

# NORTH CAROLINA REGISTER

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December 1, 2015

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

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

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116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

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215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

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amy.bason@ncacc.org

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(919) 715-4000

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Raleigh, North Carolina 27603

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### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee

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Raleigh, North Carolina 27611

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2015 – December 2015

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
29:13	01/02/15	12/08/14	01/17/15	03/03/15	03/20/15	05/01/15	05/2016	09/29/15
29:14	01/15/15	12/19/14	01/30/15	03/16/15	03/20/15	05/01/15	05/2016	10/12/15
29:15	02/02/15	01/09/15	02/17/15	04/06/15	04/20/15	06/01/15	05/2016	10/30/15
29:16	02/16/15	01/26/15	03/03/15	04/17/15	04/20/15	06/01/15	05/2016	11/13/15
29:17	03/02/15	02/09/15	03/17/15	05/01/15	05/20/15	07/01/15	05/2016	11/27/15
29:18	03/16/15	02/23/15	03/31/15	05/15/15	05/20/15	07/01/15	05/2016	12/11/15
29:19	04/01/15	03/11/15	04/16/15	06/01/15	06/22/15	08/01/15	05/2016	12/27/15
29:20	04/15/15	03/24/15	04/30/15	06/15/15	06/22/15	08/01/15	05/2016	01/10/16
29:21	05/01/15	04/10/15	05/16/15	06/30/15	07/20/15	09/01/15	05/2016	01/26/16
29:22	05/15/15	04/24/15	05/30/15	07/14/15	07/20/15	09/01/15	05/2016	02/09/16
29:23	06/01/15	05/08/15	06/16/15	07/31/15	08/20/15	10/01/15	05/2016	02/26/16
29:24	06/15/15	05/22/15	06/30/15	08/14/15	08/20/15	10/01/15	05/2016	03/11/16
30:01	07/01/15	06/10/15	07/16/15	08/31/15	09/21/15	11/01/15	05/2016	03/27/16
30:02	07/15/15	06/23/15	07/30/15	09/14/15	09/21/15	11/01/15	05/2016	04/10/16
30:03	08/03/15	07/13/15	08/18/15	10/02/15	10/20/15	12/01/15	05/2016	04/29/16
30:04	08/17/15	07/27/15	09/01/15	10/16/15	10/20/15	12/01/15	05/2016	05/13/16
30:05	09/01/15	08/11/15	09/16/15	11/02/15	11/20/15	01/01/16	05/2016	05/28/16
30:06	09/15/15	08/24/15	09/30/15	11/16/15	11/20/15	01/01/16	05/2016	06/11/16
30:07	10/01/15	09/10/15	10/16/15	11/30/15	12/21/15	02/01/16	05/2016	06/27/16
30:08	10/15/15	09/24/15	10/30/15	12/14/15	12/21/15	02/01/16	05/2016	07/11/16
30:09	11/02/15	10/12/15	11/17/15	01/02/16	01/20/16	03/01/16	05/2016	07/29/16
30:10	11/16/15	10/23/15	12/01/15	01/15/16	01/20/16	03/01/16	05/2016	08/12/16
30:11	12/01/15	11/05/15	12/16/15	02/01/16	02/22/16	04/01/16	05/2016	08/27/16
30:12	12/15/15	11/20/15	12/30/15	02/15/16	02/22/16	04/01/16	05/2016	09/10/16

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

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

### NOTICE OF TEXT

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

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

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

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

**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 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 66 – VETERINARY MEDICAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Veterinary Medical Board intends to amend the rule cited as 21 NCAC 66 .0105.*

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

**Proposed Effective Date:** April 1, 2016

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Written request to the office of the NCVMB mailed to NCVMB, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606.

**Reason for Proposed Action:** Removal of text no longer needed due to online availability of the Veterinary Practice Act.

**Comments may be submitted to:** Jonathan Loftis, Deputy Director, 1611 Jones Franklin Rd., Suite 106, Raleigh, NC 27606, phone (919) 854-5601, fax (919) 854-5606, email [jloftis@ncvmb.org](mailto:jloftis@ncvmb.org).

**Comment period ends:** February 16, 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

**SECTION .0100 – STATUTORY AND ADMINISTRATIVE PROVISIONS**

**21 NCAC 66 .0105 APPLICABILITY OF BOARD RULES**

~~The Executive Director shall mail a copy of Article 11 of Chapter 90 of the North Carolina General Statutes and the rules of the Board adopted under Chapter 90 to all applicants applying for licensure. Additional copies are available from the Executive Director at the Board office. Rules adopted and published by the Board under the provisions of Article 11 of Chapter 90 and G.S. 150B shall be binding upon every individual holding a license from the Board, and upon all professional corporations and entities legally authorized to offer or to perform veterinary services in this state. All licensees of the Board are charged with having knowledge of the existence of the Board rules and shall be deemed to be familiar with their several provisions and to understand them.~~

*Authority G.S. 90-185(6).*

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**APPROVED RULES**

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*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 October 15, 2015.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**NC RURAL ELECTRIFICATION AUTHORITY**

Loan Applications and Categories 04 NCAC 08 .0304\* 29:24 NCR

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

Scope and Definitions 10A NCAC 14D .0101 30:02 NCR

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

Documentation of Educational Requirements 12 NCAC 09B .0106\* 29:19 NCR

Minimum Standards for Law Enforcement Officers 12 NCAC 09B .0111\* 29:19 NCR

Minimum Standards for Local Confinement Personnel 12 NCAC 09B .0114\* 29:19 NCR

Minimum Standards for Juvenile Justice Officers 12 NCAC 09B .0117 29:19 NCR

Admission of Trainees 12 NCAC 09B .0203\* 29:19 NCR

General Instructor Certification 12 NCAC 09B .0302\* 29:19 NCR

Certification of School Directors 12 NCAC 09B .0501\* 29:19 NCR

Instructor Qualifications 12 NCAC 09F .0104\* 29:19 NCR

Education 12 NCAC 09G .0204\* 29:19 NCR

General Instructor Certification 12 NCAC 09G .0308\* 29:19 NCR

Handling of Antineoplastic Agents 13 NCAC 07G .0101\* 30:01 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

Mitigation Program Requirements for Protection and Mainte... 15A NCAC 02B .0295\* 29:16 NCR

**MASSAGE AND BODYWORK THERAPY, BOARD OF**

Continuing Education Definitions 21 NCAC 30 .0702\* 29:13 NCR

**PHARMACY, BOARD OF**

Storage of Devices and Medical Equipment 21 NCAC 46 .2612\* 29:24 NCR

**PODIATRY EXAMINERS, BOARD OF**

License Re-Instatement 21 NCAC 52 .0215\* 29:24 NCR

Forms and Applications 21 NCAC 52 .0611 29:24 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

**LABOR, DEPARTMENT OF**

Handling of Antineoplastic Agents 13 NCAC 07G .0101\* 30:01 NCR

**TITLE 04 - DEPARTMENT OF COMMERCE**

**04 NCAC 08 .0304 LOAN APPLICATIONS AND CATEGORIES**

A checklist for applications made pursuant to Rule .0302 of this Section for Rural Utility Service (RUS) loans and Rural Economic Development Loans and Grants (REDLG) may be found on the Authority's website.

*History Note: Authority G.S. 117-32; Eff. February 1, 1976; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. November 1, 2015.*

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**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 14D .0101 SCOPE**

*History Note: Authority S.L. 2011-104; S.L. 2015-52; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012; Repealed Eff. November 1, 2015.*

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**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS**

- (a) Each applicant for employment as a criminal justice officer shall furnish to the employing agency documentary evidence that the applicant has met the educational requirements for the criminal justice field of expected employment.
- (b) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school which meets the approval guidelines of either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or comparable out-of-state agency. Documentary evidence of college or university graduation, at an Associate's Degree or higher, consists of diplomas or transcripts from colleges or universities accredited by the Department of Education of the state in which the institution is located, from an accredited body recognized by either the U.S. Department of Education or Council for Higher Education Accreditation, or from the state university of the state in which the institution is located. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.
- (c) Documentary evidence of having passed the General Educational Development Test shall be satisfied by a certified copy of GED test results or GED certificate. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

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

*Eff. January 1, 1981; Amended Eff. November 1, 2015; June 1, 2012; August 1, 2000.*

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

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

- (1) not have committed or been convicted of:
  - (a) a felony;
  - (b) a crime for which the punishment could have been imprisonment for more than two years;
  - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment;
  - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction;
  - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; or
  - (f) an offense that, pursuant to 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition;
- (2) be a high school, college, or university graduate or have passed the General Educational Development Test indicating high school equivalency; and
- (3) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the agency-approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. November 1, 2015; April 1, 2009; August 1, 1998; December 1, 1987; October 1, 1985; January 1, 1985; January 1, 1983.*

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

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

- (1) not have committed or been convicted of:

- (a) a felony; or
  - (b) a crime for which the punishment could have been imprisonment for more than two years; or
  - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
  - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
  - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;
- (2) be a high school, college, or university graduate or have passed the General Educational Development Test indicating high school equivalency.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Eff. June 1, 1986; Amended Eff. November 1, 2015; December 1, 1987.*

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

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

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

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

**12 NCAC 09B .0203 ADMISSION OF TRAINEES**

(a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.

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

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

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

- (1) Partial or limited enrollee does not include enrollees who hold, or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.
- (2) A "nationally standardized test" means a test that:
  - (A) reports scores as national percentiles, stanines, or grade equivalents; and
  - (B) compares student test results to a national norm.

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

medical examination report is not due to neglect on the part of the trainee.

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

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

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

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

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This

includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

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

**12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION**

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

- (1) Present documentary evidence showing that the applicant:
  - (A) is a high school, college, or university graduate, or has passed the General Education Development Test (GED) indicating a high school equivalency, and

(B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system.

(2) Present evidence showing completion of a Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

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

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

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

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

*History Note: Authority G.S. 17C-6; Eff. January 1, 1981;*

*Amended Eff. November 1, 2015; January 1, 2015; January 1, 2006; May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1, 1985; January 1, 1985.*

**12 NCAC 09B .0501 CERTIFICATION OF SCHOOL DIRECTORS**

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

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

- (1) Attend and complete a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission (if certified after July 1, 2004);
- (2) Present documentary evidence showing that the applicant:

(A) is a high school, college, or university graduate or has passed the General Education Development Test (GED) indicating high school equivalency

and has acquired five years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required five years experience must have been while actively participating in criminal justice training as a Commission-certified instructor; or

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

(C) has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;

(3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member shall be required.

(4) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently certified, or which may be seeking certification, by the Commission to make presentation of certified training programs and for whom the applicant will be the designated school director.

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

(1) Document that he or she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;

(2) Present evidence showing completion of a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise;

(3) Be currently certified as a criminal justice instructor by the Commission; and

(4) Document completion of a special program presented by the Justice Academy on delivery of the instructor training course and trainee evaluation.

*History Note: Authority G.S. 17C-6; Eff. January 1, 1985;*

*Amended Eff. November 1, 2015; July 1, 2004.*

**12 NCAC 09F .0104 INSTRUCTOR QUALIFICATIONS**

(a) To be approved to deliver the "Concealed Carry Handgun Training" course, instructors shall:

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

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

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

*History Note: Authority G.S. 14-415.12; Temporary Adoption Eff. November 1, 1995; Eff. May 1, 1996; Amended Eff. November 1, 2015; September 1, 2005; May 1, 2004.*

**12 NCAC 09G .0204 EDUCATION**

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

(b) Every person employed as a probation and parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a graduate of a

regionally accredited college or university and have attained at least the baccalaureate degree.

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

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

*History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. November 1, 2015; January 1, 2015; August 1, 2004.*

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

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

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

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

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

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

*History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. November 1, 2015; January 1, 2015; January 1, 2006.*

**TITLE 13 – DEPARTMENT OF LABOR**

**13 NCAC 07G .0101 HANDLING OF ANTINEOPLASTIC AGENTS**

(a) The following recommendations with respect to the handling of antineoplastic agents are incorporated by reference, including subsequent amendments and editions: The recommendations issued by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), as contained in the Alert: Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings, as published in 2004. Copies of the 2004 NIOSH Alert and subsequent amendments may be accessed at no charge at <http://www.cdc.gov/niosh/docs/2004-165/>.

(b) For enforcement purposes, nothing in this Rule is intended to supersede federal regulations adopted and enforced by the North Carolina Department of Labor or state-specific rules codified in the North Carolina Administrative Code.

(c) Where the NIOSH recommendations are inconsistent with State or federal laws, regulations, or rules, compliance with the State or federal law, regulation, or rule shall be accepted in lieu of compliance with the NIOSH recommendations.

*History Note: Authority G.S. 95-156; Eff. Pending Legislative Review.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**15A NCAC 02B .0295 MITIGATION PROGRAM REQUIREMENTS FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS**

(a) **PURPOSE.** The purpose of this Rule is to set forth the mitigation requirements that apply to applicants listed in Paragraph (c) of this Rule and to set forth requirements for buffer mitigation providers.

(b) **DEFINITIONS.** For the purpose of this Rule, these terms shall be defined as follows:

- (1) "Authority" means either the Division or a local government that has been delegated or designated pursuant to Rules .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter to implement the riparian buffer program.
- (2) "Compensatory Buffer Mitigation Bank" means a buffer mitigation site created by a mitigation provider and approved for mitigation credit by the Division through execution of a mitigation banking instrument.
- (3) "Division" means the Division of Water Resources of the North Carolina Department of Environment and Natural Resources.
- (4) "Enhancement Site" means a riparian zone site characterized by conditions between that of a restoration site and a preservation site such that the establishment of woody stems (i.e., tree or shrub species) will maximize nutrient removal and other buffer functions.
- (5) "Hydrologic Area" means the Watershed Boundary Dataset (WBD), located at no cost at <http://data.nconemap.com/geoportal/catalog/search/resource/details.page?uuid={16A42F31-6DC7-4EC3-88A9-03E6B7D55653}> using the eight-digit Hydrologic Unit Code (HUC) prepared by the United States Geological Survey.
- (6) "Locational Ratio" means the mitigation ratio applied to the mitigation requirements based on the location of the mitigation site relative to the impact site as set forth in Paragraph (f) of this Rule.
- (7) "Mitigation banking instrument" means the legal document for the establishment, operation, and use of a mitigation bank.
- (8) "Monitoring period" means the length of time specified in the approved mitigation plan during which monitoring of vegetation success and other anticipated benefits to the adjacent water as listed in the mitigation approval is done.

- (9) "Non-wasting endowment" means a fund that generates enough interest to cover the cost of the long term monitoring and maintenance.
- (10) "Outer Coastal Plain" means the portion of the state shown as the Middle Atlantic Coastal Plain (63) on Griffith, et al. (2002) "Ecoregions of North and South Carolina." Reston, VA, United States Geological Survey available at no cost at [http://www.epa.gov/wed/pages/ecoregions/ncsc\\_eco.htm](http://www.epa.gov/wed/pages/ecoregions/ncsc_eco.htm).
- (11) "Preservation Site" means riparian zone sites that, as determined by a site visit conducted by the Authority, are characterized by a forest consisting of the forest strata and diversity of species appropriate for the location.
- (12) "Restoration Site" means riparian zone sites that are characterized by an absence of trees and by a lack of dense growth of smaller woody stems (i.e., shrubs or saplings) or sites that are characterized by scattered individual trees such that the tree canopy is less than 25 percent of the cover and by a lack of dense growth of smaller woody stems (i.e., shrubs or saplings).
- (13) "Riparian buffer mitigation unit" means a unit representing a credit of riparian buffer mitigation as set forth in Paragraph (m) of this Rule.
- (14) "Riparian wetland" means a wetland that is found in one or more of the following landscape positions:
  - (A) in a geomorphic floodplain;
  - (B) in a natural topographic crenulation;
  - (C) contiguous with an open water equal to or greater than 20 acres in size; or
  - (D) subject to tidal flow regimes excluding salt/brackish marsh wetlands.
- (15) "Stem" means a woody seedling, sapling, shrub, or tree, no less than 10 centimeters in height.
- (16) "Urban" means an area that is either designated as an urbanized area under the most recent federal decennial census available at no cost at <http://www.census.gov/> or is located within the corporate limits of a municipality.
- (17) "Zonal Ratio" means the mitigation ratio applied to impact amounts in the respective zones of the riparian buffer as set forth in Paragraph (e) of this Rule.

(c) **MITIGATION REQUIREMENTS.** Buffer mitigation is required when one of the following applies:

- (1) The applicant has received an authorization certificate for impacts pursuant to Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter and is required to perform mitigation as a condition of the authorization certificate; or
- (2) The applicant has received a variance pursuant to Rule .0233, .0243, .0250, .0259, .0267, or

.0607 of this Subchapter and is required to perform mitigation as a condition of a variance approval.

Any applicant covered under this Paragraph shall submit to the Authority a written mitigation proposal that calculates the required area of mitigation and describes the area and location of each type of proposed mitigation. The applicant shall not impact buffers until the Authority approves the mitigation plan and issues written approval.

(d) **AREA OF IMPACT.** The Authority shall determine the area of impact in square feet to each Zone as defined by the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter of the proposed riparian buffer by adding the following:

- (1) The area of the footprint of the use impacting the riparian buffer;
- (2) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
- (3) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.

The Authority shall deduct from this total the area of any wetlands that are subject to and compliant with riparian wetland mitigation requirements under 15A NCAC 02H .0506 and are located within the proposed riparian buffer impact area.

(e) **AREA OF MITIGATION REQUIRED ON ZONAL MITIGATION RATIOS.** The Authority shall determine the required area of mitigation for each Zone by applying each of the following ratios to the area of impact calculated under Paragraph (d) of this Rule:

Basin/Watershed	Zone 1 Ratio	Zone 2 Ratio
Neuse River Basin (15A NCAC 02B .0233)	3:1	1.5:1
Catawba River Basin (15A NCAC 02B .0243)	2:1	1.5:1
Randleman Lake Watershed (15A NCAC 02B .0250)	3:1	1.5:1
Tar-Pamlico River Basin (15A NCAC 02B .0259)	3:1	1.5:1
Jordan Lake Watershed (15A NCAC 02B .0267)	3:1	1.5:1
Goose Creek Watershed (15A NCAC 02B .0607)	3:1 <sup>A</sup>	

<sup>A</sup> The Goose Creek Watershed does not have a Zone 1 and Zone 2. The mitigation ratio in the Goose Creek Watershed is 3:1 for the entire buffer.

(f) **AREA OF MITIGATION REQUIRED ON LOCATIONAL MITIGATION RATIOS.** The applicant or mitigation provider shall use the following locational ratios as applicable based on location of the proposed mitigation site relative to that of the proposed impact site. Locational ratios shall be as follows:

Location	Ratio
Within the 12-digit HUC <sup>A</sup>	0.75:1
Within the eight-digit HUC <sup>B</sup>	1:1
Outside of the eight-digit HUC <sup>B</sup>	2:1

<sup>A</sup> Except within the Randleman Lake Watershed. Within the Randleman Lake Watershed the ratio is 1:1.

<sup>B</sup> Except as provided in Paragraph (g) of this Rule.

(g) **GEOGRAPHIC RESTRICTIONS ON LOCATION OF MITIGATION.** Mitigation shall be performed in the same river basin where the impact is located with the following additional specifications:

- (1) In the following cases, mitigation shall be performed in the same watershed where the impact is located:
  - (A) Falls Lake Watershed, as defined in Rule .0275 of this Section;
  - (B) Goose Creek Watershed, as defined in Rule .0601 of this Subchapter;
  - (C) Randleman Lake Water Supply Watershed, as defined in Rule .0248 of this Section;
  - (D) Each subwatershed of the Jordan Lake watershed, as defined in Rule .0262 of this Section; and
  - (E) Other watersheds as specified in riparian buffer protection rules adopted by the Commission.
- (2) Buffer mitigation for impacts within watersheds with riparian buffer rules that also have federally listed threatened or endangered aquatic species may be done within other watersheds with the same federally listed threatened or endangered aquatic species as long as the impacts are in the same river basin as the mitigation site.

(h) **MITIGATION OPTIONS FOR APPLICANTS.** The applicant may propose any of the following types of mitigation:

- (1) Riparian buffer restoration or enhancement pursuant to Paragraph (n) of this Rule;
- (2) Payment of a compensatory mitigation fee to a compensatory buffer mitigation bank pursuant to Paragraph (i) of this Rule or payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (j) of this Rule. Payment shall conform to the requirements of G.S. 143-214.20;
- (3) Donation of real property or of an interest in real property pursuant to Paragraph (k) of this Rule;
- (4) Alternative buffer mitigation pursuant to Paragraph (o) of this Rule; or
- (5) Other buffer mitigation as approved by the Environmental Management Commission as a condition of a variance approval.

(i) **PURCHASE OF BUFFER MITIGATION CREDITS FROM A PRIVATE OR PUBLIC COMPENSATORY BUFFER MITIGATION BANK.** Applicants who choose to satisfy some or all of their mitigation by purchasing mitigation credits from a private or public compensatory buffer mitigation bank shall meet the following requirements:

- (1) The compensatory buffer mitigation bank from which credits are purchased shall have available riparian buffer credits approved by the Division;
- (2) The compensatory buffer mitigation bank from which credits are purchased shall be located as described in Paragraphs (e), (f), and (g) of this Rule; and
- (3) After receiving a mitigation acceptance letter from the compensatory buffer mitigation bank, proof of payment for the credits shall be provided to the Authority prior to any activity that results in the removal or degradation of the protected riparian buffer.

(j) **PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.** Applicants who choose to satisfy some or all of their mitigation requirement by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the requirements of Rule .0269 of this Section. Payment made to the NC Division of Mitigation Services (DMS) shall be contingent upon acceptance of the payment by the DMS. The DMS shall consider their financial, temporal, and technical ability to satisfy the mitigation request to determine whether they shall accept or deny the request.

(k) **DONATION OF PROPERTY.** Applicants who choose to satisfy their mitigation requirement by donating real property or an interest in real property to fully or partially offset an approved payment into the Riparian Buffer Restoration Fund pursuant to Paragraph (j) of this Rule shall do so in accordance with 15A NCAC 02R .0403.

(l) **MITIGATION SITE REQUIREMENTS FOR APPLICANTS AND MITIGATION PROVIDERS.** For each mitigation site proposed by an applicant or mitigation provider under Paragraphs (n) or (o) of this Rule, the Authority shall identify functional criteria to measure the anticipated benefits of the mitigation to the adjacent water. The Authority shall issue a mitigation determination that specifies the area, type, and location of mitigation and the water quality benefits to be provided by the mitigation site. All mitigation proposals shall meet the following criteria:

- (1) The location of the buffer mitigation site shall comply with the requirements of Paragraphs (f) and (g) of this Rule. In the Catawba watershed, buffer mitigation may be done along the lake shoreline as well as along intermittent and perennial stream channels throughout the watershed.
- (2) The mitigation proposal shall include a commitment to provide:
  - (A) a perpetual conservation easement or similar preservation mechanism to ensure perpetual stewardship that protects the mitigation site's nutrient removal and other water quality functions;
  - (B) a non-wasting endowment or other dedicated financial surety to provide for the perpetual land management and hydrological maintenance of lands

- and maintenance of structures as applicable; and
- (C) financial assurance in the form of a completion bond, credit insurance, letter of credit, escrow, or other vehicle acceptable to the Authority payable to, or for the benefit of, the Authority in an amount sufficient to ensure that the property is secured in fee title or by easement, and that planting or construction, monitoring and maintenance are completed as necessary to meet success criteria as specified in the approved mitigation plan. This financial assurance obligation shall not apply to the NC DMS.
- (3) Diffuse flow of runoff shall be maintained in the riparian buffer. Any existing impervious cover or stormwater conveyances such as ditches, pipes, or drain tiles shall be eliminated and the flow converted to diffuse flow. If the applicant or mitigation provider determines that elimination of existing stormwater conveyances is not feasible, then they shall include a justification and shall provide a delineation of the watershed draining to the stormwater outfall and the percentage of the total drainage by area treated by the riparian buffer with the mitigation plan specified in Paragraph (n) or (o) of this Rule for Authority approval. During mitigation plan review and approval, the Authority may reduce credit proportionally.
- (4) Sewer easement within the buffer. If the proposed mitigation site contains a sewer easement in Zone 1, that portion of the sewer easement within Zone 1 shall not be suitable for buffer mitigation credit. If the proposed mitigation site contains a sewer easement in Zone 2, the portion of the sewer easement in Zone 2 may be suitable for buffer mitigation credit if:
- (A) the applicant or mitigation provider restores or enhances the forested buffer in Zone 1 adjacent to the sewer easement;
- (B) the sewer easement is required to be maintained in a condition that meets the vegetative requirements of the collection system permit; and
- (C) diffuse flow is provided across the entire buffer width.
- (5) The applicant or mitigation provider shall provide a site specific credit/debit ledger to the Authority at regular intervals as specified in the mitigation plan approval or mitigation banking instrument once credits are established and until they are exhausted.
- (6) Buffer mitigation credit, nutrient offset credit, wetland mitigation credit, and stream mitigation credit shall be accounted for in accordance with the following:
- (A) Buffer mitigation used for buffer mitigation credit shall not be used for nutrient offset credits;
- (B) Buffer mitigation credit shall not be generated within wetlands that provide wetland mitigation credit required by 15A NCAC 02H .0506; and
- (C) Buffer mitigation credit may be generated on stream mitigation sites as long as the width of the restored or enhanced riparian buffer meets the requirements of Subparagraph (n)(1) of this Rule.

(m) **RIPARIAN BUFFER MITIGATION UNITS.** Mitigation activities shall generate riparian buffer mitigation units as follows:

Mitigation Activity	Square Feet of Mitigation Buffer	Riparian Buffer Mitigation Units Generated
Restoration Site	1	1
Enhancement Site	2	1
Preservation Site on Non-Subject Urban Streams	3	1
Preservation Site on Subject Urban Streams	3	1
Preservation Site on Non-Subject Rural Streams	5	1
Preservation Site on Subject Rural Streams	10	1

(n) **RIPARIAN BUFFER RESTORATION SITE OR ENHANCEMENT SITE.** Authority staff shall make an on-site determination as to whether a potential mitigation site qualifies as a restoration site or enhancement site as defined in Paragraph (b) of this Rule. Riparian buffer restoration sites or enhancement sites shall meet the following requirements:

- (1) Buffer restoration sites or enhancement sites may be proposed as follows:

Buffer width (ft)	Proposed Percentage of Full Credit
Less than 20	0 %
20-29	75 %
30-100	100 %
101-200	33%

- (2) The applicant or mitigation provider shall submit a restoration or enhancement mitigation plan to the Authority for written approval. The plan shall demonstrate compliance with the requirements of this Paragraph and Paragraphs (l) and (m) of this Rule and shall also contain the following:
- (A) A map of the proposed restoration or enhancement site;
  - (B) A vegetation plan that shall detail the activities proposed to ensure a final performance standard of 260 stems per acre at the completion of monitoring. The final performance standard shall include a minimum of four native hardwood tree species or four native hardwood tree and native shrub species, where no one species is greater than 50 percent of stems. Native hardwood and native shrub volunteer species may be included to meet the final performance standard of 260 stems per acre. The Authority may approve alternative vegetation plans upon consideration of factors, including site wetness and plant availability, to meet the requirements of this Part;
  - (C) A grading plan (if applicable). The site shall be graded in a manner to ensure diffuse flow through the entire riparian buffer;
  - (D) A schedule for implementation, including a fertilization and herbicide plan if applicable; and
  - (E) A monitoring plan to document whether the site is expected to meet the final performance standards as defined in Part (n)(2)(B) of this Rule and other anticipated benefits to the adjacent water. The plan shall include a proposed schedule and method for monitoring the vegetative status of the restoration or enhancement site for five years, including the health and average stem densities of native hardwood tree or tree and shrub species that are to be counted toward the final performance standard.
- (3) Within one year after Authority approval of the mitigation plan, the applicant or mitigation provider shall present documentation to the Authority that the riparian buffer has been restored or enhanced unless the applicant or mitigation provider requests, and the Authority agrees in writing prior to that date, to a longer time period.
- (4) The applicant or mitigation provider shall submit written annual reports, unless an alternative schedule has been approved by the Authority during the mitigation plan approval, for a period of five years after completion of the activities identified in Part (n)(2)(B) of this Rule at the restoration site or enhancement site showing:
- (A) compliance with the monitoring plan approved pursuant to Part (n)(2)(E) of this Rule; and
  - (B) that diffuse flow through the riparian buffer has been maintained.
- If the Authority determines that the native hardwood tree or tree and shrub species at the site are not expected to meet the final performance standards listed in Part (n)(2)(B) of this Rule, then the Authority may require that the applicant or mitigation provider replace trees or trees and shrubs as needed during that five-year period. If the Authority determines that diffuse flow through the buffer is not being maintained, then the Authority may require that the applicant or mitigation provider restore diffuse flow. If the Authority determines that the final performance standards listed in Part (n)(2)(B) of this Rule have not been achieved at the end of the five-year monitoring period, the Authority may require additional years of monitoring. The Authority shall make determinations referenced in this Subparagraph on a site specific basis based on the annual reports, any supplemental information submitted by the applicant or mitigation provider, or a site evaluation by the Authority.
- (o) **ALTERNATIVE BUFFER MITIGATION OPTIONS.** Alternative buffer mitigation options are detailed in this Paragraph. Any proposal for alternative buffer mitigation shall be provided in writing to the Division, shall meet the content and procedural requirements for approval by the Division, shall meet the requirements set out in Paragraphs (l) and (m) of this Rule and the requirements set out in the named Subparagraph of this Paragraph addressing that applicable alternative buffer mitigation option:
- (1) **Retroactive Credit.** Alternative buffer mitigation sites constructed and within the required monitoring period on the effective date of this Rule shall be eligible for use as alternative buffer mitigation sites. Alternative buffer mitigation sites that have completed monitoring and were released by the Division on or within the past 10 years of the effective date of this Rule shall be eligible for use as alternative buffer mitigation sites. All alternative buffer mitigation site proposals submitted under this Subparagraph shall meet the following:
    - (A) A map or maps of the proposed alternative buffer mitigation site;
    - (B) Documentation of pre-existing conditions showing that the proposed alternative buffer mitigation site met the criteria to qualify for the applicable

alternative buffer mitigation type identified in the applicable Subparagraph of this Paragraph;

- (C) Documentation of the activities that were conducted at the proposed alternative buffer mitigation site to meet success criteria identified in the applicable Subparagraph of this Paragraph; and
- (D) Documentation that the proposed alternative buffer mitigation site met the success criteria identified in the applicable Subparagraph of this Paragraph.

These alternative buffer mitigation sites shall receive credit in accordance with the criteria set forth in Paragraph (m) and Subparagraph (n)(1) of this Rule.

- (2) **Coastal Headwater Stream Mitigation.** Wooded buffers planted along Outer Coastal Plain headwater stream mitigation sites may also be approved as riparian buffer mitigation credit if the site meets all applicable requirements of Paragraph (n) of this Rule. In addition, all success criteria specified in the approval of the stream mitigation site by the Division shall be met. The area of the buffer shall be measured perpendicular to the length of the valley being restored. The area within the proposed buffer mitigation site shall not also be used as wetland mitigation.
- (3) **Buffer Restoration and Enhancement on Non-Subject Streams.** Restoration or enhancement of buffers may be conducted on intermittent or perennial streams that are not subject to the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter. These streams shall be confirmed as intermittent or perennial streams by Division staff certified per G.S. 143-214.25A using the Division publication, "Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010)" available at no cost at <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations>. The proposal shall meet all applicable requirements of Paragraph (n) of this Rule.
- (4) **Preservation of Buffer on Non-Subject Streams.** Preservation of buffers on intermittent or perennial streams that are not subject to the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter may be proposed in order to permanently protect the buffer from cutting, clearing, filling, grading, and similar activities that would affect the functioning of the buffer. These streams shall be confirmed as intermittent or perennial streams by Division staff certified per G.S. 143-214.25A using the Division publication,

"Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010)." The preservation site shall meet the requirements of Subparagraph (n)(1) of this Rule and the requirements set forth in 15A NCAC 02R .0403(c)(7), (8), and (11). The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent of the total area of buffer mitigation.

- (5) **Preservation of Buffers on Subject Streams.** Buffer preservation may be proposed on streams that are subject to the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter in order to permanently protect the buffer from cutting, clearing, filling, grading, and similar activities that would affect the functioning of the buffer beyond the protection afforded by the existing buffer rules on sites that meet the definition of a preservation site. The preservation site shall meet the requirements of Subparagraph (n)(1) and the requirements set forth in 15A NCAC 02R .0403(c)(7), (8), and (11). The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent of the total area of buffer mitigation.
- (6) **Enhancement of grazing areas adjacent to streams.** Buffer credit at a 2:1 ratio shall be available for an applicant or mitigation provider who proposes permanent exclusion of grazing livestock that otherwise degrade the stream and riparian zone through trampling, grazing, or waste deposition by fencing the livestock out of the stream and its adjacent buffer. The applicant or mitigation provider shall provide an enhancement plan as set forth in Paragraph (n) of this Rule. The applicant or mitigation provider shall demonstrate that grazing was the predominant land use since the effective date of the applicable buffer rule.
- (7) **Mitigation on ephemeral channels.** For purposes of riparian buffer mitigation as described in this Part, an "ephemeral channel" is defined as a natural channel exhibiting discernible banks within a topographic crenulation (V-shaped contour lines) indicative of natural drainage on the 1:24,000 scale (7.5 minute) quadrangle topographic map prepared by the U.S. Geologic Survey, or as seen on digital elevation models with contours developed from the most recent available LiDAR data, available at no cost at <http://www.ncfloodmaps.com/lidar.com>. Ephemeral channels only flow for a short period of time after precipitation in the drainage area and do not have periods of base flow sustained by groundwater discharge. The applicant or mitigation provider shall provide a delineation of the watershed draining to the

ephemeral channel. The entire area proposed for mitigation shall be within the contributing drainage area to the ephemeral channel. The ephemeral channel shall be directly connected to an intermittent or perennial stream and contiguous with the rest of the mitigation site protected under a perpetual conservation easement. The area of the mitigation site on ephemeral channels shall comprise no more than 25 percent of the total area of buffer mitigation. The proposal shall meet all applicable requirements of Paragraph (n) of this Rule for restoration or enhancement. The proposal shall meet all applicable requirements of Subparagraph (o)(4) or (o)(5) of this Rule for preservation.

- (8) Restoration and Enhancement on Ditches. For purposes of riparian buffer mitigation as described in this Part, a "ditch" is defined as a man-made channel other than a modified natural stream that was constructed for drainage purposes. To be used for mitigation, a ditch shall meet all of the following criteria:
- (A) be directly connected with and draining towards an intermittent or perennial stream;
  - (B) be contiguous with the rest of the mitigation site protected under a perpetual conservation easement;
  - (C) stormwater runoff from overland flow shall drain towards the ditch;
  - (D) be between one and three feet in depth; and
  - (E) the entire length of the ditch shall have been in place prior to the effective date of the applicable buffer rule.

The width of the restored or enhanced area shall not be less than 30 feet and shall not exceed 50 feet for crediting purposes. The applicant or mitigation provider shall provide a delineation of the watershed draining to the ditch. The watershed draining to the ditch shall be at least four times larger than the restored or enhanced area along the ditch. The perpetual conservation easement shall include the ditch and the confluence of the ditch with the intermittent or perennial stream, and provide language that prohibits future maintenance of the ditch. The proposal shall meet all applicable requirements of Paragraph (n) of this Rule for restoration or enhancement.

- (9) Stormwater Treatment Options. All stormwater treatment options shall meet the following requirements:
- (A) Structural options already required by other local, state, or federal rule or permit cannot be used as alternative buffer mitigation credit, except to the extent such measure(s) exceed the

requirements of such rule or permit. Stormwater Best Management Practices (BMPs), including bioretention facilities, constructed wetlands, infiltration devices and sand filters are all potentially approvable BMPs by the Division for alternative buffer mitigation credit. Other BMPs may be approved only if they meet the nutrient removal levels outlined in Part (o)(9)(B) of this Rule. Existing or planned BMPs for a local, state, or federal rule or permit may be retrofitted or expanded to improve their nutrient removal if this level of treatment is not required by other local, state, or federal rules. In this case, the predicted increase in nutrient removal may be counted toward alternative buffer mitigation credit;

- (B) Minimum treatment levels: Any structural BMP shall provide at least 30 percent total nitrogen and 35 percent total phosphorus removal as demonstrated by a scientific and engineering literature review as approved by the Division. The mitigation proposal shall demonstrate that the proposed alternative removes an equal or greater annual mass load of nutrients to surface waters as the buffer impact authorized in the authorization certificate or variance, following the calculation of impact and mitigation areas pursuant to Paragraphs (d), (e), and (f) of this Rule. To estimate the rate of nutrient removal of the impacted buffer, the applicant or mitigation provider may use the "NC Division of Water Quality – Methodology and Calculation for determining nutrient reductions associated with Riparian Buffer Establishment" available at no cost at [http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=55c3758f-5e27-46cf-8237-47f890d9329a&groupId=38364](http://portal.ncdenr.org/c/document_library/get_file?uuid=55c3758f-5e27-46cf-8237-47f890d9329a&groupId=38364). The applicant or mitigation provider may propose an alternative method of estimating the rate of nutrient removal for consideration and review by the Division;
- (C) All proposed structural BMPs shall follow the Division's "2009 Stormwater Best Management Practice Design Manual" available at no cost at

- http://portal.ncdenr.org/web/lr/bmp-manual. If a specific proposed structural BMP is not addressed in this Manual, the applicant or mitigation provider shall follow Chapter 20 in this Manual for approval;
- (D) All structural options are required to have Division approved operation and maintenance plans;
  - (E) All structural options are required to have continuous and perpetual maintenance and shall follow the Division's "2009 Stormwater Best Management Practice Design Manual";
  - (F) Upon completion of construction, the designer for the type of BMP installed shall certify that the system was inspected during construction and that the BMP was constructed in conformity with plans and specifications approved by the Division;
  - (G) Removal and replacement of structural options: If a structural option is proposed to be removed and cannot be replaced on-site, then a structural or non-structural measure of equal or better nutrient removal capacity, as determined by calculations submitted to and approved by the Division, in a location as specified by Paragraphs (f) and (g) of this Rule shall be constructed as a replacement;
  - (H) Renovation or repair of structural options: If the applicant, mitigation provider, or the Division determines that a structural option must be renovated or repaired, it shall be renovated to provide equal or better nutrient removal capacity than as originally designed; and
  - (I) Structural options, as well as their operation and maintenance, are the responsibility of the landowner or easement holder unless the Division gives written approval for another responsible party to operate and maintain them. Structural options shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right-of-way. These easements shall be granted in favor of the party responsible for operating and maintaining the structure, with a note that operation and maintenance is the responsibility of the landowner,

- easement holder, or other responsible party.
- (10) Approval for other alternative buffer mitigation options. Other alternative riparian buffer mitigation options not specified within this Rule may be submitted to the Division for review and recommendation to the Environmental Management Commission on a case-by-case basis. Any proposal submitted under this Paragraph shall provide documentation or calculations to demonstrate that the proposed alternative mitigation option removes an equal or greater annual mass load of nutrients to surface waters as a riparian buffer. Upon completion of the Division's review, and prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's website and the DWRwetlands Listserve. Division staff shall present their recommendations, including comments received during the public notice period, to the Environmental Management Commission for a final decision. If approved by the Environmental Management Commission, the alternative buffer mitigation option may be proposed by other applicants and mitigation providers.

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.20; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8A; 143-215.8B; 143-282(c); 143B-282(d); S.L. 1998-221; S.L. 1999-329, s. 7.1; S.L. 2001-418, s. 4.(a); S.L. 2003-340, s. 5; S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486; S.L. 2014-95; Temporary Adoption Eff. October 24, 2014; Eff. November 1, 2015.*

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**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY**

**21 NCAC 30 .0702 CONTINUING EDUCATION DEFINITIONS**

The following definitions apply to this Section:

- (1) Continuing education. -- Learning experiences that enhance and expand the skills, knowledge, and attitudes of massage and bodywork therapists that enable them to render competent professional service to clients, the profession and the public.
- (2) Distance learning. -- Courses taken by home study that are produced by an approved provider, whether delivered by videotape, audiotape, printed materials, or computer-based means. The licensee shall demonstrate

achievement of learning objectives and completion of course requirements to the provider before credit is given.

- (3) One "contact hour" of continuing education. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of an instructor, or in a distance learning activity designed by an approved provider. One semester credit hour at a post-secondary institution shall be equivalent to 21 contact hours.
- (4) Professional ethics. -- A system of conduct guided by principles that are intended to ensure the safe and effective practice of massage and bodywork therapy. Acceptable subject matter for required professional ethics courses may include: compliance with Practice Act and Rules of the Board, management of the client/therapist relationship, boundary functions, professional communication skills, conflict resolution, cultural diversity issues, and standards of practice.
- (5) Business management. -- Courses that enable the licensee to learn and apply business skills to create a successful professional practice.
- (6) Post secondary institution of higher learning – A degree granting institution accredited by an accrediting agency recognized by the United States Department of Education.
- (7) Approved provider. -- One that has been approved by any entity with which the Board has reached a contractual agreement for the approval of continuing education providers and courses. A list of accrediting entities with which the Board has entered into a contractual agreement is available on the Board's website at www.bmbt.org. The provider shall have this designation when the course begins and shall maintain this designation continuously until the course is completed. The Board does not recognize any retroactive designation of provider approval. Except as herein stated, the provider shall follow all regulations set forth by its accrediting agency. The Board may also recognize a continuing education provider outside the United States or its territories that is a post-secondary institution of higher learning approved by the educational regulation authority of that foreign country.

History Note: Authority G.S. 90-626(9); 90-632; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. November 1, 2015; April 1, 2005.

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CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2612 STORAGE OF DEVICES AND MEDICAL EQUIPMENT

- (a) Devices and medical equipment shall be stored at the location holding the pharmacy or device and medical equipment permit or a location that is within 50 miles of the permitted location. Devices and medical equipment shall not be stored on residential property.
- (b) A device and medical equipment storage site not holding a pharmacy or device and medical equipment permit shall not provide any devices, medical equipment, or services directly to patients. An employee of a permitted location who has been trained as required by Rule .2603 of this Chapter may travel from the permitted site to a storage site, retrieve devices or medical equipment from the storage site, and deliver devices or medical equipment to patients.
- (c) Device and medical equipment storage sites shall be subject to inspection by the Board under the same standards applicable to permitted sites.

History Note: Authority G.S. 90-85.6; 90-85.22; 90-85.32; Eff. March 1, 2004; Amended Eff. November 1, 2015; February 1, 2007.

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CHAPTER 52 – BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0215 LICENSE RE-INSTATEMENT

- (a) A podiatrist whose license renewal has been delinquent for six months following the July 1 deadline of the end of the podiatrist's last renewal period shall re-apply for a new examination. Application shall be made in accordance with the statute and the following:
  - (1) re-apply to the Board for licensure as if he or she is a first-time applicant, including the same application, required documents, and application and examination fees, pursuant to Rule .0201 of this Section and Rules .0601 and .0613 of this Chapter;
  - (2) appear before the Board at the same time and in the same place as other license examinees and take the same examination as a first-time applicant, including the practice and ethics examination pursuant to Rules .0202, .0205, and .0206 of this Section; and
  - (3) receive a passing grade in all parts of the Board licensing examination and pay the license certificate fee pursuant to Rule .0613 of this Chapter before being issued a new license certificate and license number.
- (b) A podiatrist whose license has been suspended, put on probation, or has invoked any other form of temporary censure due to disciplinary action in accordance with G.S. 90-202.8 shall follow the instructions related to reinstatement contained in the specific consent order setting forth the provisions of the sanction.

History Note: Authority G.S. 90-202.6(a); 90-202.8; 90-202.9; 90-202.10;

*Eff. November 1, 2015.*

**21 NCAC 52 .0611      FORMS AND APPLICATIONS**

(a) The Board shall issue the following items in accordance with applicable state statutes and this Chapter's administrative rules:

- (1) Certificate of Licensure;
- (2) Licensure Renewal Card;
- (3) Temporary License Certificate; and
- (4) Certificate of Corporate Registration.

(b) The Board shall provide and require use of the following application forms that may be obtained from the Board's web site, <http://www.ncbpe.org>:

- (1) Licensure Renewal Application;
- (2) Disclaimer Form;

- (3) Corporate Registration Application;
- (4) Corporate Registration Renewal;
- (5) Specialty Credentialing Application;
- (6) CME (Continuing Medical Education) Submission Form;
- (7) Recommendation Form; and
- (8) License Application (Regular, Temporary, Military, Reciprocity).

*History Note: Authority G.S. 55B-10; 55B-11; 90-202.4(g); 90-202.6; 90-202.7; 90-202.9; 90-20.10; 90-202.11; Eff. June 1, 2011; Amended Eff. November 1, 2015; October 1, 2014*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission December 17, 2015 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jay Hemphill  
Jeffrey A. Poley

**Appointed by House**

Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> Vice Chair)  
Anna Baird Choi  
Jeanette Doran  
Danny Earl Britt, Jr.

**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**

December 17, 2015	January 21, 2016
February 18, 2016	March 17, 2016

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**AGENDA**

**RULES REVIEW COMMISSION**

**THURSDAY, DECEMBER 17, 2015 10:00 A.M.**

**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
  - A. Child Care Commission – 10A NCAC 09 .2001, .2002, .2003, .2004, .2005 (Reeder)
  - B. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
  - C. Board of Massage and Bodywork Therapy – 21 NCAC 30 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015 (May)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between October 21, 2015 and November 20, 2015
  - Pesticide Board (Hammond)
  - Board of Crop Seed Improvement (Hammond)
  - Board of Agriculture (Hammond)
  - Industrial Commission (Thomas)
  - 911 Board (Reeder)
  - Radiation Protection Commission (Thomas)
  - Environmental Management Commission (Hammond)
  - Board of Cosmetic Art Examiners (May)
  - Irrigation Contractors Licensing Board (Thomas)
  - Medical Board (Thomas)
  - Board for Licensing of Soil Scientists (Hammond)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
  - Review of Reports
    - 1. 15A NCAC 02D - Environmental Management Commission (Hammond)

2. 15A NCAC 02Q – Environmental Management Commission (Reeder)

VII. Commission Business

- Discussion of application of G.S. 150B-2(8a)d
- Next meeting: Thursday, January 21, 2015

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**Commission Review**  
*Log of Permanent Rule Filings*  
**October 21, 2015 through November 20, 2015**

**PESTICIDE BOARD**

The rules in Chapter 9 are from the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.

The rules in Subchapter 9L are from the N.C. Pesticide Board and include organizational rules (.0100); registration (.0300); samples and submissions (.0400); pesticide licenses (.0500); pesticide and pesticide container disposal (.0600); declaration of pests and restrictions on their control (.0700); bulk distribution of pesticides (.0800); aerial application of pesticides (.1000); private pesticide applicator certification (.1100); arsenic trioxide (.1200); availability of restricted use pesticides (.1300); ground application of pesticides (.1400); worker protection standards for agricultural pesticides (.1800); pesticide storage (.1900); chemigation (any process whereby pesticides are applied to land, crops, or plants using an irrigation system) (.2000); hearing rules of the North Carolina pesticide board (.2100); and interim protection measures for the Carolina heelsplitter mussel (.2200).

Notification of Apiaries 02 NCAC 09L .1009  
Amend/\*

**CROP SEED IMPROVEMENT, BOARD OF**

The rules in Subchapter 29B concern the duties of the board.

Appeal Board 02 NCAC 29B .0103  
Repeal/\*

**AGRICULTURE, BOARD OF**

The rules in Chapter 48 concern the plant industry.

The rules in Subchapter 48C concern seeds.

Recording Flue-Cured Varieties 02 NCAC 48C .0113  
Amend/\*

The rules in Chapter 52 concern the veterinary division.

The rules in Subchapter 52C concern the miscellaneous provisions for control of livestock diseases including diseased and dead animals (.0100); virus and bacteria diseases (.0200); diagnostic laboratories (.0300); bone meal (.0400); biological residues (.0500); disease reports (.0600); and miscellaneous requirements (.0700).

Intrastate Requirements: Cervidae 02 NCAC 52C .0701  
Amend/\*

**INDUSTRIAL COMMISSION**

The rules in Chapter 10 are from the Industrial Commission.

The rules in Subchapter 10A concern workers' compensation rules including administration (.0100); notice of act (.0200); insurance (.0300); disability, compensation, fees (.0400); agreements (.0500); claims administration and procedures (.0600); appeals (.0700); rules of the commission (.0800); report of earnings (.0900); and preauthorization for medical treatment (.1000).

<u>Location of Main Office and Hours of Business</u> Amend/*	04	NCAC	10A	.0101
<u>Electronic Filings with the Commission; How to File</u> Adopt/*	04	NCAC	10A	.0108
<u>Termination and Suspension of Compensation</u> Amend/*	04	NCAC	10A	.0404
<u>Reinstatement of Compensation</u> Amend/*	04	NCAC	10A	.0405
<u>Compromise Settlement Agreements</u> Amend/*	04	NCAC	10A	.0502
<u>Motions Practice in Contested Cases</u> Amend/*	04	NCAC	10A	.0609
<u>Medical Motions and Emergency Medical Motions</u> Amend/*	04	NCAC	10A	.0609A
<u>Pre-Trial Agreement</u> Amend/*	04	NCAC	10A	.0610
<u>Expert Witnesses and Fees</u> Amend/*	04	NCAC	10A	.0613
<u>Attorneys Retained for Proceedings</u> Amend/*	04	NCAC	10A	.0617

**911 BOARD**

The rules in Subchapter 06C concern the 911 Board including forms, definitions, administration (.0100); public safety answering points (PSAPS) (.0200); commercial mobile radio service (CMRS) Providers (.0300); and grant fund (.0400).

<u>Forms</u> Adopt/*	09	NCAC	06C	.0101
<u>Physical Address of 911 Board</u> Adopt/*	09	NCAC	06C	.0102
<u>Definitions</u> Adopt/*	09	NCAC	06C	.0103
<u>Failure to Comply with Rules</u> Adopt/*	09	NCAC	06C	.0104
<u>Service Provider Failure to Comply with Rules</u> Adopt/*	09	NCAC	06C	.0105
<u>PSAP Failure to Comply with Rules</u> Adopt/*	09	NCAC	06C	.0106
<u>Review 911 Funds Expenditures, Disbursements and Reimburs...</u> Adopt/*	09	NCAC	06C	.0107
<u>Waiver of Rules</u> Adopt/*	09	NCAC	06C	.0108
<u>Hearings</u> Adopt/*	09	NCAC	06C	.0109

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**RULES REVIEW COMMISSION**

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<u>Declaratory Rulings</u> Adopt/*	09	NCAC	06C	.0110
<u>Requests for Declaratory Rulings</u> Adopt/*	09	NCAC	06C	.0111
<u>Response to a Request for Declaratory Ruling</u> Adopt/*	09	NCAC	06C	.0112
<u>Effect of a Declaratory Ruling</u> Adopt/*	09	NCAC	06C	.0113
<u>Record of Ruling</u> Adopt/*	09	NCAC	06C	.0114
<u>PSAP Eligibility</u> Adopt/*	09	NCAC	06C	.0201
<u>PSAP Eligible Expenses</u> Adopt/*	09	NCAC	06C	.0202
<u>Termination and Suspension of 911 Fund</u> Adopt/*	09	NCAC	06C	.0203
<u>PSAP Reporting</u> Adopt/*	09	NCAC	06C	.0204
<u>Comprehensive Emergency Management Plan (CEMP)</u> Adopt/*	09	NCAC	06C	.0205
<u>Back-up PSAPS</u> Adopt/*	09	NCAC	06C	.0206
<u>PSAP Operations and Management</u> Adopt/*	09	NCAC	06C	.0207
<u>Telecommunicator Qualifications, Training and Staffing</u> Adopt/*	09	NCAC	06C	.0208
<u>PSAP Call Operating Procedures</u> Adopt/*	09	NCAC	06C	.0209
<u>Public Safety Answering Point (PSAP) Facilities</u> Adopt/*	09	NCAC	06C	.0210
<u>Telephones</u> Adopt/*	09	NCAC	06C	.0211
<u>Dispatching Systems</u> Adopt/*	09	NCAC	06C	.0212
<u>Computer Aided (CAD) Dispatching Systems</u> Adopt/*	09	NCAC	06C	.0213
<u>Testing</u> Adopt/*	09	NCAC	06C	.0214
<u>Records</u> Adopt/*	09	NCAC	06C	.0215
<u>Assessing PSAP Operations</u> Adopt/*	09	NCAC	06C	.0216
<u>Registration of CMRS Service Providers</u> Adopt/*	09	NCAC	06C	.0301
<u>CMRS Service Provider Reimbursement Plans</u> Adopt/*	09	NCAC	06C	.0302
<u>Cost Recovery Plan Review</u> Adopt/*	09	NCAC	06C	.0303
<u>CMRS Service Provider Reimbursement</u> Adopt/*	09	NCAC	06C	.0304
<u>Remittance of Service Charges</u> Adopt/*	09	NCAC	06C	.0305

<u>Prepaid Wireless Service</u> Adopt/*	09	NCAC	06C	.0306
<u>PSAP Grants</u> Adopt/*	09	NCAC	06C	.0401
<u>Grants for Construction or Renovation</u> Adopt/*	09	NCAC	06C	.0402
<u>Grant Agreements</u> Adopt/*	09	NCAC	06C	.0403
<u>Grant Funds</u> Adopt/*	09	NCAC	06C	.0404
<u>Grantee Reports</u> Adopt/*	09	NCAC	06C	.0405

**RADIATION PROTECTION COMMISSION**

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

<u>Communications</u> Amend/*	10A	NCAC	15	.0111
<u>Operating Requirements</u> Amend/*	10A	NCAC	15	.0805

**ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100); classifications and groundwater quality standards (.0200); the assignments of underground water classifications (.0300); risk-based assessment and corrective action for petroleum underground storage tanks (.0400); and risk-based assessment and correction action for non-UST petroleum releases (.0500).

<u>Purpose and Scope</u> Adopt/*	15A	NCAC	02L	.0501
<u>Definitions</u> Adopt/*	15A	NCAC	02L	.0502
<u>Rule Application</u> Adopt/*	15A	NCAC	02L	.0503
<u>Required Initial Abatement Actions by Responsible Party</u> Adopt/*	15A	NCAC	02L	.0504
<u>Requirements for Limited Site Assessment</u> Adopt/*	15A	NCAC	02L	.0505
<u>Discharge or Release Classifications</u> Adopt/*	15A	NCAC	02L	.0506
<u>Reclassification of Risk Levels</u> Adopt/*	15A	NCAC	02L	.0507
<u>Assessment and Remediation Procedures</u> Adopt/*	15A	NCAC	02L	.0508

<u>Notification Requirements</u> Adopt/*	15A NCAC 02L .0509
<u>Departmental Listing of Discharges or Releases</u> Adopt/*	15A NCAC 02L .0510
<u>Establishing Maximum Soil Contamination Concentrations</u> Adopt/*	15A NCAC 02L .0511
<u>Analytical Procedures for Soil Samples</u> Adopt/*	15A NCAC 02L .0512
<u>Analytical Procedures for Groundwater Samples</u> Adopt/*	15A NCAC 02L .0513
<u>Required Laboratory Certification</u> Adopt/*	15A NCAC 02L .0514
<u>Discharges or Releases from Other Sources</u> Adopt/*	15A NCAC 02L .0515

**COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14H are sanitation rules for both operators and facilities including sanitation (.0100); shop licensing and physical dimensions (.0200); cosmetic art shop and equipment (.0300); sanitation procedures and practices (.0400); and enforcement, maintenance of licensure (.0500).

<u>First Aid</u> Amend/*	21 NCAC 14H .0404
<u>Systems of Grading Beauty Establishments</u> Readopt without Changes/*	21 NCAC 14H .0504
<u>Rule Compliance and Enforcement Measures</u> Readopt without Changes/*	21 NCAC 14H .0505

The rules in Subchapter 14T concern cosmetic art schools including the scope of the rules and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curricula for all cosmetic art disciplines (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>All Cosmetic Art Schools</u> Amend/*	21 NCAC 14T .0201
<u>Natural Hair Care Schools</u> Readopt with Changes/*	21 NCAC 14T .0205
<u>Equipment for Cosmetology Schools</u> Amend/*	21 NCAC 14T .0302
<u>Equipment for Esthetics Schools</u> Amend/*	21 NCAC 14T .0303
<u>Equipment for Manicuring Schools</u> Amend/*	21 NCAC 14T .0304
<u>Equipment for Natural Hair Care Styling Schools</u> Readopt with Changes/*	21 NCAC 14T .0305
<u>Cosmetic Art Curricula</u> Amend/*	21 NCAC 14T .0601
<u>Cosmetology Curriculum</u> Readopt with Changes/*	21 NCAC 14T .0602
<u>Apprentice Cosmetology Curriculum</u> Readopt with Changes/*	21 NCAC 14T .0603
<u>Esthetics Curriculum</u> Readopt with Changes/*	21 NCAC 14T .0604

<u>Manicuring Curriculum</u> Readopt with Changes/*	21	NCAC	14T	.0605
<u>Natural Hair Care Curriculum</u> Readopt with Changes/*	21	NCAC	14T	.0606
<u>Cosmetology Teacher Trainee Curriculum</u> Readopt without Changes/*	21	NCAC	14T	.0607
<u>Esthetic Teacher Trainee Curriculum</u> Readopt without Changes/*	21	NCAC	14T	.0608
<u>Manicurist Teacher Trainee Curriculum</u> Readopt without Changes/*	21	NCAC	14T	.0609
<u>Natural Hair Care Teacher Curriculum</u> Readopt without Changes/*	21	NCAC	14T	.0610
<u>Instruction Guidelines</u> Amend/*	21	NCAC	14T	.0612
<u>School Operations/Licensure Maintenance</u> Readopt with Changes/*	21	NCAC	14T	.0701
<u>School Performance Requirements</u> Readopt without Changes/*	21	NCAC	14T	.0705

**IRRIGATION CONTRACTORS LICENSING BOARD**

The rules in Chapter 23 are from the Irrigation Contractors' Licensing Board and concern licensing (.0100); hearing rules of the North Carolina Irrigation Contractors' Licensing Board (0200); irrigation record drawing minimum standards (.0300); irrigation design minimum standards (.0400); irrigation system installation minimum standards (.0500); irrigation system management for water efficiency minimum standards (.0600); and fees (.0700).

<u>Continuing Education</u> Readopt with Changes/*	21	NCAC	23	.0104
<u>Conduct of Hearing</u> Readopt without Changes/*	21	NCAC	23	.0206
<u>Decision of Board</u> Readopt without Changes/*	21	NCAC	23	.0207
<u>Components and Zone Designs</u> Readopt without Changes/*	21	NCAC	23	.0406
<u>Trenching and Piping</u> Readopt without Changes/*	21	NCAC	23	.0505

**MEDICAL BOARD**

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32B concern license to practice medicine including prescribing (.1000); general (.1300); resident's training license (.1400); faculty limited license (.1500); purpose license (.1600); other business (.1700); and expedited license for physician license (.2000).

<u>Reentry to Active Practice</u> Amend/*	21	NCAC	32B	.1370
<u>Application for Resident's Training License</u> Amend/*	21	NCAC	32B	.1402

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

Qualifications and Requirements for License  
Amend/\*

21 NCAC 32S .0202

**SOIL SCIENTISTS, BOARD FOR LICENSING OF**

The rules in Chapter 69 are from the Board for Licensing of Soil Scientists including statutory and administrative provisions (.0100); licensing of soil scientists (.0200); continuing professional competency (.0300); standards of professional conduct (.0400); and disciplinary action and procedure (.0500).

Fees  
Amend/\*

21 NCAC 69 .0104

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**CONTESTED CASE DECISIONS**

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*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

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
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	
<b><u>BOARD OF ARCHITECTURE</u></b>			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77
<b><u>BOARD OF BARBER EXAMINERS</u></b>			
Arthur Donald Darby Jr v. Board of Barber Examiners - Staff	14 BBE 04565	12/05/14	
<b><u>BOARD OF FUNERAL SERVICES</u></b>			
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	
<b><u>BOARD FOR THE LICENSING OF GEOLOGISTS</u></b>			
Robert Payne, P.G. v. NC Board for the Licensing of Geologists	14 BOG 03255	06/11/15	30:07 NCR 780
<b><u>DEPARTMENT OF COMMERCE</u></b>			
Hog Slat, Inc v. Department of Commerce	13 COM 20122	12/05/14	
<b><u>DEPARTMENT OF PUBLIC SAFETY</u></b>			
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

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**CONTESTED CASE DECISIONS**

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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	

Carolina Community Support Services, Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01500	04/02/15	30:04 NCR 480
Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01503	04/02/15	30:01 NCR 97
Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01594	04/02/15	30:01 NCR 133
Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare	14 DHR 02198	06/17/15	30:07 NCR 794
Regina Joyner v. Division of Child Development and Early Education, DHHS	14 DHR 04463	12/10/14	
Cumberland County Hospital System, Inc d/b/a Cape Fear Valley Health System and Hoke Healthcare LLC v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section	14 DHR 04692	01/21/15	
Bio-Medical Applications of NC, Inc d/b/a BMA Rocky Mount v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care Inc d/b/a Nash County Dialysis	14 DHR 05495	03/26/15	30:02 NCR 196
Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 05566	03/10/15	30:02 NCR 229
First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation	14 DHR 06332	02/12/15	
Carrie's Loving Hands, Felicia McGee v. NCDHHS, Division of Health Service Regulation, Certification	14 DHR 06565	02/13/15	
Erica Chante Johnson v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 06571	03/10/15	30:02 NCR 236
Brenda Buck v. NCDHHS, Division of Health Service Regulation	14 DHR 07027	01/02/15	
Humble Beginnings Child Care Inc v. Division of Child Development and Early Education	14 DHR 07029	05/22/15	
Peace Of Mind Adult Group Home Kimberly Goolsby v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07325	05/22/15	
Peace of Mind Adult Group Home Kimberly Goolsby, v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07327	05/22/15	
Dennis Reid v. NCDHHS	14 DHR 07992	04/17/15	
Hanna Lawrence v. DHHS	14 DHR 08026	01/09/15	
Sharda R Wilkes v. NCDHHS, Division of Health Service Regulation	14 DHR 08575	01/21/15	
Sandy's Playschool LLC, Michelle Bailey-Motley v. DHHS, Division of Child Development	14 DHR 08580	02/16/15	
Alicia Staton v. Department of Health and Human Services	14 DHR 08589	02/02/15	
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	
Theresa L Greene v. DHHS, Division of Health Service Regulation	14 DHR 10160	02/10/15	
Jeanette Peele v. Health Care Personnel Registry, Nurse Aide I	14 DHR 10162	05/18/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10167	04/27/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10171	04/27/15	
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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**CONTESTED CASE DECISIONS**

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Thomas Eliza Anderson v. Private Protective Services Board	11 DOJ 10367	06/24/14	
Daniel Joseph Steele v. NC Private Protective Services Board	13 DOJ 03346	06/29/15	30:07 NCR 838
Ronnie Earl Smith Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04114	04/09/15	30:02 NCR 243
Aisha Christina Burston v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04118	01/13/15	
Susan Maney v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05067	04/14/15	30:02 NCR 252
Dewayne Rosean Ward v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05116	05/16/15	
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	
Rachel Elisabeth Hoffman v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05502	03/11/15	30:04 NCR 513
Rayburn Darrell Rowe v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05503	04/20/15	30:06 NCR 692
Robert Boyce Sherrill Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05504	03/04/15	
Michelle Wiggins Morings v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07719	03/17/15	
Billy Ray Bureson v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07924	07/28/15	30:09 NCR 1034
Darin Clay Whitaker v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07925	06/12/15	
Ahmad Malik Lance v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 08050	01/27/15	
Bobby Andrew Boudreau v. NC Private Protective Services Board	14 DOJ 08155	12/19/14	
Waseen Abdul-Haqq v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08259	07/21/15	30:06 NCR 699
Donald Earl Schwab v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08347	05/28/15	30:04 NCR 518
Brandon Tyler Josey v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08348	08/08/15	30:09 NCR 1040
Kia Rena Graham v. NC Private Protective Services Board	14 DOJ 08582	01/28/15	
Martin Luther Locklear v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00052	06/05/15	30:05 NCR 580
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
Joseph Thomas Burris v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02029	10/01/15	30:11 NCR 1241
Frank Shipley Heberer v. NC Alarm Systems	15 DOJ 04294	08/04/15	30:11 NCR 1249
Timothy T.J. Conterras v. NC Private Protective Services Board	15 DOJ 05300	09/30/15	30:11 NCR 1254
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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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Kendra Marie Halsey v. Elizabeth City State University	14 DSC 09486	03/17/15	
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Stephanie T. Treio v. NC Department of State Treasurer	14 DST 06380	05/08/15	30:04 NCR 531
Candace Collins v. NC Retirement Agency	14 DST 06428	12/02/14	
Lloyd McRae Herring v. NC Department of State Treasurer Retirement Systems Division	14 DST 06724	01/20/15	
Trina Parker v. State of NC Department Treasurer Retirement Division Disability Section	14 DST 06732	02/16/15	
<b><u>STATE BOARD OF EDUCATION</u></b>			
Danny Lorenzo Scott v. Public Schools of NC, Department of Public Instruction	14 EDC 09883	07/10/15	30:06 NCR 705
<b><u>DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES</u></b>			
Alcoa Power Generating Inc. v. Division of Water Resources, DENR	13 EHR 18085	05/29/15	30:03 NCR 402
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 Mevey and/or Harry Lewis	14 EHR 02843	01/13/15	
David Frank Crisp v. NC Department of Environment and Natural Resources	14 EHR 03870	08/14/15	30:09 NCR 1046
Garrett Adam Couick v. Cabarrus County Health Alliance	14 EHR 07603	07/24/15	
<b><u>DEPARTMENT OF INSURANCE</u></b>			
Thelma Grant POA Marilyn Howard v. State Health Plan for Teachers and State Employees	13 INS 20396	05/22/15	
Stacy M. Warner v. NC State Health Plan	15 INS 00833	07/31/15	30:11 NCR 1258

**BOARD OF LICENSED PROFESSIONAL COUNSELORS**

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**CONTESTED CASE DECISIONS**

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Beth Ford v. NC LPC Board	14 LPC 05203	08/01/14	
Beth Ford v. NC Board of Licensed Professional Counselors	14 LPC 07355	05/20/15	
<b><u>MISCELLANEOUS</u></b>			
Thomas Charles Fogarty v. Town of Maggie Valley	13 MIS 19252	01/14/14	
<b><u>OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)</u></b>			
Linda Huggins v. Department of Administration, NC Human Relations Commission	08 OSP 01153	01/23/15	
Lauren Wilson Burch v. NC Alcohol Law Enforcement	12 OSP 08548	04/14/15	30:06 NCR 0681
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	
Estate of Todd McCracken v. Department of Revenue	14 OSP 07170	08/24/15	30:09 NCR 1076
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
Hope Freeman v. NC Department of Public Safety	14 OSP 07967	07/28/15	30:09 NCR 1086
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
<b><u>DEPARTMENT OF REVENUE</u></b>			
Forrest Small and Kimberly Mazanec v. Department of Revenue	15 REV 00666	06/23/15	30:11 NCR 1261
<b><u>OFFICE OF THE SECRETARY OF STATE</u></b>			
Carolyn Marie Aikens v. Secretary of State, Notary Public	13 SOS 15500	11/05/13	

FILED

STATE OF NORTH CAROLINA  
COUNTY OF AVERY

2015 OCT -1 PM 3:45

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 02029

JOSEPH THOMAS BURRIS,  
OFFICE OF  
ADMIN HEARINGS

Petitioner,

v.

NORTH CAROLINA CRIMINAL  
JUSTICE EDUCATION AND  
TRAINING STANDARDS COMMISSION

Respondent.

PROPOSAL FOR DECISION

On July 9, 2015, Administrative Law Judge Donald W. Overby heard this case in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 150B-40(e), designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

For Petitioner:

Pro Se  
Joseph Thomas Burris  
P.O. Box 484  
Newland, North Carolina 28657

For Respondent:

Matthew L. Boyatt  
Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699

ISSUE

Is Respondent's proposed denial of Petitioner's application for law enforcement officer certification supported by a preponderance of the evidence?

**APPLICABLE LAW**

12 NCAC 09A .0204(b)(6)  
12 NCAC 09A .0205(b)(4)

**EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner's Exhibits  
Respondent's Exhibits 1 – 6.

**WITNESSES**

For Respondent:  
Petitioner

For Petitioner:  
Petitioner  
Captain Tim Barnett, Beech Mountain Police Department  
Chief of Police Christopher Freeman, Beech Mountain Police Department

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

Wherefore, the Undersigned makes the following Findings of Fact, Conclusions of Law and Proposed Decision.

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of probable cause to deny law enforcement officer certification letter mailed by the Respondent on February 24, 2015.

2. The North Carolina Criminal Justice Education and Training Standards Commission (hereinafter the "Commission") has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09A .0204(b)(6) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer ... has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. 12 NCAC 09A .0205(b)(4) provides that when the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is ... material misrepresentation of any information required for certification or accreditation.

5. Petitioner is currently applying for certification as a law enforcement officer with the Beech Mountain Police Department. Petitioner submitted his application on or about November 17, 2014.

6. Petitioner previously applied for certification by the Commission in 2011 through Davidson College Campus Police. However, Petitioner's conditional offer of employment at Davidson College was withdrawn due to Petitioner providing false information regarding prior drug use during the application process. Petitioner abandoned his application for certification in 2011 and Petitioner was never certified by the Commission. Petitioner is again seeking certification from the Commission.

7. Petitioner testified at the administrative hearing and does not dispute a prior history of drug use. Petitioner experimented in high school with various drugs that were not prescribed to Petitioner. During the time period of 2003-2004, Petitioner used the following pills: Adderall, Vicodin, Percocet, and Valium. Petitioner was taking these drugs at high school parties and Petitioner did not possess a valid prescription for these drugs. Petitioner admits to the use of Adderall without a prescription as recently as 2008.

8. Petitioner also admits to the use of marijuana in high school between 2003 and 2004, in addition to the use of a "duster." Petitioner explained that a duster is compressed gas in a can that is inhaled in order to get high.

9. As indicated above, Petitioner initially sought certification as a law enforcement officer through Davidson College Campus Police in 2011. In furtherance of his application for certification through Davidson College, Petitioner submitted to the Commission a Form F-3 (LE) Personal History Statement on July 26, 2011 (hereinafter

the "F-3"). See Respondent's Exhibit 3. The F-3 was signed by Petitioner before a Notary. The Petitioner certified "that each and every statement made on this form is true and complete and I understand that any misstatement or omissions of information will subject me to disqualification or dismissal."

10. Question No. 45 of the F-3 asks, "Have you ever used any illegal drugs including but not limited to, opiates, pills, heroin, cocaine, crack, LSD, etc.?" Petitioner did not disclose the use of illegal drugs, and responded "No" to this question. The Petitioner knowingly failed to disclose that during 2003-2004, Petitioner had used a "duster" and that Petitioner had also used the following pills on various occasions in high school without a valid prescription: Adderall, Vicodin, and Valium.

11. Petitioner made a material misrepresentation with respect to Question No. 45 of the F-3 when Petitioner knowingly and intentionally withheld his prior drug use while in high school. Petitioner was under a duty to disclose his use of a "duster" and to further disclose his use of Adderall, Vicodin, and Valium pills. Petitioner's application for certification is subject to denial based on Petitioner's material misrepresentation in response to Question No. 45 of the F-3.

12. Question No. 46 of the F-3 goes on to ask, "Have you ever used prescription drugs other than under the supervision of, or as prescribed by, a physician?" Petitioner answered "Yes" to this question, but Petitioner only disclosed the use of Percocet associated with a broken knee. The Petitioner knowingly and intentionally failed to disclose that during high school he had used Adderall, Vicodin, and Valium on various occasions without a valid prescription. Petitioner's application for certification is subject to denial based on Petitioner's second material misrepresentation in response to Question No. 46 of the F-3.

13. Petitioner claims that he did not disclose his drug use on Questions 45 and 46 of the July 26, 2011, F-3 Personal History Statement out of mistake. Petitioner claims that his then fiancé completed a go-by F-3 Personal History Statement on behalf of Petitioner, and that the Petitioner later transferred the answers from the Personal History Statement prepared by his wife to the F-3 Petitioner completed and submitted to the Commission, which appears at Respondent's Exhibit 3.

14. Petitioner admits that he completed the F-3 in his own handwriting and that he was not rushed to complete the form. Petitioner had ample opportunity to fully disclose his drug use in questions 45 and 46 of the F-3. Petitioner understood the questions being asked and understood his duty to provide accurate and complete responses. At the time Petitioner completed the F-3 in 2011, Petitioner had already earned two advanced degrees, an AA in criminal justice from Caldwell Community College, and a BS in criminal justice from Appalachian State University. Petitioner's material misrepresentations on questions 45 and 46 of the 2011 F-3 did not rise out of mistake or oversight.

15. The evidence establishes that Petitioner made additional material misrepresentations regarding his illegal drug use during the mandatory background

investigation conducted by Davidson College Campus Police. Petitioner was asked by the interviewer to explain his involvement with illegal drugs. Petitioner's response was recorded in Question No. 49 of the Form F-8 Mandated Background Investigation Form (hereinafter the "F-8"), which was submitted to the Commission in furtherance of Petitioner's application for certification. See Respondent's Exhibit 4.

16. In response to Question No. 49 of the F-8, Petitioner stated that he smoked marijuana 4 or 5 times in high school. However, the Petitioner knowingly and intentionally failed to disclose to the interviewer that he had used a "duster" in high school and also failed to disclose that he illegally used Adderall, Vicodin, and Valium on various occasions in high school without a valid prescription. Petitioner's knowing and intentional misrepresentation when responding to Question No. 49 of the F-8 constitutes a material misrepresentation of information required by the Commission. Petitioner's application for certification is subject to denial based on Petitioner's third material misrepresentation when responding to Question No. 49 of the F-8.

17. Petitioner made a final material misrepresentation in response to Question No. 59 of the F-8. Petitioner was asked whether he had ever used prescription drugs without a valid prescription. Petitioner responded "Yes;" however, Petitioner only disclosed that he had used Percocet without a prescription on two (2) occasions. Petitioner knowingly and intentionally failed to disclose to the interviewer that he had used Adderall, Vicodin, and Valium on various occasions in high school without a valid prescription. Petitioner's application for certification is subject to denial based on Petitioner's fourth material misrepresentation in responding to Question No. 59 of the F-8.

18. Captain Tim Barnett and Chief of Police Christopher Freeman of the Beech Mountain Police Department appeared on behalf of Petitioner as character witnesses. Captain Barnett opined that Petitioner self-reported to the Beech Mountain Police Department his previous misrepresentations regarding past drug use that were made during the application process with Davidson College Campus Police. Captain Barnett conceded that Petitioner's explanation that he did not realize he omitted the drug use on the F-3 when transferring the responses his wife prepared for him to the F-3 Petitioner submitted to the Commission was not a reasonable explanation. Notwithstanding the foregoing, Captain Barnett believes Petitioner is an individual who possesses integrity and that Petitioner would make a good law enforcement officer if provided a second chance.

19. Chief of Police Freeman also opined that he believed Petitioner was of good character and that he would like to see Petitioner receive certification. Chief Freeman would consider Petitioner for continued employment with the Beech Mountain Police Department. Chief Freeman testified that he would not have made the trip from Beech Mountain to Waynesville if he did not believe in Petitioner's ability to become a good police officer.

20. Petitioner's wife appeared at the administrative hearing in support of her husband. Petitioner's wife expressed genuine remorse and a sense of guilt and responsibility for Petitioner's conduct. She demonstrated an amazing recall of the significant events of Petitioner's life. It is believable that Petitioner's wife did prepare a "go by" for Petitioner to use in order to give consistent and hopefully accurate answers. It is believable that Petitioner relied on the form his wife prepared. However, his wife would have had only the information supplied to her by Petitioner. Even assuming that she had the knowledge of his prior drug usage, it was still the responsibility of Petitioner to insure that even the stock form he would use was accurate. Ultimately, despite his wife's best intentions, it was his responsibility.

21. Without question, the evidence presented establishes that Petitioner's own actions have placed him in a circumstance wherein the denial of his application for certification is justified based on the Commission's rules and Petitioner's material misrepresentations regarding his past drug use.

20. The Commission does have the authority to issue a lesser sanction than outright denial of Petitioner's application for certification.

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

**CONCLUSIONS OF LAW**

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

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

3. Pursuant to 12 NCAC 09A .0204(b)(6), the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer ... has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. Pursuant to 12 NCAC 09A .0205(b)(4), when the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of

sanction is ... material misrepresentation of any information required for certification or accreditation.

5. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when he failed to disclose his use of a "duster," in addition to his illegal use of Adderall, Vicodin, and Valium pills in high school when responding to Question No. 45 of the F-3.

6. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made an additional material misrepresentation of information required for certification when he failed to disclose his use of Adderall, Vicodin, and Valium pills in high school without a valid prescription when responding to Question No. 46 of the F-3.

7. Finally, a preponderance of the evidence exists to support the conclusion that Petitioner knowingly made two (2) additional material misrepresentations of information required for certification during his interview with the Davidson College Campus Police, which resulted in false information being provided to the Commission on the F-8 form. Petitioner made a material misrepresentation when responding to Question No. 49 of the F-8, insofar as Petitioner failed to disclose his illegal use of a "duster," in addition to his illegal use of Adderall, Vicodin, and Valium pills. Petitioner made a second material misrepresentation on the F-8 when in response to Question No. 59, Petitioner failed to disclose that he had used Adderall, Vicodin, and Valium pills on several occasions without a valid prescription.

8. The Respondent may properly deny Petitioner's application for certification pursuant to 12 NCAC 9A .0204(b)(6). Pursuant to 12 NCAC 9A .0205(b)(4), the period of sanction shall be not less than 5 years for material misrepresentation of any information required for certification.

9. Respondent's finding of probable cause to deny Petitioner's application for certification is supported by substantial evidence and is not arbitrary and capricious.

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

11. Petitioner has the burden of proof in the case at bar. Petitioner's blind reliance on a form prepared by his wife was misplaced in that regardless of his faith in her abilities it remained his duty to insure the form was reporting accurate information. Beech Mountain Police Department has shown a willingness to give Petitioner an opportunity to demonstrate his ability to capably serve as a sworn law enforcement officer. However, Petitioner has failed to show by a preponderance of the evidence that

Respondent's proposed denial of Petitioner's law enforcement officer certification is not supported by substantial evidence.

**PROPOSAL FOR DECISION**

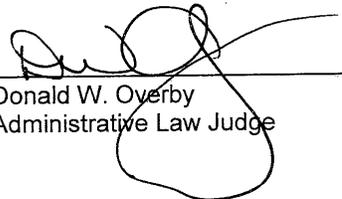
Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that the Respondent issue Petitioner certification and that Petitioner be placed on a 36 month probationary period, during which time Petitioner shall not violate a law (other than infractions and minor traffic offenses) of this state or any other state, any federal laws, any ordinances, any rules of this Commission. At the expiration of this 36 month period, Petitioner's certification shall remain in full force and effect, provided Petitioner remains in compliance with all rules established by the Commission.

**NOTICE**

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

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

This the 15<sup>th</sup> day of Sept., 2015.

  
\_\_\_\_\_  
Donald W. Overby  
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA 2015 AUG -4 PM 12: 02 IN THE OFFICE OF  
COUNTY OF WAKE OFFICE OF ADMINISTRATIVE HEARINGS  
ADMIN HEARINGS 15 DOJ 04294

FRANK SHIPLEY HEBERER )  
 )  
 Petitioner, )  
 v. ) PROPOSAL FOR DECISION  
 )  
 N.C. ALARM SYSTEMS )  
 LICENSING BOARD, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

On June 23 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 an alarm installation registration based on Petitioner's lack of good moral character and temperate habits as evidenced by three (3) convictions of Driving While Impaired.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:  
N.C.G.S. §§ 74D-2; 74D-6; 74D-8; 74D-10; 12 NCAC 11 .0300.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74D-2, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems installation business.
2. Petitioner applied to Respondent Board for an alarm installation registration.

3. Respondent was initially denied the alarm installation registration due to Petitioner's criminal record which showed the following:
  - a. a conviction in Cabarrus County, State of North Carolina, on January 3, 2013 for Driving While Impaired, Level 5; and
  - b. a conviction in Guildford County, State of North Carolina, on November 5, 2014 for Driving While Impaired, Level 2.
4. Petitioner requested a hearing on Respondent's denial of an alarm installation registration for the above two (2) convictions.
5. Subsequent to his letter requesting a hearing, Petitioner was sent a second letter notifying him of denial based on a third conviction: Driving While Impaired, Level 1, on November 6, 2014 in Moore County, North Carolina.
6. By Notice of Hearing dated June 10, 2015, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on June 23, 2014. Petitioner appeared at the hearing.
7. Petitioner admitted in open court to the third conviction which was sent after his initial request for a hearing.
8. Petitioner testified that in October 2012 he was driving home to Greensboro, NC from Charlotte, NC on Interstate 85 N when he was pulled over by a State Highway Patrolman for swerving in the highway. The Patrolman smelled alcohol as he talked to him and he was ordered out of the car. He was subjected to a field sobriety test, which he failed. He was arrested and transported to jail in Concord, NC where he spent the night in jail and was allowed to drive home the next day after authorities felt he was sober. He retained an attorney and appeared in Court on January 3, 2013 and entered a guilty plea. The Court sentenced him to complete a 20-hour DWI education class. He was placed on 12 months Restrictive Driving Privileges, so he could drive from 6:00 a.m. to 8:00 p.m. Monday – Friday.
9. In October or November 2013 while driving on a restrictive license, he was driving from Greensboro, NC to Pinehurst, NC via Highway 220. It was approximately 11:00 a.m. and a Highway Patrolman noticed him swerving and pulled him over in Moore County. The Patrolman realized that he was intoxicated and he was arrested and taken to jail in Carthage, NC. His brother came and picked him up from jail. He retained an attorney and entered a guilty plea. The Court revoked all driving privileges. He had to complete a 40-hour

DWI class. Because it was his second DWI, he spent 30 days in the Moore County detention facility; he spent every other weekend in jail until his time was served.

10. Petitioner does not have a NC driver's license at this time.
11. In the late 1980's/early 1990's he went to Alcoholics Anonymous for help. He stated that because of AA he stayed sober for seven (7) years but relapsed. He is attending AA again and his first AA meeting was May 3, 2014. He has been sober since attending that May 3<sup>rd</sup> meeting over one (1) year ago. He attends meetings at two different locations in Greensboro; a 1<sup>st</sup> Lutheran Church daily and every Tuesday, Friday and Saturday nights at 6:30 p.m. at Muir's Chapel United Methodist Church.
12. Petitioner is a Certified Public Accountant with many years' experience in public accounting.
13. Petitioner was hired by Secure Watch, Inc. as Chief Financial Officer in August, 2014, but has not worked since his application was denied. His employer is aware of his alcohol problems and DWI convictions.
14. Nancy Blackett Nagel testified on behalf of Petitioner. She has known him since 1965 and they have been long-time friends. In 1989 he proudly told her he had obtained a six-month medallion from Alcoholics Anonymous. She too, is a recovering alcoholic and attends the daytime AA meetings with Petitioner.
15. She has seen him really "grow" in the past 14 months; he now chairs the meeting, and she think Petitioner is "marvelous."
16. Shelba Wooten Forrest, a friend and Petitioner's Sunday School teacher, testified that he is a very caring man. Everyone in his Sunday School class knew Petitioner had a problem, was very concerned, and wanted him to get help.
17. Petitioner told Ms. Forrest about the Moore County DWI conviction and his 30-day active sentence. After that, she saw resolve in him to stay sober.
18. Ms. Forrest stated she regrets the law is so inflexible and does not understand alcoholics, or give people second chances. She thinks Petitioner should be given a new start and an opportunity.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.

2. Under G.S. § 74D-6(3), Respondent Board may refuse to grant an alarm installation registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74D-6(2), Respondent Board may refuse to grant an alarm installation registration if it is determined that the applicant has been convicted of a crime involving the illegal use of alcohol.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving the illegal use of alcohol is *prima facie* evidence that the applicant does not have good moral character or intemperate habits.
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through convictions in three (3) different counties in North Carolina for Driving While Impaired, crimes involving the illegal use of alcohol. Notably all three convictions were less than two years apart with two of them being on successive days. The two most recent convictions were less than a year ago.
6. Petitioner admitted the charges, presented character witnesses, but has not rebutted the presumption.

Based on the foregoing, the undersigned makes the following:

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be denied an alarm installation registration.

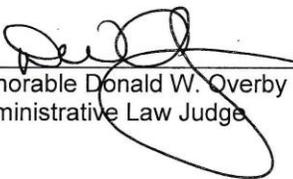
NOTICE AND ORDER

The NC Alarm Systems Licensing 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 the 4<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
Honorable Donald W. Overby  
Administrative Law Judge

NORTH CAROLINA  
WAKE COUNTY

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
2015 OCT -1 PM 2: 34  
15 DOJ 5300

TIMOTHY T. J. CONTEARRAS  
Petitioner

OFFICE OF  
ADMIN HEARINGS

v

PROPOSED FINAL  
DECISION

NC PRIVATE PROTECTIVE  
SERVICES BOARD  
Respondent

This matter coming on to be heard and being heard August 25, 2015, and the Petitioner appeared pro se, and the Respondent was represented by attorney Mr. Jeffrey P. Gray, and based upon the evidence presented and the arguments of the parties, the undersigned makes the following findings of fact:

1. Petitioner is a citizen and resident of Cumberland County, North Carolina, and applied to Respondent for an unarmed guard permit.
2. Respondent Board is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
3. Respondent denied the unarmed guard registration due to lack of good moral character and temperate habits as demonstrated by Petitioner's criminal record.
4. Respondent cited the following as reasons for the denial:
  - Boone County, KY – Felony Probation Violation – Guilty – 9-16-2002
  - Boone County, KY – Fugitive from Another State – Guilty – 1-17-2002
  - Isle of Wight County, VA – Felony Credit Card Theft – Guilty – 8-13-2002
  - Isle of Wight County, VA – Felony Hit and Run – Guilty – 8-13-2002
  - (Resp. Ex. 2)
5. Petitioner stipulated that these items were on his criminal record.
6. Petitioner was notified by letter on June 16, 2015, that his application was denied due to his criminal record. (Resp. Ex. 2)

7. Petitioner timely requested a hearing regarding the denial of his armed guard application.

8. Petitioner testified that each of his criminal convictions occurred more than ten years ago when he was a teenager.

9. Petitioner further testified that each offense stemmed from a contentious relationship with a girlfriend who went to great lengths to get even with him for attempting to leave the relationship.

10. Petitioner was convicted of hit and run and credit card theft in Isle of Wight County on March 10, 2003. (Resp. Ex. 1)

11. Petitioner testified that he accepted a plea agreement for time served awaiting trial on those charges.

12. According to Petitioner, he was involved in an automobile accident near his employment in Virginia. Petitioner then reported the incident to a security guard and asked that he contact police. When police arrived they found his girlfriend's credit card in his pocket and cited him for hit and run and credit card theft.

13. Petitioner stated that he had permission to use the credit card, but his girlfriend refused to tell the police this fact.

14. According to the Petitioner, he had several court dates continued because the prosecuting witness, the estranged girlfriend, refused to appear in court.

15. Petitioner accepted a plea agreement on these charges because it enabled him to conclude the criminal charge and be released from pre-trial confinement after approximately one year in jail.

16. Records presented by the Respondent indicate that the Petitioner was ordered to spend two years in prison for the hit and run and credit card theft charges, with credit for time served awaiting trial. (Resp. Ex. 1)

17. However, no jail or prison records were produced to demonstrate that the Petitioner did in fact spend two years in prison, and it is reasonable to assume that an inmate received various credits which would reduce the overall time he is required to serve.

18. Respondent alleged and Petitioner admitted that he had a probation violation in 2002.

19. On April 25, 2002, the Petitioner was placed on probation following conviction for making a bomb-threat. (Resp. Ex. 1)

20. While the Respondent could have alleged the conviction for a bomb threat as cause to deny Petitioner's registration, they chose instead to utilize the probation violation.

21. A probation violation is not a criminal conviction under N.C.G.S. §74C-8(d)(2).

22. Even if the bomb threat conviction had been used for cause to deny registration, the underlying facts flow from Petitioner's association with the same ex-girlfriend. In this instance, she called in on his phone at work which broadcasted the fake bomb threat, and the Petitioner accepted responsibility to protect her from prosecution.

23. Petitioner has been employed at ABM Security Services, and his employer was made aware of these incidents.

24. Petitioner has presented letters attesting to his good character, along with documents from the Commonwealth of Virginia restoring his citizenship rights. (Pet. Ex. 1)

25. Petitioner was credible in his testimony, and he appears now to be of good moral character and temperate habits based upon the testimony and evidence presented.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. Under G.S. §74C-12(a)(25), Respondent may refuse to grant registration if it determines that an applicant has demonstrated intemperate habits or lacks good moral character.

3. Under G.S. §74C-8(d)(2), conviction of any crime involving acts of violence, conviction for larceny, or offenses involving moral turpitude are prima facie evidence that an applicant lacks good moral character.

4. Felony Credit Card theft is a larceny and implicates the disqualifying language above.

5. A probation violation is not a criminal conviction under N.C.G.S. §74C-8(d)(2).

6. There is insufficient evidence from the facts presented to determine if the hit and run conviction implicates the disqualifying language under the statute.

7. A fugitive warrant is not a criminal offense for which a conviction can be had. A fugitive warrant is issued to detain a defendant for a period of time while the issuing state determines if a governor's warrant is necessary to secure the return of a defendant to the state in which the original offense was committed. In this case, it appears that Petitioner was extradited from Kentucky to Virginia under the fugitive warrant for the bomb threat charge.

8. A fugitive warrant does not implicate the disqualifying language under the statute, even though the underlying charge may.

9. Respondent presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through the conviction of Assault on a Female.

10. Petitioner, however, presented sufficient evidence that he is an honest, trustworthy, and hard-working individual.

11. Petitioner's only involvement with the criminal justice system appears to be the crimes listed herein, and he has an unremarkable record for over 10 years.

12. Petitioner has proven by a preponderance of the evidence that he is of good moral character and temperate habits sufficient for issuance of the license.

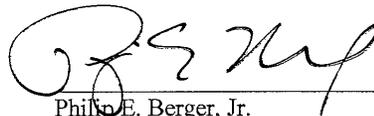
Based upon the foregoing findings of fact and conclusions of law, the undersigned hereby recommends that Petitioner be issued an unarmed guard registration.

**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 the 30<sup>th</sup> day of September, 2015.

  
Philip E. Berger, Jr.  
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA  
COUNTY OF PITT

2015 JUL 31 PM 1:40 ADMINISTRATIVE HEARINGS  
15 INS 00833

OFFICE OF  
ADMIN HEARINGS

<p>Stacy M Warner Petitioner</p> <p>v.</p> <p>N.C. State Health Plan Respondent</p>	<p><b>FINAL DECISION GRANTING SUMMARY JUDGMENT</b></p>
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THIS MATTER is before the for consideration of Respondent’s Motion for Summary judgment Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent’s Motion for Summary Judgment filed with the Office of Administrative Hearings on June 29, 2015. This matter was scheduled for hearing on June 22, 2015. After brief discussions in open court it was decided that summary judgment was appropriate in this matter in that there is no genuine issue of material fact. Both parties were given an opportunity to orally argue their contentions on June 22, 2015, and were given an opportunity to present this Tribunal with any written argument or other documentation to support their respective positions on or before June 29, 2015. Each party submitted written documentation for consideration.

Having considered matters of record in this contested case, the written submissions of both parties as well as their oral arguments, this matter is appropriate for entry of summary judgment. The United States Preventative Services Task Force (USPSTF) recommends what services are to be covered in grade A and B. In the USPSTF recommendations, the topic “BRCA risk assessment and genetic counseling/testing” is a recommendation for women to be

screened. In the topic "Breast cancer screening," only mammography is recommended. The only other topic related to breast cancer is in regards to medications. MRIs are not listed within the USPSTF recommendations. (R. Ex. 7) Blue Cross Blue Shield provides a list of preventive services covered at 100% under the Affordable Care Act and MRIs are not included.

Based on the articles submitted by Petitioner, such as the prestigious New England Journal of Medicine, perhaps MRIs should be included as part of a preventative regime for patients such as Petitioner. However, MRIs are not included as a recommended preventive breast screening by the USPSTF, and MRIs are not required preventive services or screening under the Affordable Care Act or Petitioner's health benefit health plan that must be covered at 100%. The payment of Petitioner's claim for the June 17, 2014 MRI was correct according to her plan and her benefits under the State Health Plan.

Now, Therefore, Respondent's Motion for Summary Judgment is **ALLOWED** and Respondent is not required to cover Petitioner's MRI at 100%.

**NOTICE**

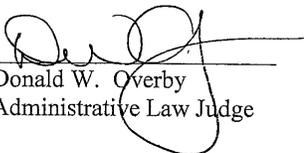
**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

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

Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 31<sup>st</sup> day of July, 2015.

  
Donald W. Overby  
Administrative Law Judge

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
6/23/2015 11:59 AM

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 REV 00666

<p>Forrest Small &amp; Kimberly Mazanec Petitioner</p> <p>v.</p> <p>N.C. Department Of Revenue Respondent</p>	<p><b>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT</b></p>
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THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent’s Motion for Summary Judgment with attachments filed with the Office of Administrative Hearings (“OAH”) on May 20, 2015, as well as Respondent’s Memorandum in Support of Summary Judgment with accompanying attachments filed with the OAH. Petitioner filed with OAH a 3-ring binder which contained twelve enumerated documents, each identified by index, and which was given consideration.

Oral argument was held on May 29, 2015. Respondent appeared represented by counsel Andrew Furusest of the North Carolina Attorney General’s Office. Petitioners appeared *pro se*, and at the hearing presented this Tribunal a red manila folder containing several documents including among other items applicable statutes as well as their written opposition to the motion for summary judgment, all of which was given consideration.

Having given consideration to the written submissions as well as the oral presentations of both parties it is found as fact and concluded as a matter of law that no genuine issue of material fact exists and therefore this matter is appropriate for summary judgment.

At issue in this contested case is whether or not Petitioners were entitled to tax credit for their minor child for school years 2012 and 2013. Petitioners concede and acknowledge that the amount of credit attempted to be taken in each tax year was in excess of the allowable amount even if they should prevail. Further, Petitioners concede and acknowledge that the minor child was exclusively enrolled in public school for the spring semester of 2012; and therefore they would not be entitled to any credit for that semester.

Petitioners contend that the swirl of information around the tax credit is confusing, and Respondent even acknowledges that fact in a letter dated September 29, 2014. Much of the confusion is centered around the definition of the word “enrollment” especially as it is used in N. C. Gen. Stat. § 105-151.33. In part, that confusion is due a confusion of phraseology between the

Department of Revenue and the State Board of Education and the Department of Public Instruction.

In an effort to try to clarify the credit the DOR issued a directive (PD-12-1) which refers to “compulsory school attendance” as defined in G.S. §115C-378. That statute is speaking of attendance in a general manner as opposed to being absent from school. It makes no distinction as to how long a child must be at school to be counted as in attendance, but that definition may be found in the School Attendance Manual issued by the SBE/DPI. In the 2014-15 Manual, a student must be present for at least half of the school’s instructional day in order to be counted as present. Again, this is, for educational purposes, an accounting solely for whether or not the child is given credit for attending that day as opposed to being absent for that day. It is not synonymous with enrollment, and is not intended to be.

The DOR directive PD-12-1 poses a question concerning a child in both public and private school. There is no question that the answer given to that question is confusing. It would have been a better answer, but still not crystal clear had the answer been limited to: “No. This tax credit is applicable for tuition expenses to a nonpublic school . . . that meet the compulsory school attendance requirements for a child as defined in G.S. 115C-378.”

Petitioners’ reliance on the fact that their son was in the private school for more than half the school day and therefore met the school attendance requirement is not well founded. Again, it is a distinction between being absent or present for the day, and not equivalent to “enrollment.”

G.S. 105-151.33 provides for the credit for a qualified child who is “enrolled . . . in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1.” Thus, the only 2 schools a child may attend and be eligible for the credit is the non-public or the qualifying public school. There is no mention at all of a child who is in both a public and a non-public school. There is no question that the child Noah meets the other criteria as an “eligible dependent child.” Noah and his parents do not meet any of the criteria listed for “disqualification”; however, that is not an exhaustive list.

The question arises again as to what is meant by “enrollment” in G.S. 105-151.33(e) which states that the amount of the tax credit may be reduced for “any time enrolled in public school.” Noah was enrolled in Baucom Elementary School, his base school which is a public school. He attended both Baucom and the non-public Hill Center.

The reduction of the credit is a percentage of the semester that the child is enrolled in a public school. In this instance, Noah was enrolled in Baucom for the entire semesters at issue and therefore the Respondent appropriately reduced the amount by 100%.

To clarify any confusion the legislative intent may be discerned from the Legislative Fiscal Note from the 2011 Session of the General Assembly. On page three of the fiscal note, the note speaks of “Percent of Eligible Students Moving Out of Public School.” (Emphasis added) On page four, there is an analogy to “a student who transfers out of a typical school” in trying to assess the monetary factor of this legislation. In the same paragraph it notes the amount of savings for a student “with an IEP transferring (i.e. withdrawing) from the public schools to a

nonpublic school.” In the next paragraph on Page four, the fiscal note states that the impact of the bill is from two factors and one of them is the number of students who transfer from public to nonpublic schools. Importantly it is noted that the “State and local school systems would no longer be financially responsible for educating the child for which the credit was granted.”

It is obvious from the language of the fiscal note that the intent of the General Assembly is to have a severance between the public school and the non-public school in order to be eligible for the tax credit. It is also recognized that this information is not readily at hand to the taxpayers in North Carolina, a vast majority of whom would not even know such exists. However, it is information which this Tribunal is to consider in weighing and deciding the law of a particular case.

**FINAL DECISION**

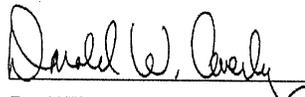
Based upon the foregoing, it is hereby ORDERED by Respondent’s Motion for Summary Judgment is **ALLOWED** and this contested case is hereby **DISMISSED**.

**NOTICE AND ORDER**

This Final Decision is issued under the authority of N.C. Gen. Stat. § 150B-34. Pursuant to N.C. Gen. Stat. § 150B-45 and 105-241.16, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in N.C. Gen. Stat. § 7A-45.4(b) through (f). The party seeking review must pay the tax due and file the **petition within 30 days after being served** with a written copy of the Administrative Law Judge’s Decision and Order.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. N.C. Gen. Stat. § 150B-47 requires the Office of Administrative Hearings 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. To ensure the timely filing of the record, the appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when the appeal is initiated.

This the 23rd day of June, 2015.

  
Donald W. Overby  
Administrative Law Judge