paul McConocha RE: Steve Brown Performance/Conduct

CONTESTED CASE DECISIONS

19	Alan Daeke's memorandum to Stephen Brown advising Brown on Daeke's Step 1 Ruling regarding the grievances Brown filed on 6/19/12, copying Alicia Robinson and Paul McConocha
20	E-mail chain between Blain Woods and Stephen Brown RE: GEM Electric Vehicle Purchase
21	E-mail chain between Stephen Brown and Blaine Woods RE: Req for the Electric Car
22	E-mail chain between Stephen Brown and Blaine Woods RE: Is the Club Car Ordered
23	Email chain between Paul McConocha, Stephen Brown, and Alan Daeke RE: Partners II Metering Project
24	E-mail chain from Stephen Brown to Alan Daeke RE: Partners II Sub Metering for Jack Colby
25	E-mail chain between Paul McConocha, Stephen Brown, and Alan Daeke RE: Partners II Greenhouse Electric Meter
29	E-mail from Paul McConocha to Stephen Brown RE: Elster Meter Contact at FREEDOM
30	Letter from Paul McConocha to Ewan Pritchard discussing Elster Electric Meter
31	Time Card Reconciliation Report
32	E-mail chain between Paul McConocha, Barbara Hise, Adrienne Allen, Alan Daeke, and Stephen Brown RE: Timecard and Shop Supervisor Question
33	E-mail from Paul McConocha to Stephen Brow RE: Draft Jan Nederveen Letter
34	Jan Nederveen Memorandum Regarding Job Responsibilities
35	E-mail from Brown to McConocha RE: Jan Personal Safety
36	Memorandum from Paul McConocha to Stephen Brown Re: Jan Personal Safety
37	E-mail from Stephen Brown to Paul McConocha RE: Please process time sheets in AiM
38	E-mail from Paul McConocha to Stephen Brown RE: EM Shop Safety Facts
39	EM Shop Performance Metrics and Work Order Status Reports
40	Updated Brown 2011-2012 Work Appraisal
41	2012-2013 Brown Annual and Interim Appraisal Form
42	Final Written Warning for Unacceptable Personal Conduct and Unsatisfactory Job Performance
43	Step 1 Grievance Ruling
44	Revised Final Written Warning for Unacceptable Personal Conduct and Unsatisfactory Job Performance
45	Notice of Investigatory Status and Notice of Pre-Dismissal Conference
46	Notice of Dismissal for Unsatisfactory Job Performance
47	EM Shop Update 2/27/13
48	Brown Response to Final Written Warning

49	Energy Management Shop Update – November 30, 2012
50	E-mail from Paul McConocha to Stephen Brown cc: Alan Daeke RE: EM Shop Interim Reviews
51	Energy Management Shop Updates
52	E-mail from Alan Daeke to Stephen Brown RE: Suspected Unethical and Possibly Illegal Procurement Practices of the NCSU Purchasing Department
53	E-mail from Paul McConocha to Nikki Price RE: Interim Reports Due
54	Stephen Brown SPA Work Plan and Appraisal Form for 2006-2007
55	E-mail from Marc Okner to Stephen Brown RE: Invitation: Annual Performance Review, take two @ Tue., Jan. 5 2:30pm – 3:30pm

WITNESSES

Called by Respondent:

Mr. Paul McConocha
Mr. Alan Daeke

Called by Petitioner:

Mr. Stephen Dale Brown

ISSUES

1. Whether Respondent had just cause to dismiss Petitioner.

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.
2. Petitioner Stephen Dale Brown was a permanent State employee subject to Chapter 126 of the North Carolina General Statutes.
3. Respondent North Carolina State University (“NC State” or “the University”) is subject to Chapter 126 and was Petitioner’s employer.
4. Petitioner has a degree in electrical engineering from NC State. Petitioner worked in a

variety of sales positions across several different industries before coming to work at NC State in 2004. Petitioner was hired as an Electronic Technician III to supervise the Energy Management Shop. The Energy Management Shop is within the University's Utilities and Engineering Department. Petitioner was aware at the time he interviewed and was hired for the position that the position was a supervisory one and that he would be responsible for managing and supervising other employees. Petitioner's contention that he was not in a supervisory position is not credible. **T. pp. 19, 270-71, 406-08, 493-95.**

5. Petitioner was hired by Mr. Edward Sekmistrz. Petitioner reported to Mr. Sekmistrz until 2009, when Mr. Paul McConocha was hired to be the Energy Program Manager. Thereafter Petitioner reported to Mr. McConocha. At all times during the relevant time period, Petitioner reported to Mr. McConocha. **T. pp. 11, 13, 20, 270-71, 406-07, 493-95, 504.**
6. Mr. McConocha has a Master's degree in Environmental Sciences from Miami of Ohio University and previously worked for thirteen years as Vice President of Engineering and Environmental Services for Macy's Incorporated before joining NC State as Energy Program Manager.
7. As Energy Program Manager, Mr. McConocha manages approximately twelve employees, including 6 direct reports. Mr. McConocha's group is responsible for overseeing the diligent use of energy and water on campus. His team monitors the amount of energy the University consumers utilizing over 600 monitoring devices or utility meters. In order to carry out their duties and responsibilities, the employees in the Energy Management Group must interact with other departments at the University. The Energy Management Group's performance is measured by energy use, water use, the completion of preventative maintenance, and fulfillment of assigned work orders. Mr. McConocha reports to Mr. Alan Daeke, Director of Utilities and Engineering. **T. pp. 10-13, 18-20, 267-69, 270-71, 277-79, 406-07.**
8. As Electronic Technician and Shop Supervisor, Petitioner was responsible for the overall management of the Energy Management Shop. A large part of Petitioner's job involved prioritizing and assigning work and repair orders and ensuring that maintenance and repairs are done expeditiously and efficiently. Petitioner's management responsibilities included the management and supervision of electronic technicians and a meter reader. His responsibilities included hiring necessary staff, assigning work, supervising the Shop employees, and evaluating their performance. He was responsible for control operations upkeep and maintenance of the on-campus utility plants, maintenance and monitoring of the meter reading functions for the University's utility billing, and management and maintenance of the University's smart meters. **T. pp. 19-23, 270-71, 278-79, 407-08, 495-96, 615-16; Resp. Exs. 1, 9, 40-41.**
9. Mr. Daeke was the Director of Utilities and Engineering at all times relevant herein. As Director, Mr. Daeke has overall responsibilities for the thermal production and distribution for NC State, including electrical distribution and maintenance of the power and utility systems. His group provides the thermal utilities and the electrical power to the buildings on NC State's various campuses. The group manages the University's energy use and deals with fuel procurement, outreach to campus, streetlight maintenance, generator maintenance,

banner installations, and billing for consumed utilities. The group has five central plants and three substations for electrical power that provide service to the University. Mr. Daeke manages 7 direct reports and has overall responsibility for seventy-seven employees. Mr. Daeke has a mechanical engineering background and is an experienced manager. Mr. Daeke reports to Mr. Jack Colby, Assistant Vice Chancellor for Facilities Operation. **T. pp. 10-13, 18-20, 266-68, 277-78.**

10. Mr. Daeke had an open-door management policy and would communicate regularly with his staff. He held monthly meetings with his direct reports, including Mr. McConocha, to track progress on assignments and to provide feedback on how they were doing, including work in progress, matters that need attention, personnel related items, or anything else that the employees felt merited discussion. Mr. Daeke would also hold weekly staff meetings where the entire group would review various employment-related matters. **T. pp. 268-71**
11. The University used a career-banded work plan and appraisal forms that set forth specific tasks, work orders, and responsibilities and employees were given reviews on an interim and annual basis. As supervisor, Mr. McConocha was responsible for evaluating Petitioner's performance. Performance was measured by metrics, third-party feedback from customers and colleagues, direct observation, actual results, and sampling of work product.
12. Contributing to the appraisals in his role as Mr. McConocha's supervisor and as Director of Utilities and Engineering, Mr. Daeke would provide his feedback to Mr. McConocha based on his observations of Petitioner's performance and behavior. Mr. McConocha interacted daily with Petitioner in-person, over the telephone, and electronically. Both Mr. McConocha and Mr. Daeke personally observed Petitioner's work performance and behavior, as well as received feedback from Petitioner's colleagues and other campus personnel. Mr. Daeke would review and sign Petitioner's appraisal. **T. pp. 13-14, 23-24, 27-28, 271-72, 280-81; Resp. Exs. 1, 40-41.**
13. In addition to Petitioner's day-to-day management responsibilities and the day-to-day job duties detailed in his work plan, Petitioner would be assigned a variety of specific work assignments on a regular basis. These work assignments were assigned through different ways, including direct communication from Mr. McConocha and work orders submitted by campus personnel through the AIM system, the University's computer maintenance management system. AIM is used to open work orders, categorizing the work order in terms of priority, track the progress of the work orders, and track the amount of time worked on the order. The AIM system tracks open work orders and the progress of work being performed. The AIM system also recorded hours worked on specific tasks. **T. pp. 22-25, 27-28, 271**
14. Mr. Daeke and Mr. McConocha had ongoing concerns and issues regarding Petitioner's behavior and work performance. Petitioner had received poor ratings in the past on his annual work evaluations for judgment, communication skills, and relationships with other employees. Mr. McConocha was particularly concerned about Petitioner's poor communication, lack of organization, inability to effectively assign work, and inability to ensure that work was performed satisfactorily and in a timely fashion. The Energy Management Shop had failed to keep up with critical repairs and failed to perform

installation projects in a timely manner which were parts of Petitioner's responsibility. Mr. McConocha communicated his concerns to Mr. Daeke and to Petitioner on a regular basis. **T. pp. 29-30, 65-75, 273-74; Resp. Exs. 1, 54.**

15. In June of 2011, Dr. Ewan Pritchard, a mechanical engineer and principal member of the FREEDM Center, asked the Energy Management Group to help evaluate a new smart meter the Center had developed. The FREEDM Center is a research unit within NC State's College of Engineering that is funded by the National Science Foundation to develop smart grid technology and resilient electrical distribution of electricity. A smart meter is basically a utility meter with a computer that is capable of recording, tracking, and analyzing data that can be read via the internet.
16. Mr. McConocha instructed Petitioner to evaluate the meter, provide constructive feedback, and let him know whether the group might be interested in deploying those types of meters in the future. Petitioner was told that the evaluation needed to be completed by July 15, 2011 because the unit needed to be returned to the FREEDM Center by that date. Petitioner failed to perform the assigned task and did not provide Mr. McConocha with constructive feedback. The meter was returned to the FREEDM Center with a letter of apology from Mr. McConocha. **T. pp. 45-49, 55, 282; Resp. Exs. 1, 29, 30.**
17. In spring 2011, Mr. McConocha and the Energy Management Group arranged with the FREEDM Center to use the Center's modified plug-in Toyota Prius for meter reading. Aside from the plug-in modifications that were made by the FREEDM Center, the Prius was no different than any other model Prius being driven on the roads today. The parties agreed that the Energy Management Shop's dedicated meter reader employee would use the plug-in Prius for running the meter route on NC State's campus. It was a mutually beneficial arrangement because the regular usage of the Prius would allow the Center to evaluate the car's performance and the Energy Management Shop got a free, energy efficient vehicle to use. The arrangement began as a pilot program for a couple of weeks, but was later made a more formal and permanent arrangement. The Prius would be available to the Energy Management Shop and in return the Shop would use the car during the normal course of business to transport the meter reader around campus. Petitioner was responsible for seeing that the Prius was used accordingly by his team. **T. pp. 49-55, 549-56; Resp. Exs. 1, 11.**
18. The Shop used the Prius at first, but soon stopped using it for meter reading. Petitioner informed Mr. McConocha that the meter reader did not like using the Prius, contending that the visibility was different from the Shop's truck. According to Petitioner, the meter reader preferred using the Shop's truck for his meter route. Mr. McConocha informed Petitioner that he expected Petitioner to see that the Prius was used in accordance with the agreement. Petitioner failed to do so and the Prius was not used consistently in accordance with the agreement. **T. pp. 49-55, 213-15, 549-56; Resp. Exs. 1, 11.**
19. Petitioner testified that he did not recall what the arrangement was with the FREEDM Center regarding the Prius. After his memory was refreshed, Petitioner testified that the Shop used the Prius until the meter reader said the car was not safe for him to drive. Although Petitioner was the meter reader's supervisor, he failed to take any steps to ensure that the car was utilized in accordance to the agreement, even after being directed to do so

by his supervisor. **T. pp. 49-55, 549-56; Resp. Exs. 1, 11.**

20. As supervisor part of Petitioner's job responsibilities was to hire electronic technicians and other staff members. In October 2011, Petitioner recommended that Mr. Philip Tabor be hired as a permanent employee. Mr. Tabor had been working in the Energy Management Shop under Petitioner's supervision for the past several months. Mr. Tabor went through the interview process and both Mr. McConocha and Mr. Daeke gave their approval. Petitioner submitted Mr. Tabor to Human Resources for permanent hire and informed Mr. Tabor that he had done so. After submitting Mr. Tabor for employment, Petitioner abruptly changed his mind and informed Mr. McConocha that he wanted to withdraw the offer to Mr. Tabor because he no longer believed Mr. Tabor had the technical capability to perform the job. Because Petitioner had already interviewed Mr. Tabor, recommended him for employment, and informed him that he was being submitted for permanent employment, Mr. McConocha and Mr. Daeke did not believe it would be appropriate to withdraw the offer to Mr. Tabor at that point in time. Petitioner never articulated the reasons for the abrupt change in his recommendation or provided any justification for not hiring Mr. Tabor. Mr. Tabor continues to be employed by the Energy Management Group and is meeting all expectations. **T. pp. 56-64, 282-83, 573-75; Resp. Exs. 1, 40, 7-8**
21. As part of his job, Petitioner was responsible for managing the installation and integration of new meters on campus. A new electric smart meter had been installed at the Terry Small Animal Hospital and Petitioner was tasked with completing the installation and integrating the meter. A fully-integrated smart meter is one that is connected to the internet and can be monitored remotely, instead of having to be manually read by a meter reader. To complete the integration, a communications cable needed to be installed to the device. Petitioner failed to complete the assigned task. **T. pp. 71-72, Resp. Ex. 1.**
22. Mr. McConocha documented Petitioner's work performance issues in Petitioner's 2011-2012 interim appraisal and review, which was conducted in December 2011. Mr. McConocha informed Petitioner of the specific issues with regard to his performance and that Petitioner would be given every opportunity to improve his performance during the next review cycle. Petitioner was extremely upset at receiving less than satisfactory ratings in his review and submitted several written responses to be included in his personnel file. **T. pp. 32-35 , Resp. Exs. 1, 10, 14, 17, 40; Pet. Exs. 1-2.**
23. After the interim review in December 2011, Mr. Daeke suggested and approved for Mr. to meet weekly with Petitioner to review Petitioner's work, discuss outstanding issues, and monitor progress. The goal of the meetings was to improve communication between Mr. McConocha and Petitioner and to rehabilitate Petitioner's performance and get the Energy Management Shop's performance back on track. The hope was that the meetings would help Petitioner improve his organization and management of the Shop so that they could get the necessary work done and improve customer service. **T. pp. 30, 33-35, 70, 284-86, 290; Resp. Exs. 2, 13-14.**
24. Petitioner was resistant to the idea of meeting regularly with Mr. McConocha and behaved in a disrespectful and unprofessional manner during the first meeting on January 6, 2012. As a result of Petitioner's behavior, Mr. McConocha established specific ground rules for

- the meetings. **T. pp. 37-44; Resp. Exs. 12-13, 15.**
25. Mr. McConocha met with Petitioner on a weekly basis. Mr. McConocha would prepare an agenda for the meetings and would provide Mr. Daeke with regular updates. During the meeting, the men would establish priority lists for work orders and projects. These lists would be reviewed on a weekly basis. **T. pp. 70, 286-87, Resp. Exs. 2, 18, 47, 49, 51.**
26. As a result of the meetings, Petitioner's performance improved for a limited period of time, but Petitioner was unable to sustain the improvement. Specifically, he failed to procure an electric club car for meter reading activities in a professional manner that was compliant with State and University procurement policies and procedures. Petitioner failed to properly plan for and oversee the installation of a wireless utility meter reading system on campus as previously discussed and assigned. He failed to perform in a satisfactory manner as project lead for the installation of utility sub-meters at the Partners II greenhouses. He was unable to complete outstanding work orders in a timely manner and failed to update plant priority lists as required. In addition, Petitioner failed to comply with time keeping requirements. As a result, Petitioner received less than good ratings on his annual appraisal. **T. pp. 70, 290-96; Resp. Exs. 1, 2, 18, 39-40.**
27. In spring 2012, Petitioner was asked to take the lead on procuring an electric club car for the Energy Management Shop. The club car would be a replacement for the FREEDM Center Prius and would be a dedicated vehicle for the campus utility meter reader. Mr. McConocha and Petitioner had discussed purchasing one in the past, but it was not until 2012 that the funds became available to purchase the vehicle. **T. pp. 75-77, 299, 410-15, 505-09; Resp. Exs. 1, 2, 20-22.**
28. Petitioner was supposed to identify the proper vehicle, obtain quotes and pricing, and follow University procurement procedures to acquire the car by the end of the fiscal year. Petitioner did not have prior experience with procuring an item like the club car or equipment of such value. Petitioner researched the club cars, obtained pricing from several vendors, and made his recommendation to Mr. McConocha and the University's Purchasing department. University Purchasing informed Petitioner and Mr. McConocha that they needed to use a North Carolina term contract and purchase the vehicle using an approved vendor. Mr. McConocha instructed Petitioner to follow University procurement guidelines and to use the State term contract and approved vendors. **T. pp. 75-83, 218, 299-301, 410-15, 511-13; Resp. Exs. 20-22, 52**
29. Petitioner failed to comply with Mr. McConocha's instructions. He persisted in sending accusatory and confrontational emails to employees in the University Purchasing department. Petitioner objected to the University's purchasing process because the State's approved vendor did not have the lowest bid. Petitioner had already informed an unapproved vendor that it had submitted the lowest bid, although that was beyond his authority.
30. Petitioner accused the University Purchasing department of acting unethically and possibly illegally. Personnel in the University Purchasing department complained to Mr. Daeke about Petitioner's conduct. As a result of Petitioner's unprofessional communications with

the University Purchasing department, Mr. Daeke had to meet with Ms. Sharon Loosman, Director of Purchasing, and Mr. Blain Woods, Assistant Director of Purchasing, to apologize for Petitioner's conduct. Petitioner's refusal to comply with University procedures also resulted in a subsequent delay in procuring the car. Eventually, the University Purchasing department assisted in acquiring the car in compliance with State and University procedures, but the purchase did not occur until the next fiscal year. **T. pp. 75-83, 235-36, 299-305; 509-11; Resp. Exs. 20-22, 52**

31. In November 2011, Petitioner was assigned to be the Energy Management team representative for the installation of utility sub-meters at three research greenhouses attached to the Partners II building on NC State's Centennial Campus. Associate Vice Chancellor Jack Colby had directed that all the utility meters for the three greenhouses be separated from the Partners II building. This was so the University could meter separately the utility/energy usage of the greenhouses and not have the usage be part of the main building billing. This was a large project that began in November 2011 and required the coordination and communication of several groups on campus. Mr. Blake Holmes from the Repair and Renovation group was the project lead and project manager. His group looked to Petitioner and his team for assistance with installing the new utility meters on the greenhouses. **T. pp. 84-89; 306-13, 416-18; Resp. Exs. 2, 4-5, 23-25.**
32. In March 2012, Mr. Holmes informed Petitioner that the three utility meters were installed and that he needed Petitioner to validate the power meter and complete the installation. Petitioner was supposed to make sure the meters were installed properly, met specifications, and were integrated into the building systems and data management systems. Petitioner and Mr. McConocha discussed this project during their weekly meetings and it was made a priority on March 23, 2012. Despite being a priority, Petitioner did not take immediate action regarding the project. **T. pp. 85-86, 305-07, 520-22; Resp. Exs. 2, 4-5, 23-25, 51.**
33. On or about April 27, 2012, Petitioner presented a concept of the project to the Energy Management Shop. Mr. Al Ball, an engineer with the Power Systems Group who was not involved in the project, saw the concept and mentioned that the electric meter should be UL listed. On May 3, 2012, Mr. Holmes asked Petitioner for an update on the installation project. Mr. Holmes asked Petitioner for a detailed analysis of everything that was still needed in order for Petitioner to complete the project. Petitioner raised two possible concerns, including Mr. Ball's comment that the meter may require a UL listing. Petitioner confirmed with Mr. Holmes that there were no additional concerns. **T. pp. 86-92, 308-13, 517-30; Resp. Exs. 2, 4, 23-25.**
34. On May 17, 2012, Mr. Holmes informed Petitioner that the two issues he had raised had been addressed and that there were no electrical issues regarding the installation. Despite these assurances, Petitioner continued to insist that there was a potential issue with the electrical work. Petitioner is not an electrician, had never handled the installation of a high-voltage meter before, and was not qualified to provide advice regarding electrical issues. Ultimately, Petitioner failed to complete the assigned task. **T. pp. 86-92, 308-13, 517-30; Resp. Exs. 2, 4-5, 23-25.**
35. Six months after the beginning of the project, Petitioner informed to Mr. McConocha that

the Partners II project was not part of his group's core mission and that the group was not qualified to do the work even though his group is responsible for supporting the installation of meters and meter equipment. Assuming *arguendo* that such were true, he had a responsibility to inform his supervisor well in advance of 6 months. He should have been able to figure that out within a week of two of getting the assignment.

36. In accord with University policy and Petitioner's position, Petitioner was required to submit monthly time sheets. Throughout the entire time Petitioner was employed at NC State, he would correctly keep track of his time using a monthly time sheet and submit these monthly time reports to Mr. Daeke's assistant. In May 2012, Petitioner began entering his time into the AIM system on a daily basis. As shop supervisor, Petitioner should not have been charging his time to a work request in AIM. By doing so, it amounted to double entry of his work time. His time is reported via a monthly time sheet and included in the overhead portion of the charge back rates. Mr. McConocha instructed Petitioner on more than one occasion to stop entering his time into AIM, but Petitioner failed to comply. Ultimately Mr. Daeke held a meeting in his office with Petitioner and Mr. McConocha and ordered Petitioner to cease recording his time in AIM. Only then did Petitioner stop. Petitioner's conduct and refusal to follow Mr. McConocha's directives constituted insubordination. **T. pp. 97-103, 187-88, 313-18, 418-21; Resp. Exs. 2, 18, 31-32**
37. On February 10, 2012, the Energy Management Group met to discuss potential metering projects that could be completed before the end of the fiscal year. The group discussed installing a wireless Datamatic Mosaic Firefly utility meter reading system on campus. Datamatic is the vendor that distributes the meter. **T. pp. 104-05; Resp. Exs. 2.**
38. On March 16, 2012, Petitioner and Mr. McConocha discussed the planned procurement and installation of that system and Petitioner was tasked to lead the project. Over the next two months, Mr. McConocha and Petitioner discussed the project several times during their weekly meetings. However, Petitioner never presented a work plan or schedule for the project as directed. **T. pp. 104-09, 318-19; Resp. Ex. 2.**
39. Mr. Erik Hall, Plant Engineer, was responsible for running the University's five district utility plants, reported to Mr. Daeke, and was a peer of Mr. McConocha. Early on the morning of May 30, 2012, Petitioner issued a detailed task assignment via e-mail to Mr. Hall. The subject line of the e-mail was in all capital letters and stated "MANAGEMENT MUSCLE REQUIRED IMMEDIATELY – Datamatic Mosaic Firefly Installation 5/30." Petitioner informed Mr. Hall of what needed to be done on the project that very day and requested immediate assistance from Mr. Hall and his group. Although Mr. Hall's group had provided funding for the project, there had been no prior communication from Petitioner regarding the project to Mr. Hall or Mr. McConocha. Petitioner was well aware prior to May 30, 2012 that the Datamatic representative was coming to campus on that date to help with the project. Petitioner's actions demonstrated a lack of planning and his e-mail communication constituted an improper upper-delegation of responsibility. **T. pp. 106-110, 319-25, 424-29, 533-39; Resp. Ex. 2.**
40. On June 5, 2012, Petitioner received a written warning for unsatisfactory work performance and unacceptable personal conduct. The reason for the disciplinary action was that

Petitioner failed to perform his job in a satisfactory manner and engaged in disruptive and unprofessional personal conduct that was counterproductive and detrimental to the Energy Management Group's mission. Assigned work was still not being completed satisfactorily in a timely manner. Specific reasons for the warning as discussed above included Petitioner's failure to procure the electric club car in a professional, expeditious, and efficient manner, his unsatisfactory job performance regarding the Partners II utility meter installation, his unsatisfactory job performance and unprofessional conduct regarding the Datamatic Mosaic Firefly installation project, and his entering his daily time into the AIM system. Also given as a reason for the written warning was his attempting to record his scheduled annual review meeting with Mr. McConocha despite Mr. McConocha's clear instructions not to record the meeting. Petitioner had been told by Human Resources that it is within Mr. McConocha's rights to require Petitioner not record the meeting. **T. pp. 75-83, 97-103, 111-13, 299-301, 313-18;; Resp. Exs. 2, 4-5, 16, 18, 20-22, 23-25, 31-32, 52, 55**

41. Included in the written warning was a six-point Performance Improvement Plan informing Petitioner that he was expected to communicate professionally and appropriately with all NC State personnel and to take greater ownership with regard to his group's productivity and improve the shop's performance. **T. pp. 75-83, 97-103, 111-13, 299-301, 313-18, 540-48; Resp. Exs. 2, 4-5, 16, 18, 20-22, 23-25, 31-32, 52, 55**
42. Petitioner filed an administrative grievance regarding his annual appraisal and the June 5, 2012 written warning, alleging both contained false, inaccurate, or misleading information. As part of the grievance process, Mr. Daeke met with Petitioner to discuss his grievance and to determine whether there was any merit to it. Mr. Daeke determined that both the annual appraisal and written warning were accurate. **T. pp. 325-27, 539; Resp. Ex. 19.**
43. Petitioner's job performance improved slightly after the written warning, but the improvement did not last. Petitioner consistently failed to successfully complete assigned work in a timely manner. Petitioner was late in providing a detailed action plan for central utility plant related repairs and utility meter related repairs, a majority of urgent and routine work orders remained late and overdue, and necessary warranty tracking information had not been put into the AIM system. Petitioner was also consistently late with submitting his monthly time sheets. **T. pp. 113-15, 328-29, 336-39; Resp. Exs. 41, 44.**
44. Mr. McConocha continued to work with Petitioner to try and improve his job performance. Mr. McConocha would identify specific work orders that needed to be done in terms of priority, communicate that on a regular basis, and follow up with regard to progress. However, despite Mr. McConocha's efforts, Petitioner's performance did not improve. **T. pp. 116-17; Resp. Exs. 41, 44, 47, 49.**
45. During a Shop training session on November 6, 2012, Petitioner observed Mr. Jan Nederveen, the meter reader, nodding off. Petitioner is Mr. Nederveen's supervisor. Petitioner clapped his hands in the direction of Mr. Nederveen's face to wake him up.
46. Mr. Nederveen and the other employees who were there, including Mr. Tabor, Mr. James Fenske, and Mr. Makr Welsh, reported the incident to Mr. McConocha. Mr. McConocha conducted an investigation. As part of his investigation, Mr. McConocha spoke with

Petitioner, who admitted that he clapped his hands at Mr. Nederveen. Mr. McConocha instructed Petitioner not to discuss the matter with his employees or take any retaliatory reaction against them. Petitioner was upset that his employees had reported the incident to Mr. McConocha. He disregarded Mr. McConocha's directions and told the Shop employees that there were "rats" among the staff. Petitioner's conduct during the meeting was unprofessional, and his behavior during the subsequent investigation of the incident, including the remarks he made to his employees, was inappropriate and insubordinate. **T. pp. 119-22, 336, 432-37, 556-62; Resp. Ex. 44.**

47. Petitioner acknowledged clapping his hands at the direction of Mr. Nederveen's face in order to wake him up, but adamantly contended he did not clap his hands "near" Mr. Nederveen's face. However, Petitioner admitted that he was upset that his staff had gone behind his back and reported the incident to Mr. McConocha. He admitted that he had called his staff "rats." He believed that his staff had told lies about him and he wanted that reflected in their performance appraisals. **T. pp. 432-37, 556-62, 565-66.**
48. During 2012, Petitioner submitted his monthly time sheets late in July, August, September, October, and November. Monthly time sheets were to be submitted to Mr. Daeke's assistant at the end of each month so that she could review them for accuracy, verify leave and sick time, make a copy for the files, and send them to payroll for processing. Petitioner was not adhering to the department's process or timeline. **T. 115-16, 336-39; Resp. Ex. 44**
49. Petitioner failed to conduct monthly safety training sessions as required in March, April, May, June, July, August, and September of 2012. Supervisors are required to conduct safety training sessions every month with their staff, during which they are supposed to review training material prepared by Mr. Edward Elliot, the Facilities Operations safety officer, distribute relevant training material, and review various job safety issues with the employees. Petitioner failed to conduct the training sessions until Mr. McConocha intervened and ordered Petitioner to conduct the sessions. **T. pp. 123-26, 339-41, 441-42; Resp. Exs. 38, 44.**
50. On July 27, 2012, Mr. McConocha directed Petitioner to develop an action plan to address outstanding work orders at the University's Central Utility Plant. The University has five district energy plants that generate chilled water and working steam for building HVAC systems on campus. One of the plants also generates electricity used to power the campus. Mr. McConocha had worked with the plant staff to prioritize open repairs and meter-related repairs that needed to be done and Petitioner was expected to come up with a plan to complete the necessary repairs. Petitioner's plan was due by September 21, 2012. Petitioner failed to provide a plan by the due date and did not submit his plan for review until November. **T. pp. 128-29, 341-42; Resp. Exs. 41, 44.**
51. As Energy Management Shop Supervisor, Petitioner was responsible for assigning work to his staff, prioritizing the work that needed to be done, and ensuring that work orders and repairs were completed in a timely fashion. When work orders, customer requests, and repairs are entered into AIM, they are provided with a priority code. "Urgent" work orders indicate a response is required within 24 hours and repairs completed within 48 hours, if possible. All urgent work orders in the AIM system should reflect at least some activity on

them. "Routine" work orders are generally addressed within 30 days. As of November 28, 2012, 13 of 14 "urgent" work orders were overdue (93% late) and 25 of 32 "routine" work orders were overdue (78% late). Of those 38 overdue work orders, nine did not have any work hours charged, which indicated that no action had been taken and that absolutely no work had been done on those orders. **T. pp. 129-37, 199-202, 343-46; Resp. Exs. 41, 44, 49.**

52. As supervisor, Petitioner was responsible for performing interim and annual reviews of all employees who directly reported to him. Petitioner had been performing evaluations and reviews as part of his supervisory duties ever since he began his employment at NC State. The University's Human Resources department provides supervisors with all the necessary forms and establishes a timeframe in which the reviews needed to be completed and submitted. Per direction of Human Resources, employee interim reviews were to be completed by December 14, 2012. Petitioner failed to complete the interim reviews by the proscribed deadline. **T. pp. 137-43, 346-54, 408, 565-71; Resp. Exs. 41, 44, 50, 53.**
53. On December 20, 2012, Mr. McConocha asked Petitioner for a status update regarding the Energy Management Shop's employee interim reviews. Petitioner told Mr. McConocha that he was not going to do the interim reviews. Petitioner believed that the University's Employee Relations group would be investigating the Shop as a result of the incident involving Petitioner clapping his hands to wake up Mr. Nederveen during the Shop meeting in November and did not consider it appropriate to do the interim appraisals at this time. Contrary to Petitioner's assertion, Employee Relations was not conducting an investigation into the incident, and even if it was conducting an investigation, Petitioner was still required to provide interim appraisals of his employees. **T. pp. 137-43, 348-54, 565-71; Resp. Exs. 44, 50, 53.**
54. On January 2, 2013, Mr. McConocha again directed Petitioner to complete the interim reviews. On January 4, 2013, Petitioner submitted draft interim reviews for three of the four Shop employees. On the reviews for Mr. James Fenske and Mr. Phil Tabor, Petitioner included the comment that "NCSU employee relations has been asked to investigate why the employee and other employees report on shop activities directly to Mr. McConocha." The inclusion of this comment on the interim reviews did not relate to employee performance was thus improper. The comment was both unfounded and retaliatory. Mr. McConocha asked Petitioner to remove that comment from the reviews, but Petitioner refused. **T. pp. 137-43, 348-54, 565-71; Resp. Exs. 44, 50, 53.**
55. On September 6, 2012, Petitioner and Mr. McConocha met with Mr. Nederveen to discuss his job responsibilities and expectations. Petitioner had been assigning another Shop employee to accompany Mr. Nederveen and to help him perform his work as the meter reader. Petitioner's actions prevented Mr. Nederveen from being able to perform his job duties independently and redirected manpower away from other work orders.
56. Mr. Nederveen was presented with a formal memorandum outlining his job responsibilities and the University's expectations for his work, which he signed. The purpose of the memorandum was to ensure that Mr. Nederveen worked independently to complete his meter reading and data recording activities without daily assistance from any other

employee. **T. pp. 143-52, 236, 354-61, 579-82; Resp. Exs. 33-36, 44**

57. Petitioner objected to the memorandum because he did not think Mr. Nederveen could safely and independently perform his duties. Petitioner's concern stemmed from an injury Mr. Nederveen suffered on the job when he fell off a ladder. Petitioner was involved in the hiring of Mr. Nederveen, participated in the interview process during which Mr. Nederveen had a job coach participate with him, agreed with the initial decision to hire Mr. Nederveen, and believed that Mr. Nederveen was qualified for the position. Mr. Nederveen has never asked the University for an accommodation. The University reviewed Mr. Nederveen's situation and determined that he could perform the essential functions of his job.
58. Despite clear direct instructions from his supervisor, Petitioner refused to issue and refused to comply with the memorandum. With the assistance of Human Resources and the University's American with Disabilities Act Coordinator, Mr. McConocha, wrote the memorandum. Although Petitioner did not write it, the memorandum was issued in his name because he was Mr. Nederveen's supervisor. **T. pp. 143-52, 192-93, 354-61, 579-82; Resp. Exs. 33-36, 44**
59. Although Petitioner was given a clear directive that Mr. Nederveen was to be allowed to work independently, Petitioner continued to assign other employees to perform Mr. Nederveen's job duties. Mr. Nederveen is still employed at NC State as a meter reader and is satisfactorily performing his job. **T. pp. 143-52, 190, 354-61, 579-82; Resp. Exs. 33-36, 44**
60. Mr. McConocha documented Petitioner's work performance issues in Petitioner's 2012-2013 interim appraisal and review, which was conducted in December 2012. Mr. McConocha informed Petitioner of the specific issues with regard to his performance and that documented performance improvement would be expected during the remaining performance period. Petitioner was expected and instructed to take ownership of his shop, develop and execute plans to reduce AIM work order backlogs, and work professionally and courteously with Shop employees. **T. pp. 116-17; Resp. Exs. 41, 47, 49.**
61. On January 30, 2013, Petitioner received a Final Written Warning for Unacceptable Personal Conduct and Unsatisfactory Job Performance. Despite regular coaching, mentoring, clear direction and guidance, and a prior written warning for unsatisfactory work performance, Petitioner failed to demonstrate sustained improvement in his work. He consistently failed to satisfactorily complete assigned tasks in a timely manner. Petitioner's conduct in the hand clapping incident involving Mr. Nederveen was unprofessional, inappropriate, and insubordinate. His failure to allow Mr. Nederveen to complete his work independently without daily assistance, despite clear instructions to the contrary, constituted insubordination. Petitioner had been warned that failure to make immediate and sustained improvement in his job performance could result in his dismissal. **T. pp. 117-52, 335-66; Resp. Exs. 42, 44.**
62. The January 30, 2013 Final Written Warning included a Performance Improvement Plan. The Plan required Petitioner to, among other things, reduce AIM open and overdue urgent work orders to no more than 4 urgent work requests by April 30, 2013; reduce AIM open

- and overdue routine work order to no more than 7 requests by April 30, 2013; complete shop interim reviews by February 1, 2013; maintain decorum in the workplace; communicate professionally and appropriately with University personnel; and not retaliate against any University employees. **T. pp. 152-55, 362-64; Resp. Ex. 42.**
63. Petitioner's work performance did not improve after the issuance of the Final Written Warning and he failed to achieve the actions outlined in the Performance Improvement Plan. Petitioner had been assigned six (6) priority repairs that had aged more than a year and been given one month to complete the repairs. Only one (1) repair had been completed. Moreover, as of June 4, 2013, there were twelve (12) open urgent work orders and thirty (30) open routine work orders. Pursuant to Petitioner's work plan, scheduled preventive maintenance tasks were to be completed level every month. Since January 2013, the completion level for these PMs had only been 73%. Petitioner had also failed to update the PMs schedule and meter warranties in AIM as provided for in his work plan. In addition, Petitioner had been instructed in February 2013 to complete employee time sheet reviews and approve time sheets in AIM on a weekly basis. Petitioner failed to do so. **T. pp. 159-69; 376-88; Resp. Exs. 45-46.**
64. Mr. McConocha consulted with Mr. Daeke and Human Resources regarding possible next steps in the disciplinary process. Because of Petitioner's continuing unsatisfactory job performance, the decision was made further discipline was warranted, including possible dismissal. On June 4, 2013, Mr. McConocha issued Petitioner a Notice of Investigatory Status and Notice of Pre-dismissal Conference due to his unsatisfactory job performance. **T. pp. 155-57, 374-76; Resp. Exs. 45-46.**
65. On June 6, 2013, Petitioner attended the Pre-disciplinary Conference conducted by Mr. Daeke, Mr. McConocha, and a representative from Human Resources. Petitioner was provided with an opportunity to respond, but declined the opportunity. Ultimately Mr. McConocha was responsible for the decision to dismiss Petitioner. He arrived at the decision to dismiss Petitioner after discussing it with Mr. Daeke and Human Resources. Ms. McConocha, Mr. Daeke and Human Resources all agreed that Petitioner's continued unsatisfactory job performance warranted dismissal. On June 7, 2013, Petitioner was dismissed from employment due to unsatisfactory job performance. **T. pp. 169-73, 388-91; Resp. Ex. 46.**
66. Petitioner contends that Mr. McConocha did not provide him with the support necessary to perform his job. Petitioner acknowledged, however, that Mr. McConocha had informed him that he could hire temporary employees or authorize overtime if needed in order to get the jobs completed. Petitioner also admitted that Mr. McConocha approved the hiring of an additional technician. **T. pp. 577-79.**
67. Mr. McConocha and Mr. Daeke were credible witnesses. Crucial parts of their testimony were supported by documentation.
68. The Undersigned finds that the testimony of Petitioner was less credible and crucial parts of his testimony were not supported by documentation.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. The parties are properly before the Office of Administrative Hearings and there is no issue of improper procedure.
3. Respondent North Carolina State University is subject to Chapter 126 of the North Carolina General Statutes and is the former employer of Petitioner.
4. A “career state employee” is defined as a state employee who is in a permanent position appointment and continuously has been employed by the State of North Carolina in a non-exempt position for the immediate 24 preceding months. N.C. Gen. Stat. § 126-1.1
5. At the time of his discharge, Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C. Gen. Stat. § 126-1, *et seq.*
6. A career State employee may be dismissed only for just cause. N.C. Gen. Stat. §126-35(a). The State employer has the burden of showing by a preponderance of the evidence that there was just cause for dismissal. N.C. Gen. Stat. § 126-34.02(d); see also Teague v. N.C. Dep’t of Transp., 177 N.C. App. 215, 628 S.E.2d 395, disc rev. denied, 360 N.C. 581 (2006).
7. On the issue of just cause, Respondent has met its burden of proof to show it had just cause to dismiss Petitioner.
8. Pursuant to regulations promulgated by the Office of State Personnel, there are two bases for the dismissal of an employee for just cause: (1) unsatisfactory job performance; and (2) unacceptable personal conduct. 25 N.C.A.C. 01J .0604(b). However, “the categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.” 25 N.C.A.C. 01J .0604(c). Furthermore, “[n]o disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.” Id.
9. An employee must receive at least two prior disciplinary actions before being dismissed for a current incident of unsatisfactory job performance. 25 N.C.A.C.01J .0605(b). In addition, the employee must be given a pre-disciplinary conference and written notice of the reasons for dismissal. 25 N.C.A.C. 1J.0605. However, an employee may be dismissed without any prior warning or disciplinary action when the basis for dismissal is unacceptable personal conduct. 25 N.C.A.C. 01J 0608(a). One instance of unacceptable conduct constitutes just cause for dismissal. Hilliard v. North Carolina Dep’t of Corr., 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

10. Unacceptable personal conduct, as defined by the Office of State Personnel, includes insubordination, “conduct for which no reasonable person should expect to receive prior warning,” and “conduct unbecoming a state employee that is detrimental to state service.” 25 N.C.A.C. 01J .0614(8). Insubordination is defined as the “willful failure or refusal to carry out a reasonable order from an authorized supervisor.” 25 N.C.A.C. 01J .0614(7)
11. Unsatisfactory job performance is “work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.” 25 N.C.A.C. 1J.0614(9). It includes “careless errors, poor quality work, untimeliness, failure to follow instructions or procedures, or a pattern of regular absences or tardiness.” Amanini v. North Carolina Dep’t of Human Resources, Special Care Ctr., 114 N.C. App. 668, 679, 443 S.E.2d 114, 121 (1994). Any work related performance problem may establish just cause to discipline an employee for unsatisfactory job performance.
12. In Carroll, the Supreme Court explained that the fundamental question is whether “the disciplinary action taken was ‘just’”. Further, the Supreme Court held that, “Determining whether a public employee had ‘just cause’ to discipline its employee requires two separate inquires: First, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes ‘just cause’ for the disciplinary action taken.” NC DENR v. Carroll, 358 N.C. 649, 665, 599 S.E.2d 888, 898 (2004).
13. In Carroll, a personal conduct case, the Court went on to say that “not every violation of law gives rise to ‘just cause’ for employee discipline.” In other words, not every instance of unacceptable personal conduct as defined by the Administrative Code provides just cause for discipline. *Id.* at 670, 599 S.E.2d at 901.
14. Petitioner’s repeated failure to perform the duties set out in his job description and work plan in a satisfactory and timely manner and to follow management directives constituted “work-related performance that fail[ed] to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.” 25 N.C.A.C. 1J.0614(9).
15. Respondent did not impose unreasonable standards or work conditions on Petitioner. Petitioner was expected to supervise his staff in a professional manner, assign and prioritize work as appropriate, deliver effective customer service, take ownership of his work, and complete assigned tasks in a satisfactorily and timely manner. He was also expected to follow directives of management.
16. Petitioner’s job requirements and his unsatisfactory job performance were addressed with Petitioner on multiple occasions through various methods such as his work plan, written warnings, performance reviews, counseling, performance improvement plans, and direction of supervisors. Petitioner was given ample opportunity to correct his unsatisfactory job performance.
17. Petitioner was given two written warnings, on June 5, 2012, and on January 30, 2013, and he was warned that his failure to make the required improvements in his performance could result in his dismissal. Petitioner’s work performance did not improve after the

issuance of the second written warning and he failed to achieve the actions outlined in his Performance Improvement Plan. This third incident of unsatisfactory job performance provided justification for Petitioner's dismissal.

18. The Respondent has met it's burden of proof by showing that the employee engaged in the conduct the employer alleges, and, secondly, that conduct constitutes 'just cause' for the disciplinary action taken
19. The two-prong test of the Carroll case was expanded in the case of Warren v. N. Carolina Dep't of Crime Control & Pub. Safety sets forth what this tribunal must consider as to the degree of discipline. It states:

We conclude that the best way to accommodate the Supreme Court's flexibility and fairness requirements for just cause is to balance the equities after the unacceptable personal conduct analysis. This avoids contorting the language of the Administrative Code defining unacceptable personal conduct. The proper analytical approach is to 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 by the Administrative Code. Unacceptable personal conduct does not necessarily establish "just cause" for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to "just cause" for the disciplinary action taken. (Internal cites omitted)

Warren v. N. Carolina Dep't of Crime Control & Pub. Safety, N. Carolina Highway Patrol, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) review denied, 735 S.E.2d 175 (N.C. 2012)

20. Having found the two prongs of the Carroll case have been met, then the next inquiry is whether or not the punishment is appropriate as established in Warren.
21. Determining "just cause" rests on an examination of the facts and circumstances of each individual case. The facts of a given case might amount to just cause for discipline but not dismissal.
22. The final inquiry in the Warren analysis is determining whether the discipline imposed for that conduct was "just". Just cause must be determined based "upon an examination of the facts and circumstances of each individual case." The Warren Court refers to this process as "balancing the equities."
23. In "balancing the equities" and trying to determine what is just, or the "right" thing to do, one must look at the totality of the facts and circumstances as opposed to just looking coldly and blindly at whether or not Petitioner violated rules or policy.

24. Mitigating factors in the employee's conduct should be considered in this third prong. See Warren, citing Roger Abrams and Dennis Nolan, TOWARD A THEORY OF "JUST CAUSE" IN EMPLOYEE DISCIPLINE CASES, 1985 Duke L.J. 594 (September 1985).
25. Having given due regard to factors in mitigation, including Petitioner's work history while employed with Respondent, and based on the preponderance of the evidence, Respondent met its burden of proof that it had "just cause" to dismiss Petitioner for unacceptable personal conduct and unsatisfactory job performance. Because of the particular facts of this case, the punishment of termination was appropriate.
26. Petitioner's insubordination alone would have been sufficient for termination; however, Respondent continued to give Petitioner chance after chance to improve.
27. Respondent met its burden of proof that it did not substantially prejudice Petitioner's rights, exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act in violation of Constitutional provisions, fail to act as required by law, act arbitrarily or capriciously, and/or abuse its discretion when Respondent dismissed Petitioner for "just cause".
28. Respondent had "just cause" to dismiss Petitioner for his unacceptable personal conduct and his unsatisfactory job performance.
29. Respondent followed the procedures required before dismissing Petitioner for unacceptable personal conduct and unsatisfactory job performance.

On the basis of the above Conclusions of Law, the undersigned issues the following:

DECISION

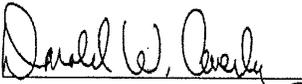
Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent has sufficiently proved that it had just cause to dismiss Petitioner and Petitioner's dismissal is therefore **UPHELD**.

NOTICE

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29(a). The appeal shall be taken within 30 days of receipt

of the written notice of final decision. A notice appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 25th day of June, 2015.


Donald W. Overby
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BILLY-DEE GREENWOOD,

Petitioner,

v.

N.C. PRIVATE PROTECTIVE SERVICES BOARD,

Respondent.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
15 DOJ 00520

PROPOSAL FOR DECISION

On March 26, 2015, Administrative Law Judge Donald W. Overby called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied a Private Investigator license based on his unfavorable employment history.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case: N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with the duty, among other things, of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business and licensing private investigators.
2. Petitioner applied to Respondent Board for a Private Investigator license.

3. Respondent denied the application due to Petitioner's employment history with the Raleigh Police Department and conduct thereafter.
4. Petitioner requested a hearing on Respondent's denial of a Private Investigator license.
5. By Notice of Rescheduled Hearing dated March 11, 2015, the undersigned Administrative Law Judge notified Petitioner that a hearing on the denial of his Private Investigator license application would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on March 26, 2015. Petitioner appeared at the hearing.
6. Petitioner had previously applied to the Board for a Private Investigator license in 2013. This was Petitioner's second time applying to the Board. The first application was denied for the identical reason as this application.
7. Investigator Melvin Turner was again assigned to conduct the background investigation of Petitioner for purposes of licensure.
8. Investigator Turner testified that he had also conducted the previous investigation of Petitioner and interviewed him by telephone for this application. Petitioner advised him that there were no issues to discuss regarding his criminal history or credit history that had arisen since his first application. Petitioner advised him that he had been working for Champion Sports and Entertainment in Chapel Hill since June 20, 2013, and conducted security risk assessments for the business.
9. Prior to that, Petitioner had served as a contract Field Advisor in Afghanistan for DynCorp International and had also attended American Military University for his Masters in Intelligence Operations.
10. The remaining information utilized by Investigator Turner in his investigation consisted of information that he had verified in April, 2013 when conducting the investigation for Petitioner's previous application.
11. Petitioner had worked as a Detective/Investigator for the Raleigh Police Department from October 2003 to July 2010. He conducted all law enforcement functions including participating in a FBI Task Force in the Career Criminal Unit. He resigned from his position at the Raleigh Police Department to begin employment with the Drug Enforcement Administration (DEA). After Petitioner had resigned from the Raleigh Police Department, an issue arose within the Department in reference to missing evidence that initially had occurred in May 2010.
12. Petitioner's partner at the time, Detective Heckman, had signed out evidence for a federal case to be tried in Greenville, North Carolina. The evidence in question was not withdrawn in Petitioner's name but he ended up taking custody of it.

13. This case was part of the FBI Task Force that Petitioner participated in. During the pendency of the case, the federal judge had placed the evidence in the secure custody of Petitioner. After the case was finalized, Petitioner was to transport the evidence back to Raleigh and return it to the evidence unit of the Raleigh Police Department. Petitioner claimed that during that period he moved all of possessions into a storage unit and departed for Quantico, Virginia to attend his DEA Special Agent training.
14. Petitioner was initially contacted by supervisors at the Raleigh Police Department and he denied any knowledge of the whereabouts of the evidence. The Raleigh Police Department contacted the DEA and the Petitioner was interviewed regarding the evidence. Petitioner gave permission for his storage unit to be searched and requested that a friend be present during the search. The missing evidence was located.
15. Since Petitioner was no longer employed with the Raleigh Police Department, the Department could take no disciplinary action against him. The Drug Enforcement Administration gave him the option to resign, but he did not; he was fired from the DEA over the evidence issue with the Raleigh Police Department.
16. The missing evidence in this incidence consisted of 55 grams of cocaine, a Tyson Tiger .38 caliber revolver, ammunition, 5 grams of marijuana, \$97.00 in currency, a cell phone, and miscellaneous wrappings. The whereabouts of the evidence between May 18, 2010, when the Petitioner was released by the court and ordered to retain the evidence until the case was completed, and the Petitioner's resignation from the Raleigh Police Department on July 16, 2010, was not known.
17. Further, the records of the evidence custodian for the Raleigh Police Department indicate that proper procedure was not followed in that the Petitioner did not process through the evidence custodian and did not obtain the evidence custodian's initials as required.
18. On October 27, 2010, an Evidence Specialist with the Raleigh Police Department had notified her supervisor that evidence signed out by Detective Heckman on May 17, 2010 for the federal case was missing and not in the Raleigh Police Department's evidence repository. A criminal investigation was then initiated by the Internal Affairs Division but it was later amended to be an administrative investigation, but only after involvement of the DEA who had advised Petitioner that he would not be prosecuted criminally if he would assist the Department in locating the missing evidence.
19. It was the opinion of the investigating officers in the Internal Affairs Division that the Petitioner was "evasive during the entire investigation." All missing evidence was ultimately located in Petitioner's storage unit and returned to the Raleigh Police Department's evidence repository.

20. Numerous violations of internal policies of the Raleigh Police Department were sustained against Petitioner although he was no longer an employee.
21. Petitioner testified that he must have forgotten that he had the evidence. The evidence had been placed in a black "tactical-type" duffle bag which had been issued by the Raleigh Police Department. Although Department issued, the Petitioner did not turn it in along with his other equipment. The duffle bag had been in the trunk of his car and had apparently been moved to the storage unit.
22. Petitioner testified that even if he had properly checked his equipment back in that there would have been no indication of him having outstanding evidence because the evidence had initially been released to the custody of his partner, Detective Hickman.
23. Petitioner also testified that he was not evasive in any manner during the investigation. The officer who initially contacted him was not particularly concerned about the evidence and he stated that he "truthfully did not know where it might be." He claimed that he packed everything in the storage unit very hurriedly because he had a short period of time between his resignation from the Raleigh Police Department and the start of classes at Quantico. It was only after the evidence was located in his storage unit that Petitioner was able to surmise what had occurred.
24. Petitioner's emphasis of the fact that he was not evasive and that somehow the Raleigh Police Department had conducted a flawed investigation and that somehow the Raleigh Police Department was at fault is an attempt by the Petitioner to deflect responsibility away from himself. Such deflection is to no avail and fails to acknowledge the given fact that the Petitioner had possession and control of the missing evidence and only further confirms that Petitioner refuses to accept responsibility for the missing evidence which was in his possession.
25. Petitioner also testified that he did not resign from the DEA when requested.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a license if it is determined that the applicant lacks good moral character.
3. Respondent Board presented evidence that Petitioner lacked good moral character through an unfavorable employment history, including a failure to account for evidence in a criminal case and dismissal from the Drug Enforcement Administration as a Special Agent.

4. Petitioner presented insufficient evidence to explain the factual basis for the events leading up to the loss or misplacing of the evidence from the federal criminal court case, nor adequately explain how such could occur. Petitioner was not credible. Therefore, Petitioner has failed to rebut the presumption that he lacks good moral character.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

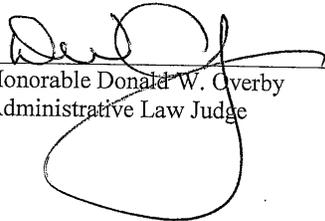
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be denied a Private Investigator license.

NOTICE AND ORDER

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

The undersigned hereby orders that the North Carolina Private Protective Services Board serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 1st day of June, 2015.



Honorable Donald W. Overby
Administrative Law Judge

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

Filed

2015 JUN 29 PM 4:12

IN THE NORTH CAROLINA
 OFFICE OF ADMINISTRATIVE
 HEARINGS
 15 DOJ 03346

DANIEL JOSEPH STEELE
 Petitioner

v.

NC PRIVATE PROTECTIVE SERVICES
 BOARD
 Respondent

Office of
 Administrative Hearings

) ORDER OF SUMMARY SUSPENSION
) OF UNARMED GUARD REGISTRATION
) PERMIT

On May 26, 2015, pursuant to North Carolina General Statute § 150B-3(c) and North Carolina General Statute § 74C-6, the undersigned Administrative Law Judge called this case for hearing on the summary suspension of the unarmed guard registration permit issued to Petitioner Daniel Joseph Steele. Based on the events at hearing, the undersigned finds as follows:

FINDINGS OF FACT

1. The North Carolina Private Protective Services Act, N.C.G.S. §§ 74C-1, *et seq.*, created the Respondent Private Protective Services Board ("the Board"), and sets forth the licensing and permit registration of companies and individuals engaged in the armed and unarmed security guard and patrol business.
2. Pursuant to N.C.G.S. § 74C-12, the Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a registration or permit issued under this Chapter if it is determined that the registrant committed an unlawful act constituting a lack of good moral character.
3. Pursuant to N.C.G.S. § 74C-6, the Board's Director shall administer the directives contained in the Private Protective Services Act, and the rules promulgated by

the Board, in order to actively police the industry. Pursuant to N.C.G.S. § 74-6, the Board authorizes its Director to summarily suspend any license or registration permit pursuant to N.C.G.S. § 150B-3(c).

4. Petitioner Daniel Joseph Steele is currently registered as an unarmed security guard with York Securities, with such unarmed guard registration being issued by Respondent Board. Petitioner's unarmed guard registration permit expires on July 31, 2015.

5. An investigation by the Board's staff revealed that Petitioner was arrested ~~and charged with first-degree murder in Wake County, North Carolina on April 18, 2015.~~ This offense poses a serious threat to the public health, safety, and welfare.

6. By Order dated April 27, 2015, the Board's Director, Barry S. Echols signed an Order of Summary Suspension of Unarmed Registration Permit, summarily suspending Petitioner's unarmed guard registration permit because Petitioner charged and arrested for First Degree Murder. That Order notified Petitioner that the Office of Administrative Hearings would conduct a contested case hearing on Tuesday, May 26, 2015, at 2:00 p.m. on the issue of Petitioner's summary suspension. While Petitioner's home address is listed as 4205 Snowcrest Lane, Raleigh, North Carolina 28216, Respondent personally served its Order of Summary Suspension on Petitioner in the Wake County Detention Center, 3001 Hammond Road, Raleigh, NC 27602.

7. On Tuesday, May 26, 2015, at 2:00 p.m., the undersigned called this case for hearing. Respondent's counsel and witnesses appeared for the administrative hearing in accordance with the Administrative Procedures Act.

8. Petitioner did not appear at the hearing, and did not attempt to contact the Office of Administrative Hearings or Respondent to request a continuance.

CONCLUSION OF LAW

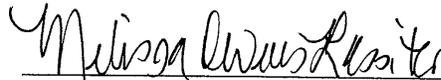
Based upon the foregoing Findings of Fact, the undersigned hereby proposes that Respondent summarily suspend Petitioner's unarmed guard registration permit pursuant to N.C.G.S. § 150B-3(c), as the public health, safety, and welfare will be jeopardized if Daniel Joseph Steele is allowed to continue as an unarmed security guard for York Securities.

NOTICE AND ORDER

The NC Private Protective Services Board will make the Final Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that Agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This 29th day of June, 2015.



Melissa Owens Lassiter
Administrative Law Judge