

NORTH CAROLINA REGISTER

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February 1, 2016

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Contact List for Rulemaking Questions or Concerns

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

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

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
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31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
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31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

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

State Board of Examiners of Electrical Contractors

Due to inclement weather and the Governor's declaration of a State of Emergency, the public hearing scheduled for January 22, 2016 at 8:30 a.m. by the State Board of Examiners of Electrical Contractors regarding 21 NCAC 18B .0209, 21 NCAC 18B .0211, 21 NCAC 18B .0406 and 21 NCAC 18B .0502 was canceled. These Rules were published in the January 4, 2016 Volume 30 Issue 13 page 1404 issue of the *NC Register*.

The Public Hearing has been re-scheduled for Tuesday, March 1, 2016 at 1:00 pm at the Holiday Inn Express located at 1320 EMS Drive, Mount Airy NC, 27030. The Board will receive public comment through 5:00 pm on March 4, 2016, addressed to the Board at 3101 Industrial Drive, Suite 206, Raleigh NC, 27619.

Board of Nursing -- rescheduled public hearing

Due to inclement weather and the Governor's declaration of a State of Emergency, the public hearing scheduled for January 22, 2016 at 1:00 pm regarding 21 NCAC 36 .0815 Reporting Criteria was canceled. This Rule was published in the November 16, 2015 Volume 30 Issue 10 page 1160 issue of the *NC Register*.

The Public Hearing has been re-scheduled for February 16, 2016 at 1:00 pm at the NC Board of Nursing office located at 4516 Lake Boone Trail, Raleigh, NC 27607. The Board will receive public comment through 5:00 pm on February 16, 2016.

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 09 – OFFICE OF THE GOVERNOR AND LT. GOVERNOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina 911 Board intends to adopt the rules cited as 09 NCAC 06C .0111-.0114, .0205, and .0216.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.nc911.nc.gov/>

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: February 26, 2016

Time: 10:00 a.m.

Location: NC 911 Board Office, Banner Elk Room at 3514 A Bush Street, Raleigh, NC 27609

Reason for Proposed Action:

09 NCAC 06C .0111 - Describes procedures for a PSAP or service provider to follow when requesting a declaratory ruling from the 911 Board.

09 NCAC 06C .0112 - Describes procedures 911 Board shall follow when responding to a request for a declaratory ruling.

09 NCAC 06C .0113 - Describes effects of a declaratory ruling.

09 NCAC 06C .0114 - Requires that records of declaratory rulings be kept on file at the 911 Board Office.

09 NCAC 06C .0205 - Outlines requirements for creation of a comprehensive emergency management plan by each PSAP.

09 NCAC 06C .0216 - Outlines procedures to be followed by the 911 Board when conducting assessments of PSAPs.

Comments may be submitted to: Teresa M. Bank, NC Department of Information Technology, P.O. Box 17209, Raleigh, NC 27619-7209, phone (919) 754-6285, email Teresa.bank@nc.gov

Comment period ends: April 1, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

Fiscal impact (check all that apply).

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

CHAPTER 06 – OFFICE OF INFORMATION TECHNOLOGY SERVICES

SUBCHAPTER 06C - 911 BOARD

SECTION .0100 – FORMS, DEFINITIONS, ADMINISTRATION

09 NCAC 06C .0111 REQUESTS FOR DECLARATORY RULINGS

(a) Requests for a declaratory ruling shall be in writing and dated.

(b) The request shall contain:

- (1) The petitioner's name, address, and telephone number;
- (2) The rule, statute, or order referred to;
- (3) A statement of facts supporting the petitioner's request for a declaratory ruling;
- (4) A statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;

(c) After review of the information required in Paragraph (b) of this Rule, the Board may request the following additional information:

- (1) A statement of any legal authorities that support the interpretation of the given the statute or rule by the petitioner;
- (2) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling;
- (3) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and
- (4) A statement of whether the petitioner desires to present oral argument.

Authority G.S. 62A-42; 150B-4.

09 NCAC 06C .0112 RESPONSE TO A REQUEST FOR A DECLARATORY RULING

(a) The Board shall consider the request within 30 days of receipt. The Board shall issue a ruling except:

- (1) When the Board finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
- (2) When the petition does not provide the information required in Rule .0111, the question is presented in such a manner that the Board cannot determine what the question is, or that the Board cannot respond with a specific ruling that shall be binding on all parties;
- (3) When the Board has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (4) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The Board shall, not later than the 30th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. The Board may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

Authority G.S. 62A-42; 150B-4.

09 NCAC 06C .0113 DURATION OF A DECLARATORY RULING

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) The portion of the statute, rule, or order interpreted by the declaratory ruling is amended or repealed;
- (2) The Board changes the declaratory ruling prospectively; or
- (3) Any court sets aside the ruling.

Authority G.S. 62A-42; 150B-4(a).

09 NCAC 06C .0114 RECORD OF RULING

A record of all declaratory ruling proceedings shall be maintained at the Board's office and shall be available for public inspection during business hours.

Authority G.S. 62A-42; 150B-4.

09 NCAC 06C .0205 COMPREHENSIVE EMERGENCY MANAGEMENT PLAN (CEMP)

(a) Each PSAP shall have a written Comprehensive Emergency Management Plan (CEMP) that includes:

- (1) An emergency fire plan;
- (2) A damage control plan; and
- (3) A back-up PSAP plan that includes alternate 911 call routing conforming to 47 C.F.R. 20.18 and G.S. 62A-49.

(b) The PSAP shall test the plans in Paragraph (a) of this Rule and the CEMP at least once annually.

Authority G.S. 62A-42; 62A-46; 47 C.F.R. 20.18.

09 NCAC 06C .0216 ASSESSING PSAP OPERATIONS

(a) The Board shall conduct annual reviews of PSAP operations to determine whether a PSAP meets Section .0200 of these Rules. Reviews shall be conducted by at least two persons selected by the Board based on each person's knowledge and experience of 911 systems and PSAP operations. The Board shall provide notice to a PSAP at least 90 days in advance of a review. The notice shall include the scope of the review and shall identify the reviewers.

(b) A written report shall be provided to a PSAP within 30 days of the date of review. The report shall state any deficiencies that identify a failure to fulfill Section .0200 of these Rules.

(c) The report shall include procedures and recommendations to remediate deficiencies. PSAPs shall respond to the report no more than 30 days following receipt and identify actions taken or planned to remediate deficiencies.

(d) Notwithstanding the annual review in Paragraph (a) of this Rule, a PSAP having no deficiencies or remediating deficiencies identified within 30 days of the report delivery date shall not be subject to review for three years.

Authority G.S. 62A-42(a)(4); 62A-42(a)(5).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Social Services Commission intends to amend the rules cited as 10A NCAC 10 .0102, .0905, and .1007.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp>

Proposed Effective Date: June 1, 2016

Public Hearing:

Date: March 9, 2016

Time: 10:00 a.m.

Location: Division of Social Services, 820 South Boylan Avenue, Room 151, Raleigh, NC 27603

Reason for Proposed Action: *The North Carolina Social Services Commission and the Division of Child Development and Early Education (DCDEE) proposes to amend rules 10A NCAC*

10 .0102, .0905 and .1007. The amendments to Rule .0102 will define "foster parent" and "homeless children" as they are used in the NC Subsidized Child Care Program. Amendments to Rule .0905 will extend the timeframe for parents to seek employment following a job loss, add transition time between enrollment in job training or educational programs, and allow for job search upon completion of education or depletion of the maximum number of months allowed for education while they are receiving subsidized child care services. Amendments to Rule .1007 will extend the period of eligibility for families receiving subsidized child care services. All but one of the changes are minimal requirements or clarification needed to obtain funds through the Child Care and Development Block Grant Act of 2014 (CCDBG), which is the largest source of federal funding for the North Carolina's Subsidized Child Care program.

Comments may be submitted to: Dedra Alston, 820 South Boylan Avenue, Raleigh, NC 27603, phone 919-527-6502, fax 919-715-0970, email Dedra.Alston@dhhs.nc.gov

Comment period ends: April 1, 2016

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

Fiscal impact (check all that apply).

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

CHAPTER 10 – SUBSIDIZED CHILD CARE RULES

SECTION .0100 - IDENTIFYING AND GENERAL INFORMATION

10A NCAC 10 .0102 DEFINITIONS

For the purpose of this Chapter, unless the context of the rule indicates a different meaning, the terms listed in this Rule are defined as follows:

- (1) "Department" means the Department of Health and Human Services.

- (2) "Director" means the Director of the Division of Child Development and Early Education.
- (3) "Division" means the Division of Child Development and Early Education, Department of Health and Human Services, located at 349 Chapanoke Road, Suite 120, 820 South Boylan Avenue, Raleigh, North Carolina 27603.
- (4) "Foster Parent" means anyone other than that child's parent(s) or legal custodian(s) who is providing full time care for a child who is in the custody of a North Carolina county department of social services.
- (5) "Homeless Children" means the definition in section 725(2) of the McKinney-Vento Homeless Assistance Act, [42 U.S.C. 11434a(2)].
- ~~(4)~~(6) "Local Purchasing Agency" means the local agency responsible for administering the state's subsidized child care program.
- ~~(5)~~(7) "Owner" means any person with a five percent or greater equity interest in a child care center, family child care home, or nonlicensed child care home.
- ~~(6)~~(8) "Private Agency" means a private, for profit or non-profit, non-governmental entity.
- ~~(7)~~(9) "Provider" means the owner of a child care center, family child care home, or nonlicensed child care home.
- ~~(8)~~(10) "Recipient" means the parent or responsible adult approved for subsidized child care services pursuant to Section .1000 of this Chapter.
- ~~(9)~~(11) "Secretary" means the Secretary of the Department of Health and Human Services.
- ~~(10)~~(12) "Subsidized Child Care Program" means the administrative, programmatic and fiscal activities related to the use of public funds to pay for child care services for families.

Authority G.S. 143B-153(2a).

SECTION .0900 - GENERAL POLICIES FOR PROVISION OF SUBSIDIZED CHILD CARE SERVICES

10A NCAC 10 .0905 SUPPORT TO EMPLOYMENT: TRAINING FOR EMPLOYMENT

- (a) Child care services shall be provided to support employment of the child's parents or responsible adult.
- (b) Child care services shall be provided to support training leading to employment of the child's parents or responsible adult.
- (c) Where a parent or responsible adult remains in the home and is capable of providing care for the child, child care services shall not be provided as a support for employment or training. Where it is determined that such parent is incapable of providing care for the child, the reasons for this determination shall be documented in the client record.
- (d) Child care services may be provided when the parent or responsible adult is engaged in gainful employment on either a full-time or part-time basis.

(e) Where the parent or responsible adult is temporarily absent from ~~work-work, training or educational program~~ with arrangements to continue the same employment, training or educational program, child care services shall continue for at least ~~30~~ 90 days. Where an absence from ~~work-work, training or educational program~~ extends beyond ~~30~~ 90 days, the agency responsible for determining eligibility shall determine on the basis of individual circumstances whether child care shall continue beyond that time period. Where child care is continued beyond ~~30~~ 90 days, the reasons for such extension shall be documented in the client's record.

(f) Where a parent is unemployed but is seeking employment, child care services shall be provided for at least ~~30~~ 90 days if the parent is already receiving subsidized child care ~~services~~. ~~services or the parent or responsible adult is enrolled in a job search activity as part of an approved employment/training plan.~~ Continuation of the service may be extended if the agency determines such extension is warranted, provided the reason for the extension is documented in the client's record.

(g) Where a parent no longer attends a training or educational program, child care services shall be provided for at least 90 days to seek employment or resume attendance at a training or educational program if the parent is already receiving subsidized child care services. Continuation of the service may be extended if the agency determines such extension as warranted, provided the reason for the extension is documented in the client's record.

~~(g)~~(h) For purposes of this Rule, training leading to employment shall include the following:

- (1) continuation of high school within the school system;
- (2) basic education or a high school education or its equivalent in community colleges or technical institutes; and
- (3) post secondary education or skills training, up to a maximum of two years enrollment.

Authority G.S. 143B-153.

SECTION .1000 - ELIGIBILITY FOR SERVICES

10A NCAC 10 .1007 REQUIREMENTS FOR DETERMINATION AND REDETERMINATION OF ELIGIBILITY

(a) The Division shall establish the requirements for application and eligibility determination and redetermination for child care services. Eligibility shall be determined initially in accordance with 10A NCAC 10 .0900 and .1000, and annually thereafter unless a change occurs that impacts eligibility. Parents who are employed or in school and whose income is at or below the federal income limit of 85 percent of State Median Income shall not have these activities disrupted during the 12 month eligibility period.

(b) At redetermination, if it is determined that the family exceeds the State's income eligibility limits, the family shall continue to receive subsidized child care services for 90 days if their income is at or below the federal income limit of 85 percent of State Median Income.

Authority G.S. 143B-153.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0347.

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

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: February 24, 2016

Time: 10:00 a.m.

Location: WRC Headquarters 5th floor, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: *The City of Havelock in Craven County made formal application to the WRC requesting a no wake zone on a portion of Slocum Creek, to mitigate hazards to water safety caused by motorboat traffic near the boat ramp interfering with paddle boat enthusiasts who use that part of Slocum Creek. The City of Havelock advertised and held a public hearing and submitted a Resolution, requesting the WRC to promulgate rulemaking.*

Comments may be submitted to: *Betsy Haywood, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone 919-707-0013, email betsy.haywood@ncwildlife.org*

Comment period ends: April 1, 2016

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal impact (check all that apply).

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0347 CRAVEN COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Craven County:

- (1) that portion of Northwest Creek between the entrance buoys at Fairfield Harbour Marina and the mouth of Spring Creek, and to all of Spring Creek, including the bulkheaded area of Fairfield Harbour, in Craven County;
(2) that area of water between the entrance buoys of the Olde Towne Lake, from the Trent River and including all of Olde Towne Lake and the bulkhead area of Olde Towne Harbour itself;
(3) Matthews Point Marina. That triangular portion within 300 feet on either side both sides of and 150 feet straight off of the main pier at Matthews Point Marina located on Clubfoot and Mitchell Creeks, at the end of SR 1711 in the Harlowe area of Craven County;
(4) that area of water within 50 yards of the fuel dock at Eastern Carolina Yacht Club-Club; and
(5) that portion of Slocum Creek in the City of Havelock, shore to shore east of a line from a point on the northern shore at 34.89122 N, 76.92302 W to a point on the southern shore at 34.89102 N, 76.92304 W and extending northeast, shore to shore to a line from a point on the northern shore at 34.8937 N, 76.92109 W to a point on the southeast shore at 34.89358 N, 76.92089 W.

(b) Speed Limit. No person shall operate any vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Green Springs Boys Club Swimming Area - No person shall operate a vessel within the Green Springs Boys Club Swimming Area along the Neuse River as designated by marker buoys and float lines.

(d) Placement and Maintenance of Markers. The Board of Commissioners of Craven County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule, Subparagraphs (1), (2), (3), and (4) of this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

(e) The City of Havelock is hereby designated a suitable agency for placement and maintenance of the markers implementing Subparagraph (5) of this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

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

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16Q .0702 and amend the rule cited as 21 NCAC 16Q .0201.

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

Proposed Effective Date: June 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Contact Mr. Bobby D. White at the Dental Board office at (919) 459-1790 or by email at bwhite@ncdentalboard.org.

Reason for Proposed Action: 21 NCAC 16Q .0201 is proposed for amendment to clarify when a dentist may supervise the delivery of general anesthesia by a CRNA and to clarify the application and evaluation process for applicants for general anesthesia permits. 21 NCAC 16Q .0702 is proposed for adoption to clarify that the Board will inspect locations where general anesthesia and sedation is administered annually for individuals who have held a permit less than five years and that the Board may hold additional inspections of facilities of other permit holders with or without cause.

Comments may be submitted to: Bobby D. White, 2000 Perimeter Park Drive Ste. 160, Morrisville, NC 27560

Comment period ends: April 1, 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

SUBCHAPTER 16Q – GENERAL ANESTHESIA AND SEDATION

SECTION .0200 - GENERAL ANESTHESIA

21 NCAC 16Q .0201 GENERAL ANESTHESIA CREDENTIALS AND PERMIT

~~(a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.~~

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a CRNA to deliver general anesthesia, the dentist shall obtain a general anesthesia permit from the Board by completing an application form and paying a four hundred seventy five dollar (\$475.00) fee. The application form is available on the Board's website: www.ncdentalboard.org. The permit shall be renewed annually and shall be displayed with the current renewal at all times in the permit holder's facility where it is visible to patients receiving treatment.

(b) A dentist applying for a general anesthesia permit shall be in good standing with the Board and shall demonstrate that he or she:

~~(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of one hundred dollars (\$100.00) and produce evidence showing that he or she:~~

- ~~(1) Has completed a minimum of one year two years of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level; or~~
- ~~(2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or~~
- ~~(3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or~~
- ~~(4) Is a Fellow of the American Dental Society of Anesthesiology; or and~~
- ~~(5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.~~
- (5) Has current ACLS certification.

(c) Before receiving a general anesthesia permit, all applicants shall pass an evaluation and inspection as set out in Rule .0202 of

this Section. Every location other than a hospital or a credentialed surgery center where a general anesthesia permit holder administers general anesthesia shall pass an inspection as set out in Rule .0202 of this Section. An additional fee of four hundred seventy five dollars (\$475.00) shall be paid for the inspection of each additional location other than a hospital or credentialed surgery center where a general anesthesia permit holder administers general anesthesia.

~~(e)(d) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit may also authorized to administer any level of sedation without obtaining a separate sedation permit.~~

~~(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age specific equivalent or other Board approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.~~

(e) A dentist who does not hold a general anesthesia permit may not employ a CRNA to deliver anesthesia. A dentist who holds a general anesthesia permit may permit a CRNA to deliver general anesthesia under direct supervision of the dentist.

(f) A general anesthesia permit holder may provide general anesthesia or any level of sedation at the office of another licensed dentist, regardless of the permit, if any, held by the hosting dentist. The permit holder shall ensure that the facility where the general anesthesia or sedation is administered has been inspected and complies with the requirements set out in Rule .0202 of this Section or shall obtain an itinerant general anesthesia permit and comply with the provisions of Rule .0206 of this Section.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0702 INSPECTION AUTHORIZED

(a) The Board may inspect the facility, equipment, auxiliaries, records or procedures of any general anesthesia, itinerant general anesthesia permit holder or sedation permit holder, with or without, cause to ensure compliance with this Subchapter. The inspections shall be conducted in accordance with Rules .0204, .0205, .0303 and .0401 of this Subchapter.

(b) The Board shall inspect every general anesthesia and sedation permit holder's facility and records at least once every five years, in accordance with Rule .0405 of this Subchapter.

(c) The Board shall annually inspect the facility and records of all general anesthesia and sedation permit holders who have held a permit for less than five years.

(d) The Board shall suspend the permit of any general anesthesia, itinerant general anesthesia or sedation permit holder who fails any inspection. No anesthesia or sedation procedures shall be performed at the failed facility site until a re-inspection is performed and a new permit is issued.

(e) The Board shall charge a fee of one hundred dollars (\$100.00) for each inspection conducted pursuant to this Rule.

Authority G.S. 90-28; 90-30.1; 90-48.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on December 17, 2015.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

PESTICIDE BOARD

Notification of Apiaries 02 NCAC 09L .1009* 30:04 NCR

CROP SEED IMPROVEMENT, BOARD OF

Appeal Board 02 NCAC 29B .0103 30:05 NCR

AGRICULTURE, BOARD OF

Recording Flue-Cured Varieties 02 NCAC 48C .0113* 30:05 NCR

Recording Blends 02 NCAC 48C .0115* 30:05 NCR

Intrastate Requirements: Cervidae 02 NCAC 52C .0701* 29:19 NCR

INDUSTRIAL COMMISSION

Location of Main Office and Hours of Business 04 NCAC 10A .0101 30:06 NCR

Electronic Filings with the Commission; How to File 04 NCAC 10A .0108 30:06 NCR

Termination and Suspension of Compensation 04 NCAC 10A .0404* 30:06 NCR

Reinstatement of Compensation 04 NCAC 10A .0405* 30:06 NCR

Compromise Settlement Agreements 04 NCAC 10A .0502* 30:06 NCR

Motions Practice in Contested Cases 04 NCAC 10A .0609* 30:06 NCR

Medical Motions and Emergency Medical Motions 04 NCAC 10A .0609A* 30:06 NCR

Pre-Trial Agreement 04 NCAC 10A .0610 30:06 NCR

Expert Witnesses and Fees 04 NCAC 10A .0613* 30:06 NCR

Attorneys Retained for Proceedings 04 NCAC 10A .0617* 30:06 NCR

MEDICAL CARE COMMISSION

Nurse Aide I Training and Competency Evaluation 10A NCAC 13O .0301* 30:03 NCR

RADIATION PROTECTION COMMISSION

Communications 10A NCAC 15 .0111* n/a G.S. 150B-21.5(a)(4)

Operating Requirements 10A NCAC 15 .0805* n/a G.S. 150B-21.5(a)(5)

COSMETIC ART EXAMINERS, BOARD OF

First Aid 21 NCAC 14H .0404* 29:24 NCR

Systems of Grading Beauty Establishments 21 NCAC 14H .0504* 29:24 NCR

Rule Compliance and Enforcement Measures 21 NCAC 14H .0505 29:24 NCR

All Cosmetic Art Schools 21 NCAC 14T .0201* 29:24 NCR

Natural Hair Care Schools 21 NCAC 14T .0205* 29:24 NCR

<u>Equipment for Cosmetology Schools</u>	21	NCAC 14T .0302*	30:04	NCR
<u>Equipment for Esthetics Schools</u>	21	NCAC 14T .0303*	30:04	NCR
<u>Equipment for Manicuring Schools</u>	21	NCAC 14T .0304*	30:04	NCR
<u>Equipment for Natural Hair Care Styling Schools</u>	21	NCAC 14T .0305*	29:24	NCR
<u>Cosmetic Art Curricula</u>	21	NCAC 14T .0601*	29:24	NCR
<u>Cosmetology Curriculum</u>	21	NCAC 14T .0602*	29:24	NCR
<u>Apprentice Cosmetology Curriculum</u>	21	NCAC 14T .0603*	29:24	NCR
<u>Esthetics Curriculum</u>	21	NCAC 14T .0604*	29:24	NCR
<u>Manicuring Curriculum</u>	21	NCAC 14T .0605*	29:24	NCR
<u>Natural Hair Care Curriculum</u>	21	NCAC 14T .0606*	29:24	NCR
<u>Cosmetology Teacher Trainee Curriculum</u>	21	NCAC 14T .0607*	29:24	NCR
<u>Esthetic Teacher Trainee Curriculum</u>	21	NCAC 14T .0608*	29:24	NCR
<u>Manicurist Teacher Trainee Curriculum</u>	21	NCAC 14T .0609*	29:24	NCR
<u>Natural Hair Care Teacher Curriculum</u>	21	NCAC 14T .0610*	29:24	NCR
<u>Instruction Guidelines</u>	21	NCAC 14T .0612*	29:24	NCR
<u>School Operations/Licensure Maintenance</u>	21	NCAC 14T .0701*	29:24	NCR
<u>School Performance Requirements</u>	21	NCAC 14T .0705*	29:24	NCR

IRRIGATION CONTRACTORS LICENSING BOARD

<u>Continuing Education</u>	21	NCAC 23 .0104*	30:03	NCR
<u>Conduct of Hearing</u>	21	NCAC 23 .0206*	30:03	NCR
<u>Decision of Board</u>	21	NCAC 23 .0207	30:03	NCR
<u>Components and Zone Designs</u>	21	NCAC 23 .0406*	30:03	NCR
<u>Trenching and Piping</u>	21	NCAC 23 .0505*	30:03	NCR

MEDICAL BOARD

<u>Reentry to Active Practice</u>	21	NCAC 32B .1370*	30:06	NCR
<u>Application for Resident's Training License</u>	21	NCAC 32B .1402*	30:06	NCR
<u>Qualifications and Requirements for License</u>	21	NCAC 32S .0202*	30:06	NCR

SOIL SCIENTISTS, BOARD FOR LICENSING OF

<u>Fees</u>	21	NCAC 69 .0104	30:02	NCR
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TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 09L .1009 NOTIFICATION OF APIARIES

(a) Any person who hires the services of an aerial applicator to apply a pesticide labeled as toxic to bees, shall notify, based on available listings of registered apiaries, the owner or operator of any registered apiary located within one mile of the target area not less than 48 hours nor more than 10 days prior to the beginning of a single application or a seasonal spray schedule, giving the approximate time of day of application and type of pesticide to be used.

(b) "Notification" for the purposes of this Paragraph is defined as follows:

- (1) written communication by:

- (a) U.S. mail,
- (b) Notification left at residence, or
- (c) Notification left at alternate address as designated on the honeybee registration list.
- (2) oral communication by:
 - (a) telephone,
 - (b) personal communication, or
 - (c) verbal communication with an alternate person as designated on the honeybee registration list.
- (3) digital communication by:
 - (a) electronic mail or
 - (b) instant cellular text messaging.

(c) The Pesticide Section shall distribute new registrations of beekeepers and their alternates by U.S. mail on the first of each quarter (January 1, April 1, July 1, and October 1) to all farmers growing crops within one mile of the apiaries that are identified on the "Apiary Registration Form" of the Plant Industry Division. The list of revised registered apiaries shall become effective on the fifth day of the first month in the quarter stated in this Rule. The registration of apiaries shall be effective for the calendar year that they are registered.

History Note: Authority G.S. 143-443(b)(4); 143-458; 143-463; 143-466; Eff. January 1, 1985; Amended Eff. January 1, 2016.

02 NCAC 29B .0103 APPEAL BOARD

History Note: Authority G.S. 106-276; Eff. February 1, 1976; Repealed Eff. January 1, 2016.

02 NCAC 48C .0113 RECORDING FLUE-CURED VARIETIES

(a) It shall be the duty of the Commissioner to accept annually for the purpose of recording only the flue-cured tobacco varieties that have been declared by the Tobacco Seed Committee (as identified in 02 NCAC 48C .0116) to have been identified as carrying the true characteristics of the variety, based on the evidence presented by each grower of each variety being recorded. The recording shall be made prior to December 1 preceding each growing season, using the same designation for each variety that was used when the variety was first sold, offered, exposed for sale, or recorded officially with an agency responsible for the enforcement of a state seed law.

(b) The Commissioner shall refuse to accept for recording any flue-cured tobacco variety, by any grower or distributor, that has not been declared by the Tobacco Seed Committee to be identified. Nothing in this Rule shall be interpreted to prohibit two or more persons recording a variety if the same designation is used for the variety by all persons recording.

History Note: Authority G.S. 106-277.15; Eff. February 1, 1976; Transferred from T02.11C Eff. January 1, 1985; Amended Eff. January 1, 2016.

02 NCAC 48C .0115 RECORDING BLENDS

(a) It shall be the duty of the Commissioner of Agriculture to accept for the purpose of recording any combination of varieties identified with a "blend" designation as identified in G.S. 106-277.2(2f).

(b) The request for recording shall be supported by an affidavit stating the component varieties and research information that shows an advantage of the "blend" over the singular use of either component variety. Each lot of seeds offered under the same

blend designation shall always be made up in the same percentage of each variety.

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

History Note: Authority G.S. 106-277.15; Eff. February 1, 1976; Transferred from T02.11C Eff. January 1, 1985; Amended Eff. January 1, 2016.

02 NCAC 52C .0701 INTRASTATE REQUIREMENTS: CERVIDAE

(a) Cervidae that originate from herds containing cervidae only may be sold within North Carolina, if they test negative for tuberculosis within 60 days of change of ownership.

(b) Cervidae that are commingled with domestic livestock may be sold within North Carolina provided that domestic cattle are tested annually, and all cervidae and bovidae other than domestic cattle and bison are tested negative for tuberculosis within 60 days prior to moving intrastate.

(c) Cervidae owners shall maintain records showing:

- (1) date and source of new additions to the herd;
- (2) date of deaths of cervidae and copy of laboratory report on cause of death; and
- (3) date of sale or other disposition of any animal from a herd containing cervidae and the name and address of person who received the animal.

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

(d) All captive cervidae of any species 12 months of age or older that die of any cause shall be tested for Chronic Wasting Disease. The animal's head shall be submitted to a USDA-approved laboratory for testing. Information about USDA approved laboratories may be found by calling the USDA-APHIS Customer Service Call Center at 1-844-820-2234. A copy of the laboratory report shall be sent to the State Veterinarian - 1030 Mail Service Center, Raleigh, North Carolina 27699.

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

History Note: Authority G.S. 106-317; 106-400; Eff. July 1, 1998; Amended Eff. August 1, 2004; August 1, 2002; Amended Eff. January 1, 2016.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 10A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The main office of the North Carolina Industrial Commission is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

History Note: Authority G.S. 97-80(a); Eff. January 1, 1990; Amended Eff. January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.

04 NCAC 10A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission which requires contemporaneous payment of a processing fee pursuant to Rule 04 NCAC 10E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to claimants and employers without legal representation. Claimants and employers without legal representation may file documents with the Commission via EDFP, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) All documents listed in Table 1 below shall be transmitted to the Commission via the Commission's Electronic Document Filing Portal ("EDFP"). Information regarding how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents listed in Table 1 below shall be sent to the Commission via electronic mail to edfp@ic.nc.gov. Documents listed in Table 1 below which are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

Table 1: Documents to be filed via EDFP

Appeal of Administrative Order to Full Commission
Appeal of Medical Motion Order to Full Commission
Appeal of Opinion and Award of Deputy Commissioner
Appeal of Order of Executive Secretary (Non-Medical)
Attorney Representation Letter
Brief to the Full Commission
Brief or Contentions
Compromise Settlement Agreement
Confirmation of Scheduling of Mediation
Court of Appeals – Notice of Appeal
Deposition
Form 18M
Form 21
Form 23 Application
Form 23 Response

Form 23 Additional Documentation
Form 24 Application
Form 24 Response
Form 24 Additional Documentation
Form 26
Form 26A
Form 33
Form 33R
Form 44
MSC2
MSC4
MSC5
Pre-trial Agreement
Notice of Scheduled Mediation

Transcripts of depositions shall be filed with the Commission pursuant to this Paragraph by the court reporting service. The transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the court reporting service with the information necessary to effectuate electronic filing of the deposition transcripts and attached exhibits. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(c) The workers' compensation forms listed in Table 2 below and all other documents to be filed with the Commission's Claims Administration Section shall be sent to the Commission via electronic mail to forms@ic.nc.gov.

Table 2: Forms to be filed via electronic mail to forms@ic.nc.gov

Form 18
Form 18B
Form 26D
Form 28
Form 28B
Form 28C
Form 28T
Form 29
Form 30
Form 30A
Form 30D
Form 31
Form 60
Form 61
Form 62
Form 63

(d) Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) below:

- (1) Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter shall be filed

via electronic mail to medicalmotions@ic.nc.gov.

- (2) Motions or notices filed with the Office of the Executive Secretary pursuant to Rule .0609(b) of this Subchapter and any other documents to be filed with the Office of the Executive Secretary which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to execsec@ic.nc.gov.
- (3) Motions before a Deputy Commissioner filed pursuant to Rule .0609(a) of this Subchapter and any other documents to be filed with a Deputy Commissioner which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to deputy@ic.nc.gov.
- (4) Motions before the Full Commission filed pursuant to Rule .0609(c) of this Subchapter and any other documents to be filed with the Full Commission which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fullcommission@ic.nc.gov.
- (5) Motions and any other documents to be filed with the Commission's Claims Administration Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to forms@ic.nc.gov.
- (6) Documents to be filed with the Commission's Docket Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to dockets@ic.nc.gov.
- (7) Documents to be filed with the Commission's Mediation Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to mediation@ic.nc.gov.
- (8) Documents to be filed with the Commission's Compliance & Fraud Investigative Division which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fraudcomplaints@ic.nc.gov.
- (9) Documents to be filed with the Commission's Medical Fees Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to medicalfees@ic.nc.gov.
- (10) Documents to be filed with the Commission's Safety Education & Training Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to safety@ic.nc.gov.
- (11) Forms 25N to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to 25n@ic.nc.gov. Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to rehab.referrals@ic.nc.gov.

(e) A one-year waiver shall be granted to a self-insured employer, carrier, third-party administrator, or law firm that notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall

indicate why the entity is unable to comply with the rule and outline its plan for coming into compliance within the one-year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S Mail.

(f) A self-insured employer, carrier, third-party administrator, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems and/or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

*History Note: Authority G.S. 97-80;
Eff. February 1, 2016.*

**04 NCAC 10A .0404 TERMINATION AND
SUSPENSION OF COMPENSATION**

(a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

(b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:

- (1) the date of injury or accident and date the disability began;
- (2) the nature and extent of injury;
- (3) the number of weeks of compensation paid and the date range(s) during which such compensation was paid;
- (4) the total amount of indemnity compensation paid to date;
- (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
- (6) whether the application is made to terminate or suspend compensation and the grounds; and
- (7) whether the employee is in managed care.

(c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by first class mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document Filing Portal in accordance with Rule .0108 of this Subchapter, and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by first class mail.

(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.

(e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule .0702 of this Subchapter.

(f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of record. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier, or administrator may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

(g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or application for review to the Full Commission pursuant to G.S. 97-85.

(h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue an Administrative Decision and Order to that effect that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

(i) The Commission shall send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation by certified mail.

(j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation* hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation* without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

(k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

History Note: Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);

*Eff. January 1, 1990;
Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000;
March 15, 1995.*

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record on a Form 23 *Application to Reinstate Payment of Disability Compensation* or by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documents shall be filed with the Commission in accordance with Rule .0108 of this Subchapter, and a copy of the Form 23 and attached documents shall contemporaneously be sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 *Application to Reinstate Payment of Disability Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of Disability Compensation* and file it with the Commission in accordance with Rule .0108 of this Subchapter and send a copy contemporaneously to the employee or the employee's attorney of record.

(c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documentation and, without an informal hearing, issue an Administrative Decision and Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be issued within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstate Payment of Disability Compensation*. Either party may seek review of the Administrative Decision and Order as provided by Rule .0702 of this Subchapter.

(d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation*

unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, which shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary within 30 days of the date of the Administrative Decision or Order. The effect of placing the case on the docket shall be the same as if the Form 23 *Application to Reinstate Payment of Disability Compensation* was denied, and compensation shall not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

*History Note: Authority G.S. 97-18(k); 97-80(a);
Eff. January 1, 1990;
Amended Eff. February 1, 2016; November 1, 2014.*

04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS

(a) The Commission shall not approve a compromise settlement agreement unless it contains the following information:

- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
- (2) The employer, carrier, or administrator will pay all costs incurred.
- (3) No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
- (4) The employee has, or has not, returned to a job or position at the same or a greater average

weekly wage as was being earned prior to the injury or occupational disease.

- (5) Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, the employee has, or has not, returned to some other job or position and, if so, the description of the particular job or position, the name of the employer, and the average weekly wage earned. This Subparagraph does not apply where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.
 - (6) Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, a summary of the employee's age, educational level, past vocational training, past work experience, and any emotional, mental, or physical impairment that predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of:
 - (A) unreasonable burden upon the parties;
 - (B) the employee is represented by counsel; or
 - (C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.
- (b) No compromise settlement agreement shall be considered by the Commission unless the following requirements are met:
- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
 - (2) The parties and all attorneys of record have signed the agreement.
 - (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
 - (4) The settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.
 - (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses that the

employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.

- (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify in writing the unpaid health care provider of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:
 - (A) when the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment, or
 - (B) when the unpaid health care provider has notified in writing the employee's attorney of its claim for payment for the costs of medical treatment and has requested notice of a settlement.
- (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
- (8) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.
 - (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be directed to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs (a) through (c) of Rule .0609 of this Subchapter.
 - (d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.
 - (e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission a copy of the fee agreement with the client.

History Note: Authority G.S. 97-17; 97-80(a); 97-82; Eff. January 1, 1990; Amended Eff. February 1, 2016; November 1, 2014; August 1, 2006; June 1, 2000; March 15, 1995.

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

- (a) Motions and responses before a Deputy Commissioner:

- (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be filed in accordance with Rule .0108 of this Subchapter.
 - (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be addressed to the Deputy Commissioner who authored the Opinion and Award and filed in accordance with Rule .0108 of this Subchapter.
- (b) Motions and responses shall be filed with the Office of the Executive Secretary in accordance with Rule .0108 of this Subchapter:
- (1) when a case is not calendared before a Deputy Commissioner;
 - (2) once a case has been continued or removed from a Deputy Commissioner's calendar; or
 - (3) after the filing of an Opinion and Award when the time for taking appeal has run.
- (c) Motions and responses before the Full Commission:
- (1) in cases calendared for hearing before the Full Commission shall be addressed to the Chair of the Full Commission panel and filed in accordance with Rule .0108 of this Subchapter.
 - (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be addressed to the Chair of the Commission and filed in accordance with Rule .0108 of this Subchapter.
 - (3) in cases continued from the Full Commission hearing docket, shall be addressed to the Chair of the panel of Commissioners who ordered the continuance and filed in accordance with Rule .0108 of this Subchapter.
 - (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be addressed to the Commissioner who authored the Opinion and Award and filed in accordance with Rule .0108 of this Subchapter.
- (d) Motions and responses thereto shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief will not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.
- (e) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.
- (f) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion from the moving party.
- (g) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of a response in opposition to the motion. The Commission may shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy.
- (h) A party who has not received actual notice of a motion or who has not filed a response at the time action is taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral argument unless the Commission determines that oral argument is necessary for a complete understanding of the issues.
- (i) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case, with the exception of the following:
- (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the Commission's instructions;
 - (2) written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case such as a request for a continuance due to the health of a litigant or an attorney;
 - (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing party, if unrepresented; and
 - (4) any other communication permitted by law or the Rules of the Commission.
- (j) All motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered by the Commission.

History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91; Eff. January 1, 1990; Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.

04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

- (a) Medical motions brought pursuant to G.S. 97-25 and responses thereto shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted electronically to medicalmotions@ic.nc.gov. Motions and responses shall be submitted contemporaneously to the Commission and the opposing party or opposing party's counsel, if represented.
- (b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.
- (c) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained by a party

to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation in accordance with Rule .0108 of the Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

(d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain the following:

- (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly underneath the case caption clearly indicating the request is for either an administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
- (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of employee's counsel;
- (3) the employer's name and employer code;
- (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, to the extent available, email address;
- (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer and carrier has not been retained;
- (6) if an attorney has been retained for the employer or carrier, the attorney's name, email address, telephone number, and fax number;
- (7) a statement of the treatment or relief requested;
- (8) a statement of the medical diagnosis of the employee and the name of any health care provider having made a diagnosis or treatment recommendation that is the basis for the motion;
- (9) a statement as to whether the claim has been admitted on a Form 60, *Employer's Admission of Employee's Right to Compensation*, Form 63, *Notice to Employee of Payment of Compensation without Prejudice (G.S. 97-18(d))* or *Payment of Medical Benefits Only without Prejudice (G.S. 97-2(19) & 97-25)*, Form 21, *Agreement for Compensation for Disability*, or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
- (10) a statement of the time-sensitive nature of the request, if any;
- (11) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
- (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the employee has made a prior written request to the defendants for the

examination, as well as the date of the request and the date of the denial, if any;

- (13) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known; and
- (14) a proposed Order in Microsoft Word format.

(e) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:

- (1) a boldface or otherwise emphasized designation as "Emergency Medical Motion";
- (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of the employee's counsel;
- (3) the employer's name and employer code, if known;
- (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if available, email address;
- (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer/carrier has not been retained;
- (6) the counsel for employer/carrier's name, email address, telephone number, and fax number;
- (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
- (8) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended relief is not provided emergently;
- (9) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
- (10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known;
- (11) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
- (12) a proposed Order in Microsoft Word format.

(f) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary.

(g) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request

for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.

(h) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Section and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts, briefs, and proposed Opinion and Awards filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.

(i) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by filing notice of appeal to the Full Commission within 15 calendar days of receipt of the decision in accordance with Rule .0108 of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the Commission within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

(j) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner's or the Chief Deputy Commissioner's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

(k) Claimants and employers without legal representation are not required to file documents via electronic transmission and may file documents with the Commission via EDPF, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;

Eff. January 1, 2011;

Amended Eff. February 1, 2016; November 1, 2014.

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and filed with the Commission in accordance with Rule .0108 of this Subchapter 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties.

(b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if required in the interests of justice or to promote judicial economy. Should the parties thereafter comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy Commissioner who removed the case from the docket and filed in accordance with Rule .0108 of this Subchapter. The Commissioner or Deputy Commissioner shall order the case returned to the hearing as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 *Request that Claim be Assigned for Hearing* is required.

(c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

(d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been calendared.

History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;

Eff. January 1, 1990;

Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995.

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

(a) The parties shall file with the Deputy Commissioner or Commissioner in accordance with Rule .0108 of this Subchapter within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, file with the Deputy Commissioner or Commissioner in accordance with Rule .0108 of this Subchapter a request to approve the costs related to the expert deposition. In these

requests, the party shall provide, in a cover letter along with the invoice (if available), the following:

- (1) the name of the expert and the expert's practice;
- (2) the expert's fax number;
- (3) the expert's area of specialty and board certifications, if any;
- (4) the length of the deposition;
- (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with parties' counsel;
- (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an exceptional, unique, or complex injury or disease;
- (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be deposed at employer's expense; and
- (8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

(c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable.

(d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee granted in the Order.

(e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the interest of justice and judicial economy.

(f) This Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the contractual fee of the expert.

History Note: Authority G.S. 97-26.1; 97-80(a); 97-80(d); Eff. January 1, 1990; Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

(a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its

behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.

(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing, a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.

(c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.

(d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.

(e) Motions to Withdraw shall be submitted in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of any pro se party or the contact information of new counsel if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

History Note: Authority G.S. 97-80(a); 97-90; 97-91; Eff. January 1, 2011; Amended Eff. February 1, 2016; November 1, 2014.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 130 .0301 NURSE AIDE I TRAINING AND COMPETENCY EVALUATION

(a) To be eligible to be listed on the NC Nurse Aide I Registry by the Health Care Personnel Education and Credentialing Section, a person shall pass a Nurse Aide I training program approved by the Department in accordance with 42 CFR Part 483.151 through Part 483.152 and the State of North Carolina's Nurse Aide I competency exam.

(b) This Rule incorporates 42 CFR Part 483 Subpart D by reference, including all subsequent amendments and editions. Copies of the Code of Federal Regulations may be accessed electronically free of charge from www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

(c) The State of North Carolina's Nurse Aide I competency exam shall include each course requirement specified in the Department-approved Nurse Aide I training program as provided for in 42 CFR Part 483.152.

(d) The State of North Carolina's Nurse Aide I competency exam shall be administered and evaluated only by the Department or its contracted testing agent as provided for in 42 CFR Part 483.154.

(e) The Department shall include a record of completion of the State of North Carolina's Nurse Aide I competency exam in the

NC Nurse Aide I Registry within 30 business days of passing the written or oral exam and the skills demonstration as provided for in 42 CFR Part 483.154.

(f) If the State of North Carolina's Nurse Aide I competency exam candidate does not pass the written or oral exam and the skills demonstration as provided for in 42 CFR Part 483.154, the candidate shall be advised by the Department of the areas that the individual did not pass.

(g) Every North Carolina's Nurse Aide I competency exam candidate shall have, as provided for in 42 CFR Part 483.154, the opportunity to take the exam three times before being required to retake and pass a Nurse Aide I training program.

(h) A person who is currently listed on any state's Nurse Aide I Registry shall not be required to take the Department-approved Nurse Aide I training program to be listed or, if his or her 24-month listing period has expired, relisted on the NC Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

(i) U.S. military personnel who have completed medical corpsman training and retired or non-practicing nurses shall not be required to take the Department-approved Nurse Aide I training program to be listed or relisted on the Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

History Note: Authority G.S. 131E-255; 42 CFR Part 483; Eff. January 1, 2016.

10A NCAC 15 .0111 COMMUNICATIONS

(a) Except as provided in Paragraph (b) of this Rule, all communications and reports concerning these Rules and applications filed thereunder shall be mailed to the agency at Radiation Protection Section, 1645 Mail Service Center, Raleigh, North Carolina 27699-1600 or delivered to the agency at its office located at 5505 Creedmoor Road, Suite 100, Raleigh, North Carolina 27612.

(b) Except as specifically instructed otherwise by the agency, immediate telephone notification and reports required by the rules in this Chapter shall be directed to (919) 814-2250 from 8:00 a.m. to 5:30 p.m. on business days.

History Note: Authority G.S. 104E-7; Eff. February 1, 1980; Amended Eff. June 1, 1989; Transferred and Recodified from 10 NCAC 3G .2212 Eff. January 4, 1990; Amended Eff. August 1, 2002; April 1, 1999; May 1, 1993; May 1, 1992; Transferred and Recodified from 15A NCAC 11 .0805 Eff. February 1, 2015; Amended Eff. January 1, 2016.

10A NCAC 15 .0805 OPERATING REQUIREMENTS

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

(b) Normal operating procedures shall be written and available to all RGD operators and support staff.

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

(d) No individual shall bypass a safety device unless the person has obtained the approval of the person responsible for radiation safety or the RSO. This process shall be incorporated into the radiation protection program by the RSO, as set forth in Rule .1603(a), and the operating procedures as set forth in Rule .0603(a)(1)(B). The written approval, as granted by the RSO, shall include an expiration date. When a safety device has been bypassed, a legible sign bearing the words "SAFETY DEVICE NOT WORKING" or words having a similar meaning shall be placed on the radiation source housing and the control panel during the bypassing period.

(e) Prior to an individual modifying the:

- (1) x-ray tube system, resulting in the removal of tube housings, covers, or shielding materials;
- (2) shutters;
- (3) collimators; or
- (4) beam stops

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

(f) Safety devices including interlocks, shutters, and warning lights shall be tested once annually for proper operation on all RGDs in operation. Records of the testing shall be retained by the registrant for three years.

(g) No individual shall hold a sample or object while it is being irradiated.

History Note: Authority G.S. 104E-7; 104E-12; Eff. February 1, 1980; Transferred and Recodified from 15A NCAC 11 .0805 Eff. February 1, 2015; Amended Eff. January 1, 2016; October 1, 2015.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14H .0404 FIRST AID

(a) Each cosmetic art shop and school shall have antiseptics, gloves or finger guards, sterile bandages, and other necessary supplies available to provide first aid.

(b) If the skin of the licensee or student is punctured, the licensee or student shall immediately do the following in this order:

- (1) Apply protective gloves to remove materials from first aid kit;
- (2) Cleanse injured area with antiseptic (e.g. alcohol, hand sanitizer);
- (3) Apply a sterile bandage;
- (4) Disinfect any implement exposed to blood per Rule .0403 in this Section;
- (5) Dispose of all contaminated supplies in a zip lock bag then place in the trash;

- (6) Wash hands with soap and running water; and
 - (7) Apply disposable, protective gloves or a finger guard.
- (c) If the skin of the patron is punctured, the licensee or student shall immediately do the following in this order:
- (1) Apply protective gloves to remove materials from first aid kit;
 - (2) Make first aid supplies available to the patron or assist the patron with:
 - (a) Cleansing injured area with antiseptic (e.g. alcohol, hand sanitizer)
 - (b) Applying a sterile bandage;
 - (3) Disinfect any implement exposed to blood per Rule .0403 in this Section;
 - (4) Dispose of all contaminated supplies in a zip lock bag then place in the trash;
 - (5) Wash hands with soap and running water; and
 - (6) Put on disposable, protective gloves or a finger guard.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. January 1, 2016.

21 NCAC 14H .0504 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in this subchapter shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

Sanitation	Point Value
Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.	2
Each licensee and student shall wear clean garments and shoes while serving patrons.	2
The cosmetic art facility shall be kept clean.	3
Waste material shall be kept in receptacles with a disposable liner.	4
All doors and windows shall be kept clean.	2
Furniture, equipment, floors, walls, ceilings and fixtures shall be clean and in good repair.	3
Clean protective capes, drapes, linens, and towels shall be used for each patron.	3
After a cape, drape, linen, or towel has been in contact with a patron's skin, it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer.	5
Any paper or nonwoven protective drape or covering shall be discarded after one use.	2
There shall be a supply of clean protective drapes, linens and towels at all times.	2

Clean drapes, capes, linens, and towels shall be stored in a clean area.	5
Bathroom facilities shall be kept clean.	3
All implements shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.	2
All implements shall be disinfected per Rule .0404 of this Subchapter.	10
All disinfected electrical implements shall be stored in a clean area.	2
Disposable and porous implements and supplies shall be discarded after use or upon completion of the service.	10
Any product that comes into contact with the patron shall be discarded upon completion of the service.	3
Disinfected implements shall be kept in a clean closed cabinet or clean closed container and shall not be stored with any implement or item that has not been disinfected.	10
Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.	1
The presence of animals or birds as prohibited in Rule .0402 of this Subchapter. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.	1
All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin shall be kept in clean, closed containers and dispensed in a sanitary manner. No product dispensed in portions shall be returned to the container.	10
After each patron's use each whirlpool or footspa shall be cleaned and disinfected.	10
The water in a vaporizer machine shall be emptied daily and the unit disinfected daily.	2
The area where services are performed that come in contact with the patron's skin including chairs, tables, and beds shall be disinfected between patrons.	3

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-26;
Eff. April 1, 2012;
Amended Eff. August 1, 2014;
Readopted Eff. January 1, 2016.

21 NCAC 14H .0505 RULE COMPLIANCE AND ENFORCEMENT MEASURES

(a) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of three hundred dollars (\$300.00) per container of product or piece of equipment:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; or

- (2) razor-type callus shavers designed and intended to cut growths of skin including skin tags, corns, and calluses.
- (b) The use of or possession of the following in a school or shop shall result in civil penalty in the amount of one hundred dollars (\$100.00) per use or possession:
 - (1) animals including insects, fish, amphibians, reptiles, birds, or non-human mammals to perform any service; or
 - (2) variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.
- (c) The action of any student or licensee to violate the Board rules in the following manner shall result in civil penalty in the amount of one hundred dollars (\$100.00) per instance of each action:
 - (1) use of any product, implement, or piece of equipment in any manner other than the product's, implement's, or equipment's intended use as described or detailed by the manufacturer;
 - (2) treatment of any medical condition unless referred by a physician;
 - (3) use of any product that will penetrate the dermis;
 - (4) provision of any service unless trained prior to performing the service;
 - (5) performance of services on a client if the licensee has reason to believe the client has any of the following:
 - (A) fungus, lice, or nits;
 - (B) inflamed infected, broken, raised, or swollen skin or nail tissue in the area to be worked on; or
 - (C) an open wound or sore in the area to be worked on; or
 - (6) alteration of or duplication of a license issued by the Board;
 - (7) advertisement or solicitation of clients in any form of communication in a manner that is false or misleading; or
 - (8) use of any FDA rated Class II device without the documented supervision of a licensed physician.
- (d) The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as required by this Subchapter including the date, time, reason, and name of the staff member who performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.
- (e) The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this Subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.
- (f) The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, and sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.

- (g) The failure to maintain a sink with hot and cold running water in the clinic area, separate from restrooms, shall result in civil penalty in the amount of one hundred dollars (\$100.00).
- (h) The failure to provide ventilation at all times in the areas where patrons are serviced in cosmetic art shops shall result in civil penalty in the amount of twenty-five dollars (\$25.00).
- (i) The failure to screen all doors and windows open for ventilation shall result in civil penalty in the amount of twenty-five dollars (\$25.00).
- (j) The failure to maintain equipment and supplies necessary to perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).
- (k) The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).
- (l) Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any one individual, shop, or school shall result in a mandatory disciplinary hearing in accordance with 21 NCAC 14C.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27; 88B-29; Eff. April 1, 2012; Amended Eff. August 1, 2014; Readopted Eff. January 1, 2016.

21 NCAC 14T .0201 ALL COSMETIC ART SCHOOLS

- (a) Cosmetology schools must have the following physical departments:
 - (1) Practice Department – a minimum of 200 square feet with a table or tables and or stands to accommodate at least 10 students and have at least 40 inches between each mannequin. Cosmetic art schools must provide an additional 5 square feet in the practice department for each student over the maximum of 10. This area shall have at least one mirror of a minimum of two square feet.
 - (2) Clinic Department – the clinic floor for performance of all cosmetic art services. Within the clinic area each school shall have:
 - (A) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
 - (B) 24 inches from the center of the chair forward;
 - (C) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
 - (D) at least 30 inches of space from the back of each styling chair, esthetics table to the wall of the school.
 - (3) Dispensary – a room or area to organize and maintain supplies, equipment for disinfection of all implements and a sink with hot and cold running water. All cosmetic art schools must have the required equipment to carry out

- (4) disinfection procedures per 21 NCAC 14H .0404;
 - (4) Theory classroom – classroom with a minimum of 300 square feet to accommodate a maximum of 25 students. Cosmetic art schools must provide an additional 8 square feet in the theory classroom for each student over the maximum of 25;
 - (5) Office – administrative office for the secure and locked facilitation of student records and files. This office shall be outfitted with a minimum of one desk and one chair;
 - (6) Reception area – a reception area for clients to wait prior to receiving services;
 - (7) Break room for student use;
 - (8) Restrooms for student and public use;
 - (9) Locker or dressing room – a locker or room for students to secure and lock personal belongings throughout the day; and
 - (10) All stations as defined in Rule .0302 of this Subchapter must be numbered numerically.
- (b) Manicuring, esthetics and natural hair care schools must have the following physical departments:
- (1) Clinic Department – the clinic floor for performance of all cosmetic art services. Within the clinic area each school shall have:
 - (A) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
 - (B) 24 inches from the center of the chair forward;
 - (C) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
 - (D) at least 30 inches of space from the back of each styling chair or esthetics table to the wall of the school.
 - (2) Dispensary – a room or area to organize and maintain supplies, equipment for disinfection of all implements and a sink with hot and cold running water. All cosmetic art schools shall have the required equipment to carry out disinfection procedures per 21 NCAC 14H .0404;
 - (3) Theory classroom – a room or area with equipment for theory training appropriate to both practical and theory learning including desks and chairs.
 - (4) Office – administrative office for the secure and locked facilitation of student records and files. This office shall be outfitted with a minimum of one desk and one chair;
 - (5) Reception area – a reception area for clients to wait prior to receiving services;
 - (6) Break room for student use;
 - (7) Restrooms for student and public use;
 - (8) Locker or dressing room – a locker or room for students to secure/lock personal belongings throughout the day; and
 - (9) All stations must be numbered numerically.
 - (c) Each cosmetic art school must display a sign in a conspicuous place in the reception area. The sign cannot be smaller than 12 inches by 18 inches, with lettering at least one and one half inches in size and must read as follows: "Cosmetic Art School Work Done Exclusively by Students."
 - (d) Each of the requirements listed within this Rule must be located within the same building with the exception of the theory classroom which may be located in an adjacent building or another building within 500 feet of the main cosmetic art building.
 - (e) All Cosmetic Art schools must post hours of operation per cosmetic art discipline and submit this information to the Board. Any changes to the hours of operation must be posted and submitted to the Board. A school shall be considered open by the Board when cosmetic art instruction, services or performances are provided.
 - (f) Cosmetic art schools may not offer student hours or performances unless they are in compliance with Paragraph (a) of this Rule.
 - (g) All cosmetic art schools must adhere to any federal, state and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work.
 - (h) All cosmetic art schools must maintain a ventilation system in good working order with temperature control. During school operating hours the temperature must be maintained between 60 and 85 degrees Fahrenheit.
 - (i) All equipment in cosmetic art schools shall be in working order; kept in safe repair; and installed in such a manner as to facilitate proper usage.
 - (j) All cosmetic art school buildings shall be maintained. Maintenance includes the safe and working condition of the physical building, furniture, equipment and supplies.
 - (k) All cosmetic art schools must maintain a bulletin board in plain sight of the clinic floor. The bulletin board shall be used to display at all times the Board sanitation rules in 21 NCAC 14H and the sanitation grade card issued to the school.
 - (l) All cosmetic art schools must post together the school letter of approval, the school license and all cosmetic art licenses issued to the teachers on staff.
 - (m) Each room in a cosmetic art school must be labeled according to its assigned purpose.
 - (n) Each theory classroom shall be equipped with desks or chairs suitable for classroom work and one chair suitable for demonstrating cosmetic art practices.
 - (o) When a school and a shop are under the same ownership:
 - (1) separate operation of the shop and school shall be maintained;
 - (2) if the school and shop are located in the same building, separate entrances and visitor reception areas shall be maintained; and
 - (3) the school and shop shall have separate public information releases, advertisements, names and advertising signs.
 - (p) A cosmetic art school must maintain space and equipment appropriate to both practical and theory learning including desks

and chairs, and station requirements so that each student in attendance has a location within which to complete assigned tasks.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. January 1, 2016.

21 NCAC 14T .0205 NATURAL HAIR CARE SCHOOLS

Natural Hair Care Styling Schools shall have a Clinic Department with a minimum clinic floor of 600 square feet for a maximum of 16 enrolled students. Schools shall provide an additional 7.5 square feet of clinic floor for each enrolled student over 16.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Amended Eff. October 1, 2012;
Readopted Eff. January 1, 2016.

21 NCAC 14T .0302 EQUIPMENT FOR COSMETOLOGY SCHOOLS

(a) The practice department in a cosmetology school shall be equipped with the following equipment:

- (1) One manicure table and stool;
- (2) One shampoo bowl and chair.
- (3) Thermal styling equipment for the purpose of curling and straightening hair;
- (4) Visual aids; and
- (5) One mannequin practice table or stand to accommodate each student in the practice department.

(b) The clinic department in a cosmetology school shall be equipped with the following for up to 40 students in the department:

- (1) 20 stations. Each station shall include one mirror, one electrical outlet, and one hydraulic chair;
- (2) Four hooded floor type dryers and chairs;
- (3) Four shampoo bowls and chairs.
 - (A) each side approach shampoo bowl shall be at least 40 inches apart, center of bowl to center of bowl;
 - (B) each free standing shampoo bowl shall be at least 31 inches apart, center of bowl to center of bowl;
 - (C) all other types of shampoo bowls shall be at least 31 inches apart, center of bowl to center of bowl;
- (4) Two manicure tables and stools;
- (5) One pedicure station that shall include a chair, a foot bath, and a stool; and
- (6) One facial treatment table or chair and a stool.

(c) The clinic department in a cosmetology school shall be equipped with the following equipment if there are more than 40 enrolled advanced students:

- (1) One station for each additional two students;

- (2) One shampoo bowl for each additional 10 students;
- (3) One manicure table and stool for each additional 15 students;
- (4) One pedicure station for each additional 20 students; and
- (5) One facial lounge or chair for each additional 40 students.

(d) Cosmetology schools that also offer the disciplines of esthetics, and manicuring shall be equipped with one additional station (as defined in this section per discipline) per five students and the equipment requirements specific to the discipline.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. January 1, 2016.

21 NCAC 14T .0303 EQUIPMENT FOR ESTHETICS SCHOOLS

(a) The practice department in an esthetics school shall be equipped with one mannequin practice table or stand to accommodate each student in the practice department.

(b) The clinic department in an esthetics school shall be equipped with the following for up to 20 students:

- (1) Ten stations: a station shall include a facial treatment chair or treatment table and one stool;
- (2) a waste container at each station;
- (3) One facial vaporizer;
- (4) One galvanic current apparatus;
- (5) One infra-red lamp;
- (6) One woods lamp;
- (7) One magnifying lamp;
- (8) One hair removal wax system;
- (9) One thermal wax system;
- (10) One suction machine;
- (11) One exfoliation machine with brushes; and
- (12) One hand washing sink with hot and cold running water, separate from restrooms.

(c) The clinic department in an esthetics school shall be equipped with the following if there are more than 20 enrolled students:

- (1) One station for each additional two students: a station shall include one facial treatment table or chair and one stool; and
- (2) Two hand washing sinks with hot and cold running water, separate from restrooms.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Amended Eff. October 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. January 1, 2016.

21 NCAC 14T .0304 EQUIPMENT FOR MANICURING SCHOOLS

- (a) The practice department in a manicuring school shall be equipped with one mannequin practice table or stand to accommodate each student enrolled in the practice department.
- (b) The clinic department in a manicuring school shall be equipped with the following for up to 20 students:
- (1) Two hand washing sinks with hot and cold running water, separate from restrooms, located in or adjacent to the clinic area;
 - (2) Ten work tables with two chairs per table;
 - (3) Ten pedicure chairs and basins;
 - (4) A waste container at each station; and
 - (5) A covered container for soiled or disposable towels located in the clinic area.
- (c) The clinic department in a manicuring school shall be equipped with the following if there are more than 20 enrolled students:
- (1) One station for each additional two students, a station shall include one work table and two chairs; and
 - (2) Two hand washing sinks with hot and cold running water, separate from restrooms.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Amended Eff. October 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. January 1, 2016.

21 NCAC 14T .0305 EQUIPMENT FOR NATURAL HAIR CARE STYLING SCHOOLS

- (a) The practice department in a natural hair care styling school shall be equipped with the following:
- (1) Styling equipment for the purpose of natural hair care;
 - (2) Visual aids; and
 - (3) One mannequin practice table or stand to accommodate each student.
- (b) The clinic department in a natural hair care styling school shall be equipped with the following for up to 16 students:
- (1) Two shampoo bowls and chairs as follows:
 - (A) each side approach shampoo bowl shall be 40 inches apart center of bowl to center of bowl; and
 - (B) each free standing shampoo bowl shall be 31 inches apart center of bowl to center of bowl;
 - (2) Eight stations. A station shall include one mirror and one hydraulic chair;
 - (3) One hooded floor type dryer; and
 - (4) Styling equipment for the purpose of natural hair care.
- (c) The clinic department in a natural hair care styling school shall be equipped with an additional station for every two students if there are more than 16 enrolled students.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17;

Eff. January 1, 2012; Amended Eff. October 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0601 COSMETIC ART CURRICULA

- (a) Cosmetic art schools shall develop and submit to the Board a curriculum of each discipline to be taught at the school. The curriculum, once approved by the Board's standards listed in Rules .0602-.0610, of this Section shall be adhered to and lessons developed from the approved curriculum.
- (b) Before a student may perform a live model performance the student shall pass the respective mannequin performance evaluation plan and blood exposure and disinfection procedure evaluation plan submitted by the school as required in Rule .0102 of this Subchapter.
- (c) Performances shall be defined as the systematic completion of the steps for safe and effective cosmetic art services to a client.
- (d) All cosmetic art students shall receive training on Material Safety Data Sheets prepared by the manufacturer on all products used by the school's students in performances.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. January 1, 2016.

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course shall consist of 1500 hours of instruction in theory and practical performances as set forth in Paragraph (b) of this Rule as follows:

- (1) Professional image;
- (2) Sanitation;
- (3) Bacteriology;
- (4) Disinfection;
- (5) First aid;
- (6) Anatomy;
- (7) Electricity;
- (8) Chemistry;
- (9) Professional ethics;
- (10) Draping;
- (11) Shampooing;
- (12) Roller sets;
- (13) Pin curls;
- (14) Ridge curls with C shaping;
- (15) Fingerwaves;
- (16) Braids;
- (17) Artificial hair;
- (18) Up-styles;
- (19) Blowdrying;
- (20) Brush control;
- (21) Blowdrying with curling iron;
- (22) Pressing or thermal;
- (23) Hair cutting;
- (24) Partings;
- (25) Perm wraps;
- (26) Relaxer sectioning;

- (27) Color application sectioning;
- (28) Scalp treatments;
- (29) Manicures;
- (30) pedicures;
- (31) artificial nails; and
- (32) Styles and techniques of cosmetology services including:
 - (A) Arranging;
 - (B) Dressing;
 - (C) Curling;
 - (D) Waving;
 - (E) Cutting techniques and implements including razors, clippers, thinning shears, and shears;
 - (F) Cleansing;
 - (G) Cutting;
 - (H) Singeing;
 - (I) Bleaching, or coloring hair;
 - (J) Esthetics;
 - (K) Manicuring;
 - (L) Business management; and
 - (M) Salon business.

- (4) Date of course completion;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

History Note: Authority G.S. 88B-4; 88B-16; Eff. January 1, 2012; Amended Eff. January 1, 2015; June 1, 2013; October 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course shall consist of 1200 hours of instruction in theory and practical performances as set forth in Paragraph (b) of this Rule as follows:

- (1) Professional image;
- (2) Sanitation;
- (3) Bacteriology;
- (4) Disinfection;
- (5) First aid;
- (6) Anatomy;
- (7) Electricity;
- (8) Chemistry;
- (9) Professional ethics;
- (10) Draping;
- (11) Shampooing;
- (12) Roller sets;
- (13) Pin curls;
- (14) Ridge curls with C shaping;
- (15) Fingerwaves;
- (16) Braids;
- (17) Artificial hair;
- (18) Up-styles;
- (19) Blowdrying;
- (20) Brush control;
- (21) Blowdrying with curling iron;
- (22) Pressing or thermal;
- (23) Hair cutting;
- (24) Partings;
- (25) Perm wraps;
- (26) Relaxer sectioning;
- (27) Color application sectioning;
- (28) Scalp treatments;
- (29) Manicures;
- (30) pedicures;
- (31) artificial nails; and
- (32) Styles and techniques of cosmetology services including:
 - (A) Arranging;
 - (B) Dressing;
 - (C) Curling;
 - (D) Waving;
 - (E) Cutting techniques and implements including razors, clippers, thinning shears, and shears;
 - (F) Cleansing;
 - (G) Cutting;
 - (H) Singeing;

(b) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client and shall include the following:

Practical Performance Requirements	Performances
Scalp and hair treatments	10
Fullhead fingerwave and style	5
Fullhead pincurl and style	5
Hair styling - sets, blowdrying, thermal press or flat iron, and artificial hair	170
Haircuts	85
Chemical reformation or permanent waving and relaxers	35
Temporary color	2
Color application - semi, demi, permanent color, and hair lightening	40
Multidimensional color - low or high lighting, cap, or bleach	25
Lash and brow color	2
Nail care - manicures and pedicures	15
Artificial nails sets which includes all four fingers and thumb	5
Facials with surface manipulations	10
Makeup application	2
Hair removal – razor, cream, waxing, or tweezing	5

- (c) Sharing of performance completions shall not be allowed.
- (d) Credit for a performance shall be given to only one student.
- (e) Certification of performance completions shall be required on the graduation form and application for the Board examination. Graduation forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type completed;

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- (I) Bleaching, or coloring hair;
- (J) Esthetics;
- (K) Manicuring;
- (L) Business management; and
- (M) Salon business.

- (10) Skin care machines, electricity, and apparatus;
- (11) Aromatherapy;
- (12) Nutrition;
- (13) Make-up or color theory;
- (14) Styles and techniques of esthetics services including:

(b) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client and shall include the following:

<u>Performance Requirements</u>	<u>Performances</u>
Scalp and hair treatments	4
Fullhead fingerwave and style	3
Fullhead pincurl and style	3
Hair styling - sets, blowdrying, thermal press or flat iron, and artificial hair	136
Haircuts	68
Chemical reformation or permanent waving and relaxers	27
Temporary color	1
Color application - semi, demi, permanent color, and hair lightening	19
Multidimensional color - low or high lighting, cap, or bleach	8
Lash and brow color	1
Nail care - manicures and pedicures	12
Artificial nails sets which includes all four fingers and thumb	4
Facials with surface manipulations	7
Makeup application	1
Hair removal removal – razor, cream, waxing, or tweezing	3

- (A) Facials;
- (B) Makeup application;
- (C) Performing skin care;
- (D) Hair removal;
- (E) Eyelash extensions;
- (F) Applying brow and lash color;
- (G) Business management; and
- (H) Professional ethics.

(b) Performances shall be defined as the systematic completion of the steps for safe and effective cosmetic art services to a client and shall include the following:

<u>Performance Requirements</u>	<u>Performances</u>
Facials Manual (skin analysis, cleansing, surface manipulations, packs, and masks)	40
Facials Electronic (the use of electrical modalitus, including dermal lights, and electrical apparatus for facials and skin care including galvanic and faradic)	30
Eyebrow arching	20
Hair removal (hard wax, soft wax, and depilatories)	30
Makeup application (skin analysis, complete and corrective makeup)	30
Eyelash extensions	10
Brow and lash color	10

(c) Certification of performance completions shall be required on the graduation form and application for the Board examination.

(d) Sharing of performance completions shall not be allowed.

(e) Credit for a performance shall be given to only one student.

History Note: Authority G.S. 88B-4; 88B-16;

Eff. January 1, 2012;

Amended Eff. January 1, 2015; June 1, 2013; September 1, 2012;

Readopted Eff. January 1, 2016.

21 NCAC 14T .0604 ESTHETICS CURRICULUM

(a) To meet the approval of the Board, an esthetician training course shall consist of at least 600 hours of instruction in theory and practical performances as set forth in Paragraph (b) of this Rule as follows:

- (1) Anatomy or physiology;
- (2) Hygiene;
- (3) Disinfection;
- (4) First aid;
- (5) Chemistry;
- (6) Draping;
- (7) Facial or body treatment (cleansing, manipulations, masks);
- (8) Hair removal;
- (9) Basic dermatology;

(c) Certification of performance completions shall be required on the graduation form and Board's application for the examination.

(d) Sharing of performance completions shall not be allowed.

(e) Credit for a performance shall be given to only one student.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17;

Eff. January 1, 2012;

Amended Eff. January 1, 2015; August 1, 2014;

Readopted Eff. January 1, 2016.

21 NCAC 14T .0605 MANICURING CURRICULUM

(a) To meet the approval of the Board, a manicurist training course shall consist of at least 300 hours of instruction in theory and practical performances as set forth in Paragraph (b) of this Rule as follows:

- (1) Manicuring theory;
- (2) Disinfection;
- (3) First aid;
- (4) Trimming;
- (5) Filing;
- (6) Shaping;
- (7) Decorating;
- (8) Arm and hand manipulation;
- (9) Sculptured and artificial nails;

- (10) Pedicuring
- (11) Styles and techniques for the care, treatment, and decoration of the following:
 - (A) Fingernails;
 - (B) Toenails;
 - (C) Cuticles;
 - (D) Nail extensions and artificial nails;
 - (E) Electric file;
 - (G) Business management; and
 - (G) Professional ethics.

(b) Performances shall be defined as the systematic completion of the steps for safe and effective cosmetic art services to a client and shall include the following:

Performance Requirements	Performances
Manicures including trimming, filing, shaping, decorating, and arm and hand manipulations	15
Applications or repair of sculptured or artificial nail sets including all four fingers and thumb.	20
Pedicures	10

- (c) Certification of performance completions shall be required on the graduation form and Board's application for the examination.
- (d) Sharing of performance completions shall not be allowed.
- (e) Credit for a performance shall be given to only one student.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Amended Eff. January 1, 2015; August 1, 2014; Readopted Eff. January 1, 2016.

21 NCAC 14T .0606 NATURAL HAIR CARE CURRICULUM

(a) To meet the approval of the Board, a natural hair care styling training course shall consist of 300 hours of instruction in theory and practical performances as set forth in Paragraph (b) of this Rule as follows:

- (1) Sanitation;
- (2) Bacteriology;
- (3) Disinfection;
- (4) First aid;
- (5) Shampooing;
- (6) Draping;
- (7) Anatomy;
- (8) Disorders of the hair and scalp;
- (9) Client consultation;
- (10) Styles and techniques of natural hair styling including:
 - (A) Twisting;
 - (B) Wrapping;
 - (C) Extending;
 - (D) Locking;
 - (E) Blowdry and thermal iron;
 - (F) Business management; and
 - (G) Professional ethics.

(b) Performances shall be defined as the systematic completion of the steps for safe and effective cosmetic art services to a client and shall include the following:

Performance Requirements	Performances
Braids	10
Twists	10
Knots	5
Corn rows	5
Hairlocking	10
Artificial hair and decorations	10
Blow dry and thermal iron	10
Braid Removal	10

- (c) Certification of performance completions shall be required on the graduation form and Board's application for the Board examination.
- (d) Sharing of performance completions shall not be allowed unless the live model service consists of 20 or more lengths of hair.
- (e) Credit for a performance shall be given to only one student unless the performance meets the requirements of paragraph d in this rule.
- (f) A performance shall consist of 10 or more lengths of hair.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; Eff. January 1, 2012; Amended Eff. January 1, 2015; August 1, 2014; June 1, 2013; Readopted Eff. January 1, 2016.

21 NCAC 14T .0607 COSMETOLOGY TEACHER TRAINEE CURRICULUM

(a) To meet the approval of the Board, a cosmetologist teacher training course shall consist of at least 800 hours of instruction in theory and practical application, divided as follows:

Requirement Description	Hours
Theory: observation theory, motivation, business management, student relations, teaching techniques, preparing lesson plans, facilitating student shop internship, preparing class lectures and presentations, preparing examinations, grading, and G.S. 88B and the rules of the Board	150
Practical Application: Conducting theory classes from prepared lessons, preparing and giving examinations, and giving practical demonstrations	650

(b) A minimum of 150 hours of theory is required prior to trainees being permitted to instruct in a cosmetic art classroom.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0608 ESTHETIC TEACHER TRAINEE CURRICULUM

(a) To meet the approval of the Board under the standards set out in these Rules, an esthetician teacher training course shall consist of at least 650 hours of instruction in theory and practical application, divided as follows:

Requirement Description	Hours
Theory: observation theory, motivation, business management, student relations, teaching techniques, preparing lesson plans, preparing class lectures and presentations, preparing examinations, grading, and G.S. 88B and the rules of the Board	120
Practical Application: Conducting theory classes from prepared lessons, preparing and giving examinations, and giving practical demonstrations	530

(b) A minimum of 120 hours of theory is required prior to trainees being permitted to instruct in a cosmetic art classroom.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0609 MANICURIST TEACHER TRAINEE CURRICULUM

(a) To meet the approval of the Board under the standards set out in these Rules, a manicurist teacher training course shall consist of at least 320 hours of instruction in theory and practical application, divided as follows:

Requirement Description	Hours
Theory: observation theory, motivation, business management, student relations, teaching techniques, preparing lesson plans, grading, preparing class lectures and presentations, preparing examinations, and G.S. 88B and the rules of the Board	115
Practical Application: Conducting theory classes from prepared lessons, preparing and giving examinations and giving practical demonstrations	205

(b) A minimum of 115 hours of theory is required prior to trainees being permitted to instruct in a cosmetic art classroom.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0610 NATURAL HAIR CARE TEACHER CURRICULUM

(a) To meet the approval of the Board under the standards set out in these Rules, natural hair care teacher training course shall

consist of at least 320 hours of instruction in theory and practical application, divided as follows:

Requirement Description	Hours
Theory: observation theory, motivation, business management, student relations, teaching techniques, preparing lesson plans, grading, preparing class lectures and presentations, preparing examinations, and GS 88B and the rules of the Board	115
Practical Application: Conducting theory classes from prepared lessons, preparing and giving examinations, and giving practical demonstrations	205

(b) A minimum of 115 hours of theory is required prior to trainees being permitted to instruct in a cosmetic art classroom.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0612 INSTRUCTION GUIDELINES

- (a) The hours earned in the clinic department must be devoted to study and performance completions.
- (b) Work in the clinic department may be done on the public.
- (c) All work done by students on the public shall be checked by the cosmetic art teacher as the work is being performed and after the service has been completed so that the teacher may point out errors to the student in order that the errors may be corrected.
- (d) Cosmetic art students shall receive training on theory of any cosmetic art service prior to performing that service.
- (e) Theory work shall include lectures on theory subjects as well as demonstrations, questions and answers on textbooks, written examinations, and in-class practice of procedures and methods.
- (f) Cosmetic art teacher trainees must be enrolled in school to earn hours.
- (g) Cosmetic art schools shall supply each student with a copy of the North Carolina Cosmetic Art Act, Board rules, and the student handbook.
- (h) All of the work outlined in the practice department and the clinic department shall be given to the students through practical demonstrations and lectures, questions and answers on textbooks, and written exam.
- (i) A minimum of 10 percent of scheduled attendance time each week shall be spent on theory instruction, questions and answers on textbooks, and the administration of a written exam to full time students.
- (j) All papers shall be graded and returned to the students.
- (k) Cosmetic art students shall receive training and practice only in the discipline in which they are enrolled.
- (l) All live model performances on the public shall be done in the clinic department. Mannequin performances and live model performances on other students may be performed in the clinic department or in a room within the school with a station.
- (m) Textbooks shall not be used more than five years after original publication date.

(n) Schools shall provide textbooks and supplementary educational materials and equipment to students.

History Note: Authority G.S. 88B-4; 88B-16; Eff. January 1, 2012; Amended Eff. June 1, 2013; October 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. January 1, 2016.

21 NCAC 14T .0701 SCHOOL OPERATIONS/LICENSURE MAINTENANCE

- (a) No individual shall be given credit for any hours earned in a cosmetic art school before the date the school is granted a license, before the student is enrolled, or after graduation or withdrawal of the student without a new enrollment.
- (b) All Cosmetic Art schools shall submit hours of operation per cosmetic art discipline to the Board. Any changes to the hours of operation shall be submitted to the Board. A school will be considered open by the Board when cosmetic art instruction, services, or performances are provided.
- (c) Students may be required to clean and disinfect work areas, reception areas, implements, and the dispensary. Students shall not be required to perform regular maintenance.
- (d) All cosmetic art schools shall adhere to all Board sanitation regulations located in 21 NCAC 14H Sanitation.
- (e) Cosmetic art schools may permit students to leave the cosmetic art school during instructional time to visit on campus libraries and other educational resource rooms such as computer labs for research and study under the supervision of a cosmetic art instructor.
- (f) Cosmetic art schools shall use the following grading scale as a minimum for passing grades:

Grade A	100-90
Grade B	80-89
Grade C	70-79
Grade F (Fail)	0-69

- (g) Cosmetic art schools shall not graduate any student who has not met the minimum school and Board requirements for graduation as prescribed by Rules .0602-.0610 of this Subchapter.
- (h) Examinations shall be administered in all subjects of the cosmetic art curriculum.
- (i) Students present at school shall be supervised by a cosmetic art teacher at all times. If a guest lecturer is leading a class, at least one cosmetic art teacher must be present in the lecture.
- (j) All cosmetic art schools shall provide:
 - (1) One teacher for every 25 students enrolled in the practice department;
 - (2) One teacher for every 20 students during practical work on live models in the clinic department; and
 - (3) Cosmetic art teachers at a ratio of 1:25 teacher to teacher trainees; or
 - (A) one teacher and up to 25 practice cosmetic art students and 5 teacher trainees; or
 - (B) one teacher and up to 20 cosmetic art students in practice on the clinic floor and 5 teacher trainees.

(k) In theory classes, the teacher-student ratio may exceed the ratios established in this Rule.

- (l) The teacher student ratios established in this Rule shall be adhered to when schools are in operation.
- (m) A teacher may administer instruction to up to 10 students enrolled in practice and clinic departments at the same time. A teacher shall not administer instruction to more than 10 students enrolled in practice and clinic departments at the same time.
- (n) At no time can any one teacher be simultaneously responsible for students in a theory class and students in practice on the clinic floor.
- (o) In cases of change in teaching staff, the school shall notify the Board of the change in writing prior to beginning instruction. A change in teaching staff includes any substitution for the regularly scheduled teacher and any change, scheduled or otherwise, in the list of teachers last given to the Board.

- (1) All courses in a cosmetic art school shall be taught by a licensed cosmetology teacher, except as follows:
 - (A) manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher;
 - (B) natural hair care courses may be taught by either a licensed cosmetology teacher or a licensed natural hair care teacher;
 - (C) esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.
- (2) A licensed cosmetologist not licensed as a cosmetology teacher may substitute for a cosmetology, esthetician, natural hair care or manicurist teacher; a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher; a licensed natural hair care specialist not licensed as a natural hair care teacher may substitute for a natural hair care teacher; and a licensed esthetician not licensed as an esthetician teacher may substitute for an esthetician teacher.

- (p) In no event may any cosmetic art licensee substitution last for more than 15 consecutive working days per year per teacher. If any teacher substitution is 16 consecutive days or longer, the school shall provide a new cosmetic art teacher.
- (q) Enrolled students may earn a maximum of 10 hours per day per discipline of cosmetic art and a maximum of 48 hours per week per discipline. A student enrolled in more than one cosmetic art discipline may not earn hours or complete performances concurrently.
- (r) A cosmetic art student must complete at least 1/3 of the minimum required hours in the cosmetic art school certifying his or her application for the state board examination.
- (s) Upon written petition by the student and the school, the Board shall make an exception to the requirements set forth in Paragraph (r) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing a minimum of 1/3 hours at the school certifying his or her application.

(t) The Board shall certify student hours for any North Carolina cosmetic art school that is closed. The Board shall not certify student hours between any North Carolina open cosmetic art schools. The Board shall certify student hours earned at North Carolina cosmetic art schools to other state boards and schools open outside of the state of North Carolina as set forth in Rule .0502 of this Subchapter.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; Eff. February 1, 2012; Amended Eff. August 1, 2014; June 1, 2013; October 1, 2012; Readopted Eff. January 1, 2016.

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

- (a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any two year period.
- (b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.
- (c) Cosmetic art schools shall provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.
- (d) School attendance policies shall give appropriate performances attendance credit for all hours attended.
- (e) If a graduate meets all the school financial and academic requirements and the Board hours and performance requirements, the school shall approve the student for Board examination.
- (f) Cosmetic art schools shall maintain current bond according to G.S. 88B-17 and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.
- (g) At the time of renewal, each school shall submit to the Board financial records of prepaid tuition and a letter signed by an authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. Each school shall maintain and submit to the Board proof of bond in an amount of ten thousand dollars (\$10,000), or equivalent to prepaid tuition received during the previous year, whichever is greater.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Amended Eff. January 1, 2015; September 1, 2012; Readopted Eff. January 1, 2016.

CHAPTER 23 – IRRIGATION CONTRACTORS LICENSING BOARD

21 NCAC 23 .0104 CONTINUING EDUCATION

- (a) Continuing Education (CEU) credit shall not be obtained for the same course more frequently than every three years.
- (b) Each individual licensee must earn ten hours of approved continuing education each calendar year. The 10 hours shall include at least two but not more than four hours of business

education. The remaining hours of continuing education shall consist of training in landscape and turf irrigation technology.

(c) A licensed contractor shall provide proof of attendance for all continuing education upon request by the Board.

(d) Only continuing education classes or activities that have been approved by the Board as providing adequate education regarding the requirements of this Chapter satisfy the licensee's continuing education requirement.

History Note: Authority G.S. 89G-5; 89G-9; Eff. July 1, 2011; Readopted Eff. January 1, 2016.

21 NCAC 23 .0206 CONDUCT OF HEARING

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

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

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

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

History Note: Authority G.S. 89G-5; 150B-38; 150B-40; 150B-41; Eff. July 1, 2011; Amended Eff. April 1, 2015; Readopted Eff. January 1, 2016.

21 NCAC 23 .0207 DECISION OF BOARD

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

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

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

History Note: Authority G.S. 89G-5; 150B-38; 150B-42; Eff. July 1, 2011; Amended Eff. April 1, 2015; Readopted Eff. January 1, 2016.

21 NCAC 23 .0406 COMPONENTS AND ZONE DESIGN

(a) An irrigation contractor shall design the layout of heads and other emission devices to reduce evaporation loss, reduce surface run-off, and limit overspray across or onto a street, public driveway or sidewalk, parking area, building, fence, or adjoining property.

(b) When changes are required an irrigation contractor shall specify in the plan notes that any required equipment shall meet or exceed the design standards of the system.

(c) An irrigation contractor shall design sprinkler head spacing with an approximate "head-to-head" coverage, unless the coverage is designed for wind derating. Wind derating shall be based on wind criteria for the time period that the system is normally operated.

(d) An irrigation contractor shall use separate stations or zones (hydrozones) for areas with dissimilar environmental conditions or dissimilar water or scheduling requirements. These conditions or requirements include sun exposure, plant type, soil type, varying wind conditions, grades, and dimensional issues. When not practicable due to accessibility, dimensional issues or other constraints, practical modifications to this standard may be acceptable.

(e) An irrigation contractor shall, when selecting system components:

- (1) Select components to avoid surface runoff;
- (2) Select components to keep the sprinkler precipitation rate below the infiltration rate of the soil;
- (3) Specify the use of repeat cycles to allow the water to soak into the root zone; and
- (4) Specify stations or zones for sprinklers at the top and toe of sloped areas.

(f) An irrigation contractor shall locate sprinkler heads based on an evaluation of physical, environmental, and hydraulic site conditions, including typical wind conditions during the normal irrigation period.

(g) An irrigation contractor shall divide the irrigation systems into zones consistent with the types of sprinkler heads and nozzles being used in order to achieve an approximate matched precipitation rate.

(h) An irrigation contractor shall utilize water-conserving equipment as follows:

- (1) Check valves to minimize low-head drainage when grades exceed five percent;
- (2) Pressure regulators or pressure compensating devices when pressures exceed manufacturer's recommendations;
- (3) Rain sensors to suspend irrigation during rain or other forms of precipitation;
- (4) A controller that has multi-program capability with at least four start times (for multiple repeat soak cycles) and run time adjustments in one-minute increments; and
- (5) Low-trajectory sprinkler nozzles and modified head spacings to mitigate the effects of wind.

(i) An irrigation contractor shall select components that do not mist when manufacturer's pressure specifications are met.

(j) An irrigation contractor shall design irrigation systems with control wire splices made with a waterproof wire splice kit that is UL listed for underground applications. The design shall specify the manufacturer's recommended splice kits for two-wire control systems.

(k) An irrigation contractor shall offset turf grass sprinklers from pavement edges a minimum of two inches to allow for edging of the turf.

(l) An irrigation contractor shall offset sprinklers from vertical walls to limit spray on the walls.

(m) An irrigation contractor shall locate valves to allow reasonable access for maintenance or service.

(n) An irrigation contractor shall protect the roots of existing trees by:

- (1) Planning pipe system layout to limit its effect on existing trees and other planting.
- (2) When necessary to trench into the root zone of an established plant in order to provide irrigation within the root zone:
 - (a) digging the trench in such a way as to minimize the effect on the roots (for example, by digging the trench in a straight line towards the base of the tree or shrub such that, if the line of the trench were extended, it would intersect with the base of the tree or shrub); or
 - (b) using direct boring or hand-trenching. An irrigation contractor shall use hand trenching techniques that dig a trench without damaging roots having a diameter of one-half inch or more.
- (3) In the event of trenching, maintaining a distance of one foot from the tree trunk for every inch of tree diameter at a height of four feet six inches above the ground. For example, piping shall be kept at least 20 feet away from the trunk of a tree having a 20 inch diameter at four feet six inches above the ground.
- (4) In the event of boring, maintaining a distance of at least one-half foot from the tree trunk for each inch of tree diameter at a height of four feet six inches above the ground and, in any event, maintaining a distance of at least five feet from the tree trunk. When direct boring, an irrigation contractor shall bore to a minimum of 36 inches.
- (5) Avoiding placing sprinklers in a position to directly spray water on tree trunks of mature trees by placing them no closer to a tree than one-third of the sprinkler spray radius.

(o) An irrigation contractor shall use the appropriate size American Wire Gauge ("AWG") wire, as noted by the manufacturer, to operate a valve.

(p) An irrigation contractor shall:

- (1) Install control wires in the same trench along the side of the main line piping;
- (2) Allow slack in the wiring; and

- (3) Bundle an expansion coil for all wires at each valve location.
- (q) An irrigation contractor shall indicate common wiring (wire that runs through the entire circuit of valves) by using a different colored wire from all other wire connections.
- (r) An irrigation contractor shall provide additional wire along the irrigation wire path for future expansion or replacement of damaged wires.
- (s) An irrigation contractor shall use valve boxes that are large enough to provide sufficient space for servicing the valve housed inside. Valve boxes shall be at least 10 inches in diameter for both manual and automatic valves.
- (t) An irrigation contractor shall follow the manufacturer's recommendation for all wiring and grounding, including two-wire control systems.

History Note: Authority G.S. 89G-5; Eff. August 1, 2011; Readopted Eff. January 1, 2016.

21 NCAC 23 .0505 TRENCHING AND PIPING

- (a) All portions of an irrigation system that do not meet the standards in this Rule shall be noted on the record drawing.
- (b) An irrigation contractor shall protect the root systems of the trees on the site by not trenching across the established root systems of existing trees and shrubs.
- (c) Notwithstanding the requirement in Paragraph (b) of this Rule, when the irrigation contractor finds that it is necessary to trench into the root zone of an established plant in order to provide irrigation within the root zone, he shall dig the trench in such a way as to minimize the effect on the roots (for example, by digging the trench in a straight line towards the base of the tree or shrub such that, if the line of the trench were extended, it would intersect with the base of the tree or shrub).
- (d) An irrigation contractor shall cut damaged roots cleanly at right angles.
- (e) Piping in irrigation systems shall be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene (PE), and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.
- (f) The main line and lateral line piping shall be installed to provide a minimum of 12 inches between the top of the pipe and the natural grade.
- (g) The bottom of the trench shall be smooth and provide a flat bed on which to rest the pipe.
- (h) The irrigation contractor shall clean backfill material of any debris that may damage the pipe.
- (i) If a utility, man-made structure, or roots create an unavoidable obstacle that makes the 12 inch depth coverage requirement impractical, the piping shall be installed inside a larger section of pipe for added protection.
- (j) When swing joints are used, the depth of the pipe shall allow the swing joint to operate as designed.
- (k) All trenches and holes created during installation of an irrigation system shall be backfilled and compacted to the final grade. The trench shall be compacted in lifts no greater than six inches to insure proper compaction.

- (l) All new irrigation systems that are installed using PVC shall be prepared according to manufacturer's recommendations prior to connection.
- (m) When the irrigation contractor uses PR 200 pipe, the manufacturer's directions shall be followed.
- (n) The irrigation contractor shall use the manufacturer's approved lubricant when assembling Bell and Gasket Pipe and Fittings.
- (o) The irrigation contractor shall use Teflon tape on all threaded fittings, wrapping the tape three times to insure a proper seal.
- (p) When the irrigation system uses reclaimed water, the irrigation contractor shall use purple pipe or mark the pipe with purple tape placed above all piping in the system. Tape shall be within six inches of the top of the pipe. The irrigation contractor shall use purple valve box covers and purple quick coupler flaps and place an eight inch by eight inch sign with purple background stating "RECLAIMED WATER-DO NOT DRINK," and "AGUA DE RECUPERION-NO BEBER."

History Note: Authority G.S. 89G-5(15); 89G-5(16); Eff. July 1, 2011; Amended Eff. April 1, 2015; Readopted Eff. January 1, 2016.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .1370 REENTRY TO ACTIVE PRACTICE

- (a) An applicant for licensure who has not actively practiced or who has not maintained continued competency for the two-year period immediately preceding the filing of an application for a license shall complete a reentry agreement as a condition of licensure.
- (b) The first component of a reentry agreement involves assessing the applicant's current strengths and weaknesses in the intended area(s) of practice. The process may include testing and evaluation by colleagues, educators or others.
- (c) The second component of the reentry agreement is education. Education shall address the applicant's area(s) of needed improvement and consist of a reentry period of retraining and education upon terms based on the factors set forth in Paragraph (d) of this Rule.
- (d) Factors that may affect the length and scope of the reentry plan include:
 - (1) The applicant's amount of time out of practice;
 - (2) The applicant's prior intensity of practice;
 - (3) The reason for the interruption in practice;
 - (4) The applicant's activities during the interruption in practice, including the amount of practice-relevant continuing medical education;
 - (5) The applicant's previous and intended area(s) of practice;
 - (6) The skills required of the intended area(s) of practice;
 - (7) The amount of change in the intended area(s) of practice during the time the applicant has been out of continuous practice;

- (8) The applicant's number of years of graduate medical education;
 - (9) The number of years since the applicant completed graduate medical education; and
 - (10) As applicable, the date of the most recent ABMS, AOA or National Commission on Certification of Physician Assistant certification or recertification.
- (e) If the Board approves an applicant's plan for reentry, the approved plan shall be incorporated by reference into a reentry agreement and executed by the applicant, the Board, and any applicable Board agents assisting with the reentry agreement.
- (f) After the reentry agreement has been executed, and the applicant has completed all other requirements for licensure, the applicant shall receive a License. The licensee may not practice outside of the scope of the reentry agreement during the reentry period.
- (g) Unsatisfactory completion of the reentry agreement or practicing outside the scope of the reentry agreement shall result in the automatic inactivation of the licensee's license unless the licensee requests a hearing within 30 days of receiving notice from the Board.
- (h) Upon successful completion of the reentry agreement, the Board shall terminate the reentry agreement.

History Note: Authority G.S. 90-8.1; 90-14(a)(11a); Eff. March 1, 2011; Amended Eff. January 1, 2016.

21 NCAC 32B .1402 APPLICATION FOR RESIDENT'S TRAINING LICENSE

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application which can be found on the Board's website in the application section at <http://www.ncmedboard.org/licensing>, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education to P.O. Box 20007, Raleigh, NC 27619 or license@ncmedboard.org.
- (5) furnish an original ECFMG certification status report of a currently valid ECFMG certification if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if:

- (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (the applicant shall provide an ECFMG score transcript from the ECFMG); or
 - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (6) submit an appointment letter from the program director of the GME program or his or her appointed agent verifying the applicant's appointment and commencement date;
 - (7) submit two completed fingerprint record cards supplied by the Board to P.O. Box 20007, Raleigh, NC 27619;
 - (8) submit a signed consent form allowing a search of local, state, and national files for any criminal record to P.O. Box 20007, Raleigh, NC 27619.
 - (9) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
 - (10) provide proof that the applicant has taken and passed within three attempts:
 - (A) COMLEX Level 1, each component of COMLEX Level 2 (cognitive evaluation and performance evaluation) and, if taken, COMLEX Level 3; or
 - (B) USMLE Step 1, each component of USMLE Step 2 (Clinical Knowledge and Clinical Skills) and, if taken USMLE Step 3; or
 - (C) MCCQE Part 1 and, if taken, MCCQE Pat 2;
 - (11) In the event any of the above required information should indicate a concern about the applicant's qualifications, upon request, the applicant shall supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (b) In the event any of the above required information should indicate a concern about the applicant's qualifications, an applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character, if the Board needs more information to complete the application.
- (c) If the applicant previously held a North Carolina residency training license, the licensure requirements established by rule at the time the applicant first received his or her North Carolina residency training license shall apply. Information about these Rules is available from the Board.

History Note: Authority G.S. 90-8.1; 90-12.01; 90-13.1; 90-14(a); Eff. August 1, 2010;

Amended Eff. January 1, 2016; September 1, 2014; November 1, 2013; August 1, 2012; November 1, 2011.

21 NCAC 32S .0202 QUALIFICATIONS AND REQUIREMENTS FOR LICENSE

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before practicing as a physician assistant. An applicant for a physician assistant license shall:

- (1) submit a completed application, available at www.ncmedboard.org, to the Board;
- (2) meet the requirements set forth in G.S. 90-9.3 and has not committed any of the acts listed in G.S. 90-14;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant shall provide information about the applicant's immigration and work status that the Board shall use to verify applicant's ability to work lawfully in the United States;
- (4) submit to the Board proof that the applicant completed a Physician Assistant Educational Program. He or she shall also show successful completion of the Physician Assistant National Certifying Examination;
- (5) pay to the Board a non-refundable fee of two hundred dollars (\$200.00) plus the cost of a criminal background check. There is no fee to apply for a physician assistant limited volunteer license;
- (6) submit National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) reports. These reports shall be requested by the applicant and submitted to the Board within 60 days of the request;
- (7) submit a Board Action Data Bank Inquiry report from the Federation of State Medical Boards (FSMB). This report shall be requested by the applicant and submitted to the Board within 60 days of the request;
- (8) submit to the Board, at P. O. Box 20007, Raleigh, NC 27619, two complete original fingerprint record cards, on fingerprint record cards supplied by the Board upon request;
- (9) submit to the Board, at P. O. Box 20007, Raleigh, NC 27619 or license@ncmedboard.org, a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (10) disclose whether he or she has ever been suspended from, placed on academic probation, expelled, or required to resign from any school, including a PA educational program;
- (11) attest that he or she has no license, certificate, or registration as a physician assistant currently

- (12) under discipline, revocation, suspension, probation, or any other adverse action resulting from a health care licensing board;
 - (13) certify that he or she is mentally and physically able to safely practice as a physician assistant and is of good moral character;
 - (14) provide the Board with two original recommendation forms dated within six months of the application, at P. O. Box 20007, Raleigh, NC 27619, These recommendations shall come from persons under whom the applicant has worked or trained who are familiar with the applicant's academic competence, clinical skills, and character. At least one reference form shall be from a physician and the other reference form must be from a physician assistant peer under whom the applicant has worked or trained. References shall not be from any family member or, in the case of applicants who have not been licensed anywhere, references shall not be from fellow students of the applicant's Physician Assistant Educational Program;
 - (15) if two years or more have passed since graduation from a Physician Assistant Educational Program, document that he or she has completed at least 100 hours of continuing medical education (CME) during the preceding two years, at least 50 hours of which must be recognized by the National Commission on Certification of Physician Assistants as Category I CME. An applicant who is currently certified with the NCCPA will be deemed in compliance with this Subparagraph; and
- In the event any of the above required information should indicate a concern about the applicant's qualifications, the applicant shall supply any other information the Board deems necessary to evaluate the applicant's qualifications, including explanation or documentation of the information required in this Rule.
- (b) In the event any of the above required information should indicate a concern about the applicant's qualifications, an applicant may be required to appear in person for an interview with the Board, if the Board determines in its discretion that more information is needed to evaluate the application.

History Note: Authority G.S. 90-9.3; 90-11; 90-14(a); 90-18(c)(13); 90-18.1; Eff. September 1, 2009; Amended Eff. January 1, 2016; May 1, 2015; March 1, 2011.

CHAPTER 69 – BOARD FOR LICENSING OF SOIL SCIENTISTS

21 NCAC 69 .0104 FEES

Each completed application form shall be accompanied by the prescribed fee. Application fees shall not be refunded regardless of Board approval or disapproval of the application. Fees for services of the Board shall be as follows:

(1)	application for license	\$50.00
(2)	license	\$85.00
(3)	renewal of license	\$85.00
(4)	restoration of license	\$110.00
(5)	replacement of license	\$50.00
(6)	licensed soil scientist seal	\$30.00
(7)	application for corporate certificate of licensure (corporations and limited liability corporations)	\$50.00

(8)	renewal of corporate certificate of licensure	\$25.00
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History Note: Authority G.S. 55B-10; 55B-11; 57D-2-02; 89F-5; 89F-25; 150B-19; Temporary Adoption Eff. May 15, 1996; Eff. April 1, 1997; Amended Eff. July 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014; Amended Eff. January 1, 2016; January 1, 2015.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission February 18, 2016 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd 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

February 18, 2016	March 17, 2016
April 21, 2016	May 19, 2016

AGENDA

RULES REVIEW COMMISSION
Thursday, February 18, 2016 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. 911 Board – 09 NCAC 06C .0105, .0106, .0107, .0111, .0112, .0113, .0114, .0205, .0216, .0302, .0303, .0304 (Reeder)
 - B. Environmental Management Commission - 15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515 (Hammond)
 - C. Coastal Resources Commission - 15A NCAC 07L .0102, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0601, .0602, .0603, .0701, .0702, .0703, .0704, .0705 (May)
 - D. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
 - E. Board of Chiropractic Examiners – 21 NCAC 10 .0106, .0208, .0214 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between December 22, 2015 through January 20, 2016
 - Department of Commerce - Credit Union Division (May)
 - State Board of Elections (May)
 - Department of Information Technology (May)
 - Environmental Management Commission (Thomas)
 - Department of Revenue (Reeder)
 - Board of Architecture (Thomas)
 - Board of Dental Examiners (Hammond)
 - Board of Examiners of Fee-Based Practicing Pastoral Counselors (Reeder)
 - Board of Podiatry Examiners (Reeder)
 - Board of Recreational Therapy Licensure (Reeder)
 - Office of Administrative Hearings
 - Building Code Council (Thomas)

- 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. 10A NCAC 10 – Social Services Commission (Hammond)
 2. 10A NCAC 89 – DHHS - Vocational Rehabilitation Services (Hammond)
 3. 13 NCAC 07 – Department of Labor (Thomas)
 4. 13 NCAC 12 – Department of Labor (Thomas)
 5. 21 NCAC 32 – Medical Board (Reeder)
 6. 21 NCAC 45 – Board of Examiners of Fee-Based Practicing Pastoral Counselors (Reeder)
 - VII. Commission Business
 - Next meeting: Thursday, March 17, 2016
-

Commission Review
Log of Permanent Rule Filings
December 22, 2015 through January 20, 2016

COMMERCE, DEPARTMENT OF - CREDIT UNION DIVISION

The rules in Chapter 6 are from the Credit Union Division.

The rules in Subchapter 6C concern credit unions and include general information (.0100); organization of credit unions (.0200); basic internal controls: accounting procedures and operation standards for state-chartered credit unions (.0300); loans (.0400); impairment and insolvency (.0500); dividends deposits and interest rebate (.0600); accounts (.0700); reports to administrator (.0800); pension plans (.0900); retention of records (.1000); forms used by credit union division (.1100); investments (.1200); reserves (.1300); and signature guarantee services.

<u>Surety Bond and Insurance Coverage</u>	04	NCAC	06C	.0311
Amend/*				
<u>Prohibited Fees</u>	04	NCAC	06C	.0410
Adopt/*				
<u>Permanent Records</u>	04	NCAC	06C	.1001
Amend/*				
<u>Non-permanent Records</u>	04	NCAC	06C	.1002
Amend/*				
<u>Federal Funds</u>	04	NCAC	06C	.1204
Amend/*				

ELECTIONS, STATE BOARD OF

The rules in Chapter 17 concern photo identification.

<u>Signage Notifying One-Stop Voters of the Option to Request...</u>	08	NCAC	17	.0106
Adopt/*				

INFORMATION TECHNOLOGY, DEPARTMENT OF

The rules in Subchapter 6B concern procurement requests including requisitioning (.0100); specifications (.0200); procurement authorization and procedures (.0300); rejection of offers (.0400); inspection and testing (.0500); guarantees and warranties (.0600); contracts (.0700); partial and multiple awards (.0800); waiver of competition (.0900); miscellaneous provisions (.1000); bid protest, contested case procedure (.1100); declaratory rulings; default proceedings; disqualifications; and debarment (.1200); exemptions, emergencies, and special delegations (.1300); and records (.1400).

<u>Procurement Procedures</u> Readopt without Changes/*	09 NCAC 06B .0301
<u>Methods of Source Selection</u> Readopt without Changes/*	09 NCAC 06B .0302
<u>Advertisement and Notice</u> Readopt without Changes/*	09 NCAC 06B .0314
<u>Mandatory Conferences/Site Visits</u> Readopt without Changes/*	09 NCAC 06B .0315
<u>Negotiation</u> Readopt without Changes/*	09 NCAC 06B .0316
<u>Debriefing Offerors</u> Readopt without Changes/*	09 NCAC 06B .0405
<u>Use and Description</u> Readopt without Changes/*	09 NCAC 06B .0701
<u>Conditions for Limited or Waived Competition</u> Readopt without Changes/*	09 NCAC 06B .0901
<u>Emergency Situations or Pressing Need</u> Amend/*	09 NCAC 06B .1302
<u>General Delegations</u> Amend/*	09 NCAC 06B .1304
<u>Procurement File Records</u> Amend/*	09 NCAC 06B .1402

ENVIRONMENTAL MANAGEMENT COMMISSION

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

<u>Activities Exempted from Permit Requirements</u> Amend/*	15A NCAC 02Q .0102
<u>Facilities Not Likely to Contravene Demonstration</u> Repeal/*	15A NCAC 02Q .0302
<u>Changes Not Requiring Permit Revisions</u> Adopt/*	15A NCAC 02Q .0318
<u>Emergency Generators and Stationary Reciprocating Interna...</u> Amend/*	15A NCAC 02Q .0903

REVENUE, DEPARTMENT OF

The rules in Chapter 7 are sales and use tax.

The rules in Chapter 7B concern state sales and use tax including general provisions (.0100); general application of law to manufacturing and industrial processing (.0200); specific tangible personality classified for use by industrial users (.0300); specific industries (.0400); exempt sales to manufacturers (.0500); sales of mill machinery and accessories (.0600); specific industry purchases (.0700); adjustments, replacements and alterations and installation sales (.0800); advertising, advertising agencies and public relations firms (.0900); barbers, beauty shop operators, shoe and watch repairmen (.1000); sales of bulk tobacco barns and farm machines and equipment (.1100); hotels, motels, tourist camps and tourist cabins (.1200); sales in interstate commerce (.1300); sales of medicines, drugs and medical supplies (.1400); finance companies, finance charges and carrying charges (.1500); sales to or by hospitals, educational, charitable or religious institutions, and refunds thereto (.1600); sales to or by the state, counties, cities and other political subdivisions (.1700); hospitals and sanitariums (.1800); tire recappers and retreaders: and tire and

tube repairs (.1900); sales and gifts by employers to employees or other users (.2000); electricity, piped natural gas, bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas and other combustibles (.2100); food and food products for human consumption (.2200); sales to out-of-state merchants for resale (.2300); sales of medical supplies and equipment to veterinarians (.2400); furniture and storage warehousemen (.2500); liability of contractors, use tax on equipment brought into state and building materials (.2600); dentists, dental laboratories and dental supply houses (.2700); florists, nurserymen, greenhouse operators and farmers (.2800); vending machines (.2900); articles taken in trade, trade-ins, repossessions, returned merchandise and used or secondhand merchandise (.3000); radio and television stations and motion picture theatres (.3100); telecommunications and telegraph companies (.3200); orthopedic appliances (.3300); memorial stone and monument dealers and monument manufactures (.3400); machinists, foundrymen and pattern makers (.3500); funeral expenses (.3600); lubricants and oils and greases (.3700); premiums and gifts and trading stamps (.3800); containers, wrapping and packing and shipping materials (.3900); fertilizer, seeds and feed and insecticides (.0400); artists, art dealers and photographers (.4100); sales to the United States government or agencies thereof (.4200); refunds to interstate carriers (.4300); lease or rental (.4400); laundries, dry cleaning plants, laundrettes, linen rentals and solicitors for such businesses (.4500); motor vehicles and boats (.4600); printers and newspaper or magazine publishers (.4700); basis of reporting (.4800); transportation charges (.4900); eyeglasses and other ophthalmic aids and supplies, oculists and optometrists and opticians (.5000); leased departments and transient sellers (.5100); baby chicks and poult (.5200); certificate of authority and bond requirements (.5300); and forms used for sales and use tax purposes (.5400).

<u>Made to Order and Installation Sales: Generally</u> Repeal/*	17	NCAC	07B	.0802
<u>Cabinetmakers</u> Repeal/*	17	NCAC	07B	.0803
<u>Sign Fabricating and Painting</u> Repeal/*	17	NCAC	07B	.0805
<u>Repairs and Alterations: Generally</u> Repeal/*	17	NCAC	07B	.0806
<u>Clothing Alterations</u> Repeal/*	17	NCAC	07B	.0807
<u>Reupholstering</u> Repeal/*	17	NCAC	07B	.0808
<u>Laminating Services</u> Repeal/*	17	NCAC	07B	.0809
<u>Bullets and Shells-Reloading</u> Repeal/*	17	NCAC	07B	.0810
<u>Fire Extinguishers: Recharging</u> Repeal/*	17	NCAC	07B	.0811
<u>Shoe Repairmen</u> Repeal/*	17	NCAC	07B	.1002
<u>Watch: Clock and Jewelry Repairmen</u> Repeal/*	17	NCAC	07B	.1003
<u>Tire Recapping Materials</u> Repeal/*	17	NCAC	07B	.1901
<u>Tire Repair Materials</u> Repeal/*	17	NCAC	07B	.1903
<u>Sales by Tire Recappers</u> Repeal/*	17	NCAC	07B	.1904
<u>Memorial Stone Sales</u> Repeal/*	17	NCAC	07B	.3401
<u>Supplies to Install Memorial Stones/Monuments/Bronze Grav...</u> Repeal/*	17	NCAC	07B	.3403
<u>Funeral Expenses</u> Repeal/*	17	NCAC	07B	.3601

<u>Lubricating Service</u> Repeal/*	17	NCAC 07B .3701
<u>Sales by Laundries: Linen Rentals: and Solicitors for suc...</u> Repeal/*	17	NCAC 07B .4501
<u>Garment Repairs and Storage</u> Repeal/*	17	NCAC 07B .4506
<u>Rug Reinstallation Charges</u> Repeal/*	17	NCAC 07B .4507
<u>Motor Vehicle Service Businesses</u> Repeal/*	17	NCAC 07B .4603
<u>Special Equipment-Accessories: Motor Vehicles</u> Repeal/*	17	NCAC 07B .4604
<u>Manufactured Homes</u> Repeal/*	17	NCAC 07B .4615

ARCHITECTURE, BOARD OF

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

<u>Examination</u> Amend/*	21	NCAC 02 .0302
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DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16O concern nitrous-oxide-oxygen conscious sedation including definitions (.0300); and qualification to perform functions (.0400).

<u>Conscious Sedation</u> Amend/*	21	NCAC 16O .0301
<u>Nitrous Oxide Monitoring</u> Amend/*	21	NCAC 16O .0302
<u>Non-Delegable Functions</u> Amend/*	21	NCAC 16O .0401
<u>Educational Requirements</u> Amend/*	21	NCAC 16O .0402

The rules in Subchapter 16Q concern general anesthesia and sedation including definitions (.0100); general anesthesia (.0200); parenteral conscious sedation (.0300); enteral conscious sedation (.0400); renewal of permits (.0500); reporting and penalties (.0600); and penalty for non-compliance (.0700).

<u>General Anesthesia and Sedation Definitions</u> Amend/*	21	NCAC 16Q .0101
<u>General Anesthesia Equipment and Clinical Requirements</u> Amend/*	21	NCAC 16Q .0202
<u>Temporary Approval Prior to Site Evaluation</u> Repeal/*	21	NCAC 16Q .0203
<u>Procedure for General Anesthesia Evaluation or Inspection...</u> Amend/*	21	NCAC 16Q .0204
<u>Results of Site Evaluation and Reevaluation</u> Repeal/*	21	NCAC 16Q .0205

RULES REVIEW COMMISSION

<u>Itinerant (Mobile) General Anesthesia Permit, Equipment a... Adopt/*</u>	21	NCAC	16Q	.0206
<u>Annual Review of General Anesthesia and Itinerant (Mobile... Adopt/*</u>	21	NCAC	16Q	.0207
<u>Credentials and Permits for Moderate Conscious Sedation Amend/*</u>	21	NCAC	16Q	.0301
<u>Moderate Conscious Sedation Clinical Requirements and Equ... Amend/*</u>	21	NCAC	16Q	.0302
<u>Temporary Approval Prior to Site Inspection Repeal/*</u>	21	NCAC	16Q	.0303
<u>Off Site Use of Moderate Conscious Sedation Permits Amend/*</u>	21	NCAC	16Q	.0304
<u>Annual Renewal of Moderate Conscious Sedation Permit Requ... Adopt/*</u>	21	NCAC	16Q	.0305
<u>Procedure for Moderate Conscious Sedation Evaluation or I... Adopt/*</u>	21	NCAC	16Q	.0306
<u>Minimal Conscious Sedation Credentials, Evaluation and Pe... Repeal/*</u>	21	NCAC	16Q	.0401
<u>Minimal Conscious Sedation Permit Requirements, Clinical ... Repeal/*</u>	21	NCAC	16Q	.0402
<u>Temporary Approval Prior to Site Inspection Repeal/*</u>	21	NCAC	16Q	.0403
<u>Credentials and Permits for Moderate Pediatric Conscious ... Adopt/*</u>	21	NCAC	16Q	.0404
<u>Moderate Pediatric Conscious Sedation Clinical Requirement... Adopt/*</u>	21	NCAC	16Q	.0405
<u>Off Site Use of Moderate Pediatric Conscious Sedation Pe... Adopt/*</u>	21	NCAC	16Q	.0406
<u>Annual Renewal of Moderate Pediatric Conscious Sedation P... Adopt/*</u>	21	NCAC	16Q	.0407
<u>Procedure for Moderate Pediatric Conscious Sedation Evalu... Adopt/*</u>	21	NCAC	16Q	.0408
<u>Annual Renewal Required Repeal/*</u>	21	NCAC	16Q	.0501
<u>Payment of Fees Repeal/*</u>	21	NCAC	16Q	.0502
<u>Inspection Authorized Repeal/*</u>	21	NCAC	16Q	.0503
<u>Reports of Adverse Occurrences Repeal/*</u>	21	NCAC	16Q	.0601
<u>Failure to Report Repeal/*</u>	21	NCAC	16Q	.0602
<u>Reports of Adverse Occurrences Adopt/*</u>	21	NCAC	16Q	.0703

EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS, BOARD OF

The rules in Chapter 45 concern the Board of Examiners of Fee-Based Practicing Pastoral Counselors including general provisions (.0100); application for certification(.0200); examination (.0300); certification renewal (.0400); continuing education (.0500); definitions (.0600); temporary certificates (.0700); and supervision (.0800.

<u>Certification Renewal Form Amend/*</u>	21	NCAC	45	.0401
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PODIATRY EXAMINERS, BOARD OF

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

<u>Continuing Education</u>	21	NCAC	52	.0208
Readopt with Changes/*				

RECREATIONAL THERAPY LICENSURE, BOARD OF

The rules in Chapter 65 cover the practice of recreational therapy including general provisions (.0100); requirements for practice (.0200); requirements for licensure (.0300); application (.0400); fees (.0500); license renewal requirements (.0600); reinstatement (.0700); inactive status (.0800); reciprocity (.0900); and revocation, suspension or denial of licensure (.1000).

<u>Licensed Recreational Therapist Standards of Practice</u>	21	NCAC	65	.0203
Amend/*				
<u>Licensed Recreational Therapy Assistant Standards of Prac...</u>	21	NCAC	65	.0204
Amend/*				
<u>Supervision of a Licensed Recreational Therapy Assistant</u>	21	NCAC	65	.0205
Amend/*				
<u>Minimum Level of Education and Competency for Licensed Re...</u>	21	NCAC	65	.0301
Amend/*				
<u>Minimum Level of Education and Competency for Licensed Re...</u>	21	NCAC	65	.0302
Amend/*				
<u>Application Procedures for Licensed Recreational Therapist...</u>	21	NCAC	65	.0401
Amend/*				
<u>Licensure Fees</u>	21	NCAC	65	.0501
Amend/*				
<u>Renewal Requirements for Licensed Recreational Therapist ...</u>	21	NCAC	65	.0602
Amend/*				
<u>Change of Address or Name Requirements for Licensed Recre...</u>	21	NCAC	65	.0603
Amend/*				
<u>LRTA Renewal Supervision Requirement</u>	21	NCAC	65	.0604
Adopt/*				
<u>Inactive Status</u>	21	NCAC	65	.0801
Amend/*				
<u>Military Endorsement</u>	21	NCAC	65	.0902
Adopt/*				

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100); mediated settlement conferences (.0200); simplified procedures for Medicaid applicant and recipient repeals (.0400); and electronic filing (.0500).

<u>General</u>	26	NCAC	03	.0101
Amend/*				

<u>Definitions and Construction</u> Amend/*	26 NCAC 03 .0102
<u>Definitions</u> Adopt/*	26 NCAC 03 .0501
<u>General</u> Adopt/*	26 NCAC 03 .0502
<u>Registrants</u> Adopt/*	26 NCAC 03 .0503
<u>Integration with Other Rules</u> Adopt/*	26 NCAC 03 .0504

BUILDING CODE COUNCIL

<u>2012 NC Building Code/Panic and Fire Exit Hardware</u> Amend/*	1008.1.10
<u>2012 NC Building Code/Continuity</u> Amend/*	712.4
<u>2012 NC Building Code/Construction, Corridors</u> Amend/*	1018.1
<u>2012 NC Energy Conservation Code/Building Envelope Requir...</u> Amend/*	Table 502.1.2
<u>2012 NC Fire Code/Suite/Room Identification</u> Amend/*	505.1.1
<u>2012 NC Fire Code/Definitions</u> Amend/*	902
<u>2012 NC Mechanical Code/Load Calculations</u> Amend/*	312.1
<u>2012 NC Plumbing Code/Water Distribution Pipe</u> Amend/*	605.4
<u>2014 NEC with NC Amendments</u> Adopt/*	150609 Item B-6

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

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

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May

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

J. Randolph Ward

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
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	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5 th Ave Speedmart	15 ABC 00355	04/22/15	
Alcoholic Beverage Control Commission v. Monterrey Mexican Restaurant Inc T/A Monterrey Mexican Restaurant	15 ABC00393	04/07/15	
NC Alcoholic Beverage Control Commission v. Greenbox, LLC, T/A Big Shots Sports Bar and Grill	15 ABC 04354	10/29/15	
Alcoholic Beverage Control Commission v. Woodlawn Restaurant and Lounge, LLC T/A O'Hara's Restaurant and Lounge	15 ABC 04355	09/03/15	
Alcoholic Beverage Control Commission v. Ortez Corp. Inc, T/A Pollo Royal Restaurant	15 ABC 04362	09/03/15	
NC Alcoholic Beverage Control Commission v. Rodeo Restaurant Group Corp, T/A Brasilla Churrasco Steakhouse	15 ABC 05010	10/06/15	
NC Alcoholic Beverage Control Commission v. Double K Sports Bar Inc, T/A Double K Sports Bar	15 ABC 05753	12/07/15	
NC Alcoholic Beverage Control Commission v. S and J Tobacco and Food Mart T/A S and J Tobacco and Food Mart	15 ABC 06629	12/14/15	
NC Alcoholic Beverage Control Commission v. 2Ak Enterprises LLC, T/A Tilt on Trade	15 ABC 06634	12/02/15	
NC Alcoholic Beverage Control Commission v. CCS Charlotte Enterprise LLC, T/A Caldwell Corner Store	15 ABC 06636	12/02/15	
<u>BOARD OF ARCHITECTURE</u>			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77

BOARD OF BARBER EXAMINERS

Arthur Donald Darby Jr v. Board of Barber Examiners - Staff 14 BBE 04565 12/05/14

BOARD OF FUNERAL SERVICES

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

BOARD OF SOCIAL WORK

NC Social Work Certification and Licensure Board v. Stephanie Helbeck Cornfield 15 BSW 04491 10/09/15 30:14 NCR 1573

BOARD FOR THE LICENSING OF GEOLOGISTS

Robert Payne, P.G. v. NC Board for the Licensing of Geologists 14 BOG 03255 06/11/15 30:07 NCR 780

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Hog Slat, Inc v. Department of Commerce 13 COM 20122 12/05/14

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Belinda Johnson v. Board of Certified Public Accountant Examiners 15 CPA 00798 03/09/15

DEPARTMENT OF PUBLIC SAFETY

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
 Anne Marie Brandt v. NC Department of Public Safety 14 CPS 05077 08/18/15 30:08 NCR 924
 Jack Norris v. Victims Compensation Commission 14 CPS 06019 03/30/15 30:01 NCR 89
 Yessika Murga Martinez v. Crime Victims Compensation Commission 14 CPS 07544 05/29/15
 Joanne Sanon v. Department of Public Safety 14 CPS 07995 01/16/15
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 Bonnie Hall v. Crime Victims Compensation Commission 14 CPS 08618 01/23/15

Antwon B. Logan v. Victims Compensation Commission 15 CPS 00093 03/11/15
 Dalton James v. Victims Compensation Commission 15 CPS 00463 04/24/15
 Dwight Earl Evans Jr. v. Victims Compensation Commission 15 CPS 03563 08/20/15
 Shawn J. McKay v. NC Department of Public Safety 15 CPS 04164 10/28/15
 Timothy Ryan Revels v. Department of Public Safety, Office of Victim Services 15 CPS 05756 09/22/15
 Kish D. Anderson v. NC Victims Compensation Commission 15 CPS 06451 12/16/15
 Latasha Watkins v. Victim Compensation 15 CPS 06893 11/30/15

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Michelle Starnes v. Patricia Norris, DVM, Director of Animal Welfare Division, North Carolina Department of Agriculture and Consumer Services 15 DAG 03112 06/25/15

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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 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
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 A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation 13 DHR 19835 05/22/15
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 Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01503 04/02/15 30:01 NCR 97
 Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01594 04/02/15 30:01 NCR 133
 Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare 14 DHR 02198 06/17/15 30:07 NCR 794
 Pamela and Andrew Frederick v. DHHS 14 DHR 04017 08/28/15
 Regina Joyner v. Division of Child Development and Early Education, DHHS 14 DHR 04463 12/10/14
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Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 05566	03/10/15	30:02 NCR 229
First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation	14 DHR 06332	02/12/15	
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Theresa L Greene v. DHHS, Division of Health Service Regulation	14 DHR 10160	02/10/15	
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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	
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Annie Beatrice Christian v. DHHS, Division of Health Service Regulation	15 DHR 01566	06/17/15	
Barbara Combs v. Julian F. Keith ADATC, Division of Mental Health Developmental	15 DHR 01570	05/12/15	
Sharon Renee Quick v. DHHS	15 DHR 01830	06/22/15	
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Ray D. McGee v. DHHS	15 DHR 01906	05/22/15	
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Henry and Barbara Brown and Quality Professional Multiservices LLC v. DHHS, Division of Health Service Regulation	15 DHR 02306	07/01/15	
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Special K Enrichment and Melanie James v. Partners Behavioral Health Management	15 DHR 03194	08/19/15	
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Christian Prep Academy Inc., Pamela Powell v. DHHS, Division of Public Health, Child and Adult Care Food Program	15 DHR 03347	06/19/15	
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Landmark Assisted Living LLC, Licensee D/B/A Grayson Creek of Welcome	15 DHR 05293	10/22/15	
Candii Homes, Rosalina Teel v. Eastpointe	15 DHR 05598	10/08/15	

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Johnny Dale Hooks, Sr. v. NC Department of Health and Human Services	15 DHR 05783	12/02/15	
Carolyn Pritchett v. DHHS	15 DHR 06086	12/30/15	
Nancy Peace v. NC DHHS, Division of Child Development and Early Education	15 DHR 06231	12/31/15	
Linda Maness Garner v. NC DHHS, Division of Child Development and Early Education	15 DHR 06621	12/16/15	
Delaine Manly v. NC DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	15 DHR 06679	10/29/15	
Brittany Easton v. Health Care Personnel Registry	15 DHR 06727	10/28/15	
Blessing E. Anyebe v. NC DHHS, Division of Health Care Regulation, Health Care Personnel Registry Section	15 DHR 06853	12/15/15	
Laura Yvette Hardison v. DHHS, Division of Health Service Regulation	15 DHR 07973	12/11/15	
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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	
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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	
Billy Vance Waldroup v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07718	08/24/15	30:08 NCR 958
Michelle Wiggins Morings v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07719	03/17/15	
Timothy McCoy Rogers v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07923	10/07/15	
Billy Ray Bursleson 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	
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Christopher J. Weaver v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 08146	09/01/15	
Bobby Andrew Boudreau v. NC Private Protective Services Board	14 DOJ 08155	12/19/14	
Catherine Denise Netter v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08257	07/09/15	
Carol Bernice Manning v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 08258	08/17/15	30:12 NCR 1365
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	
Steven Joseph O'Byrne v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 09954	08/13/15	30:12 NCR 1370
Samuel Jason Bradley v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00051	03/25/15	
Martin Luther Locklear v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00052	06/05/15	30:05 NCR 580
Shenikwa Janay Barefield v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00053	10/15/15	30:13 NCR 1451
Michael Allen Strickland v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00054	05/07/15	
Ronald Corbett Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00055	05/04/15	30:05 NCR 587
Michael Glenn Davis v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00211	09/11/15	30:13 NCR 1457
Rodrigo Estanol v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00212	08/03/15	30:13 NCR 1466
George Allen Woodcock v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00213	04/28/15	
Defferson Luvontae Graham v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00214	07/17/15	30:10 NCR 1181
Edward Holley v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00215	07/16/15	30:10 NCR 1186
Christopher Paul Abner v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00216	08/17/15	30:10 NCR 1194

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Kenneth Sinatra Whittington Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 00388	06/30/15	
Billy-Dee Greenwood v. NC Private Protective Services Board	15 DOJ 00520	06/02/15	30:07 NCR 833
Kendrix Lavel Mace v. NC Private Protective Services Board	15 DOJ 00708	06/04/15	
Donald Lee Lucas v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01031	09/16/15	
Jose Antonio Perez III v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01032	11/23/15	30:15 NCR 1694
John Charles Laverne Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01033	07/22/15	
Tod Leslie Bonello v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01107	08/03/15	
Harfel Clementa Davis v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01533	08/05/15	30:13 NCR 1478
Shavonne Tawanna Collins v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01535	07/07/15	
Inah Latonna York v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01537	05/26/15	
Clonzie Lee Nealy Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01539	07/22/15	
Sheila Lauvedia Banks v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01542	05/26/15	
Rion Neil Ferguson v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01543	07/13/15	
James Alvin Hunt v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02028	08/19/15	
Joseph Thomas Burris v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02029	10/01/15	30:11 NCR 1241
Hugh George Luster v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02530	08/18/15	
Roger Lee Inge Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02534	10/22/15	
Matthew John Steeno v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02691	08/07/15	
Andre Deshaud Pickens v. NC Private Protective Services Board	15 DOJ 02730	06/19/15	30:10 NCR 1202
William Micah Jernigan v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 02958	07/23/15	
Brianna Coneese Billups v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 03111	10/26/15	
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Ashley Bryant Helms v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 03885	11/13/15	30:15 NCR 1700
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Michael Ross Pitchford v. NC Private Protective Services Board	15 DOJ 04293	09/25/15	
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Timothy T.J. Conterras v. NC Private Protective Services Board	15 DOJ 05300	09/30/15	30:11 NCR 1254
Travis Lee Richmond v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 05790	11/02/15	
Richard Waverly Merritt v. NC Private Protective Services Board	15 DOJ 05829	12/01/15	
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DEPARTMENT OF TRANSPORTATION

Barnhill Contracting Co. Inc v. Department of Transportation, Division of Highways 12 DOT 04647 02/03/15

DIVISION OF EMPLOYMENT SECURITY

Kendra Marie Halsey v. Elizabeth City State University 14 DSC 09486 03/17/15

Ruby Anne Beck v. NC Department of Public Safety 15 DSC 01652 06/02/15

DEPARTMENT OF STATE TREASURER

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

James R. Trotter v. State Treasurer, State Retirement Systems Division 14 DST 10143 10/26/15

Revonda E. Nance v. NC Department of State Treasurer Retirement Systems 15 DST 01151 05/27/15

Selyna Deshazo v. NC Retirement System Disability Section 15 DST 03060 08/20/15

Holly Ann Bowers v. Disability Retirement Systems Division, Garry Austin 15 DST 05827 10/01/15

STATE BOARD OF EDUCATION

TPS Publishing Inc. v. NC State Board of Education 14 EDC 07610 10/22/15 30:12 NCR 1376

McGraw-Hill School Education LLC v. NC State Board of Education; Textbook Commission; and Department of Public Instruction 14 EDC 08481 11/23/15 30:15 NCR 1673

Danny Lorenzo Scott v. Public Schools of NC, Department of Public Instruction 14 EDC 09883 07/10/15 30:06 NCR 705

Sherry-Lynn Amaral v. DPI NC Financial Licensure and Business Services Licensure Section 14 EDC 10060 10/07/15 30:12 NCR 1395

Allison Rascoe v. NC State Board of Education 15 EDC 00272 08/28/15 30:14 NCR 1580

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Partnership Achieving Community Education "PACE" Academy v. NC State Board of Education	15 EDC 03643	08/13/15	30:14 NCR 1586
Timothy M. Maghran v. Department of Public Instruction	15 EDC 05550	11/05/15	
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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	
John J. Woodard Jr. v. NC Department of Environment and Natural Resources, Division of Energy, Mineral, and Land Resources	15 EHR 03522	08/20/15	
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<u>DEPARTMENT OF INSURANCE</u>			
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Angela Joyner-Perry v. NC State Health Plan for Teachers and State Employees Retirement System	15 INS 00208	05/13/15	
Stacy M. Warner v. NC State Health Plan	15 INS 00833	07/31/15	30:11 NCR 1258
Tiece M. Ruffin v. NC State Health Plan	15 INS 03371	07/20/15	
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Dennis Goodson v. Office of Administrative Hearings	14 MIS 10144	02/19/15	
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Steven Dolinski v. NC Department of Public Safety	14 OSP 01047	02/16/15	
Freddie Wayne Huff II v. NC Department of Public Safety	14 OSP 03402	02/16/15	
Monica Bullard v. NC Department of Public Safety	14 OSP 04724	03/18/15	
Kenneth M. Lloyd Jr. v. State of NC Department of Transportation	14 OSP 05708	01/15/15	
Millie E. Hershner v. NC Department of Administration	14 OSP 06051	10/02/14	
Matthew Lennon v. NC Department of Justice and NC Department of Public Safety	14 OSP 06377	02/16/15	
Oshun G. Williams v. NCDOT Division #5	14 OSP 06561	01/22/15	
Estate of Todd McCracken v. Department of Revenue	14 OSP 07170	08/24/15	30:09 NCR 1076

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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
Dr. Tatiana A. Tagirova v. Elizabeth City State University	14 OSP 07929	03/05/15	
Machelle Hamilton v. Caswell Center, Department of Health and Human Services	14 OSP 08082	01/13/15	
Gail Ann Hagen v. Partners Behavioral Health Management	14 OSP 08303	01/21/15	
William Frank Strickland v. NC Department of Health and Human Services	14 OSP 09484	03/17/15	
Teresa Hayes v. University of North Carolina Chapel Hill School of Dentistry	14 OSP 09689	02/12/15	
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
Benham Aryafar V. North Carolina State Board of Community Colleges/South Piedmont Community College	14 OSP 10059	02/19/15	
Robert Jarmon v. North Carolina Central University	14 OSP 10276	06/09/15	
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Karimah Michelle Bennett v. North Carolina Central University	15 OSP 00470	04/29/15	
Chandra Edwards v. Chapel Hill-Carrboro City Schools	15 OSP 00579	04/01/15	
Denise Brooks v. Polk Correctional Institution	15 OSP 00949	05/18/15	
Joevelyn Heard-Leak v. NC State University Center for Urban Affairs	15 OSP 01091	08/31/15	30:15 NCR 1708
Ronnie Evans v. Angela Tarantini, Department of Correction	15 OSP 01232	07/30/15	
Waldo Fenner v. John Umstead Hospital/RJ Blackley Alcohol and Drug Abuse Treatment Center (ADATC)	15 OSP 01648	05/21/15	
Barbara Smith-Lide b. NC Department of Public Safety	15 OSP 01737	12/03/15	
Samuel Avery Furlow v. NC Department of Public Safety, Polk Correctional Institution	15 OSP 02299	09/09/15	30:15 NCR 1712
Savvas Georgiades v. University of North Carolina at Pembroke-Department of Human Resources	15 OSP 02473	09/22/15	
Kimberly A. Sutton v. NC Department of Public Safety, Division of Adult Correction and Juvenile Justice	15 OSP 02512	07/28/15	
Kesselly Jahneh Kasiyah Sr. v. Guilford County Schools, Shirley Morrission	15 OSP 02826	08/28/15	
Leah Scheuerell v. Harnett Correctional Facility and Raleigh Regional Office	15 OSP 03150	07/14/15	
Samantha Davis v. Caswell Center	15 OSP 03254	07/15/15	
Donald P. Morrison, II v. NC Department of Public Safety/Division of Adult Correction/Harnett Correction Institution	15 OSP 04351	09/08/15	
Michael Glenn Davis v. NC Department of Public Safety, Adult Correction and Juvenile Justice	15 OSP 04607	09/24/15	
Johnnie M Darden Sr. v. Department of Public Safety	15 OSP 05439	12/31/15	
Teresa Hayes v. The University of North Carolina Chapel Hill School of Dentistry	15 OSP 06124	11/24/15	
Jonathan S. Onyenekewe v. NC DHHS, RJ Blackley ADATC	15 OSP 06489	11/10/15	
James Hampton Sr. v. UNC Pembroke	15 OSP 06622	11/20/15	
Ron Hedrington v. Tarheel Challenge Academy (TCA Director Timmons Edward)	15 OSP 07237	12/03/15	
Angela Miles Stephens v. NC Department fo Public Safety	15 OSP 07244	12/02/15	
April Dawn Johnson v. Broughton Hospital	15 OSP 07723	12/30/15	
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Donald McPhaul Jr. v. NC Department of Revenue	14 REV 04564	12/05/14	
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Sean Condren v. NC Department of Revenue	14 REV 09184	08/07/15	30:14 NCR 1569
Norman Harvin v. NC Department of Revenue	14 REV 09948	06/19/15	
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Brenda Wells v. NC Department of Revenue	15 REV 00303	04/13/14	
Jasmine J. Davenport v. NC Department of Revenue	15 REV 00357	05/29/15	
Olethia Davis v. NC Department of Revenue (Lyons Gray, Jerry Coble, Charles H. Helms, Margaret "Beth" Collins, Roderick Anthony Edwards, Thomas "Tommy" Thomas, Joan Kincaid Lawrence)	15 REV 00664	05/12/15	
Forrest Small and Kimberly Mazanec v. Department of Revenue	15 REV 00666	06/23/15	30:11 NCR 1261
Jesse Lee and Keshia Nickerson, v. NC Department of Revenue	15 REV 01088	06/17/15	
Chester L McDowell Sr v. NC Department of Revenue	15 REV 01574	10/06/15	
Michael Park and Yopop South Park LLC. V. NC Department of Revenue	15 REV 02607	07/27/15	
Marva Gillis NC Department of Revenue	15 REV 05754	10/07/15	

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SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

North Carolina Substance Abuse Professional Practice Board v. John Patrick Craven 14 SAP 05713 01/06/15

OFFICE OF THE SECRETARY OF STATE

Carolyn Marie Aikens v. Secretary of State, Notary Public 13 SOS 15500 11/05/13

Jamel Byrd-El v. Department of the Secretary of State 14 SOS 06624 01/26/15

Marvin Ray Sparrow v. Secretary of State 14 SOS 07416 05/05/15

Sharron Marie Glover v. Ozie Stallworth Director, Notary Certification Enforcement Section
and filing Division Department of the NC Secretary of State 14 SOS 07998 01/28/15

Deborah T. Godfrey v. Secretary of State Notary Division 14 SOS 09902 03/09/15

John Bradford Pittman v. NC Department of the Secretary of State 15 SOS 02354 10/19/15

Qadir El Bey, Mesu El Bey, Asas Ashu El Bey, Fatama El Bey v. State of North Carolina
Department of Secretary of State 15 SOS 02377 07/21/15

Rasul Khesu-Sadiq Bey 15 SOS 03219 08/21/15

Chena Conroy v. NC Department of the Secretary of State 15 SOS 05173 10/28/15

Jason Gold v. NC Department of the Secretary of State; Notary Section 15 SOS 07346 12/03/15

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Deloris Young v. University of North Carolina Hospitals 15 UNC 01408 07/06/15

Barbara Snipes v. University of North Carolina Hospitals 15 UNC 01927 07/16/14

Deborah H. Justice v. University of North Carolina Hospitals 15 UNC 02347 05/21/15

John Walker v. UNC Hospitals 15 UNC 02639 07/16/15

Bernardine Fox v. UNC Hospitals 15 UNC 02692 08/24/15

Theresa Bell v. UNC Hospitals 15 UNC 02693 07/01/15

Phillip Leigh v. University of North Carolina Hospitals 15 UNC 03564 09/04/15

For Respondents North Carolina State Board of Education ("SBE"), Textbook Commission ("Commission"), and the Department of Public Instruction ("DPI") (collectively, "Respondents"):

Tiffany J. Lucas
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

ISSUES

1. Whether Petitioner's bid application for its Glencoe *Math Course 1, Math Course 2, Math Course 3* and *Accelerated* was properly submitted to and evaluated by Respondents and as such, whether the Respondents violated N.C. Gen. Stat. § 150B-23 through the Textbook Commission's failure to recommend, and the State Board of Education's failure to approve, Petitioner McGraw-Hill's Glencoe middle school math materials and place the materials on the state-approved textbook list.
2. Whether the Textbook Commission violated N.C. Gen. Stat. § 150B-23 in its application of the Reconsideration Process to McGraw-Hill.

EXHIBITS

For Petitioner

- 3 2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina
- 4 letter, Wilsworth of McGraw-Hill to Moore, 4/4/14, with attached bid submission
- 5 correlations of Glencoe middle school textbooks with Common Core State Standards, Mathematics Grade 6
- 6 correlations of Glencoe middle school textbooks with Common Core State Standards, Mathematics Grade 7
- 7 correlations of Glencoe middle school textbooks with Common Core State Standards, Mathematics Grade 8
- 8 correlations of Glencoe middle school textbooks with Common Core State Standards, Mathematics Grades 7 and 8
- 9 Instructional Materials Evaluation Tool for CCSS Alignment in Mathematics

Grades 6-8, Bid ID 51, Evaluator Robbin Briley, Glencoe Math Course, Grade 6-8

10 memorandum, Brown to 2014 Publishers, 8/1/14, re August 11-12, 2014 Deliberations Meeting

11 Textbook Commission Members, 2014

13 reconsideration notes, Textbook Commission members, Bid ID#s 51, 52, 53, and 54

14 Textbook Commission Deliberations Voting Chart - Mathematics K-12, 2014

15 letter, Novey to SBE, 9/2/14, with documents showing textbooks not recommended

16 NC Textbook Adoption Process, Frequently Asked Questions

18 2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina, K-12 Mathematics, PowerPoint presentation to Textbook Commission, 3/5/13

19 *McGraw-Hill School Education, LLC v. NC State Board of Education, et al.*, Order Granting Preliminary Injunction, 1/15/15

20 printout from State Board of Education with links to adopted textbooks

21 statement from DPI placing Glencoe math textbooks on approved textbook list

22 2015 Cost Proposal, Excel Spreadsheet (electronic document)

23 e-mail, Bennett to Burke and others, 8/13/14, subject: NC 6-12 Hearing Results

24 e-mail exchanges within McGraw-Hill re Textbook Recommended/Not Recommended List, 8/25/14; e-mail, Moore to publishers, 8/18/14, re Textbook Recommended/Not Recommended List

35 e-mail string among Bennett, Ryan, Snowwhite, and Silva of McGraw-Hill, 9/15/14 and 9/17/14, re McGraw-Hill Proposal - 2014 Mathematics Education Instructional Materials

38A Glencoe Math Course 1 Student Edition, Volume 1

38B Glencoe Math Course 1 Student Edition, Volume 2

38C Glencoe Math Course 1 Teacher Edition, Volume 1

- 38D Glencoe Math Course 1 Teacher Edition, Volume 2
- 38E Glencoe Math Course 1, Assessment Matters workbook
- 39A Glencoe Math Course 2 Student Edition, Volume 1
- 39B Glencoe Math Course 2 Student Edition, Volume 2
- 39C Glencoe Math Course 2 Teacher Edition, Volume 1
- 39D Glencoe Math Course 2 Teacher Edition, Volume 2
- 39E Glencoe Math Course 2, Assessment Matters workbook
- 40A Glencoe Math Course 3 Student Edition, Volume 1
- 40B Glencoe Math Course 3 Student Edition, Volume 2
- 40C Glencoe Math Course 3 Teacher Edition, Volume 1
- 40D Glencoe Math Course 3 Teacher Edition, Volume 2
- 40E Glencoe Math Course 3, Assessment Matters workbook
- 41 excerpts from deposition of Tara Wilsworth, 4/23/15
- 42 excerpts from deposition of Kim Harvey, 4/23/15, pages 18-21
- 43 memorandum, Brown to Textbook Publishers, 9/5/14, State Board of Education Textbook Recommendations

For Respondents

- 1 North Carolina Bid Proposal Form A, 5/8/09
- 2 North Carolina Textbook Adoption School Price List 2009
- 3 2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina, K-12 Mathematics, PowerPoint presentation to Textbook Commission, 3/5/13
- 4 Form A, North Carolina Bid Proposal, McGraw-Hill Education, 4/5/13
- 5 North Carolina Textbook Adoption School Price List 2013 - CTE

- 6 2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina
- 7 letter, Wilsworth to Moore, 4/4/14, with attached McGraw-Hill bid proposal
- 8 North Carolina Textbook Commission, PowerPoint presentation, 4/28/14
- 9 materials presented to State Board of Education, September 2014
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WITNESSES

For Petitioner

1. Kim Harvey (by live testimony and deposition designations) is the director of strategic services for McGraw-Hill. Ms. Harvey oversees the creation of bids and proposals, grant applications, correlations and the execution of contracts. She has been employed at McGraw-Hill for 23 years.
2. Edward Wayne Bennett (by live testimony) is McGraw-Hill's K-12 district manager for the southeast, supporting Georgia, North Carolina, South Carolina and West Virginia. Mr. Bennett is familiar with McGraw-Hill's product, formulations, substance and the procedures for approval in North Carolina. He works directly with the marketing department in formulating how to submit McGraw-Hill's textbook bid application.
3. Andrew Clute (by live testimony) is the Vice President of McGraw-Hill's 6th grade through 12th grade portfolio and is accountable for the profit and loss of McGraw-Hill's product lines for these grades. His primary job is to ensure McGraw-Hill is accurately forecasting and developing products to meet the future needs of the market. Mr. Clute developed the Glencoe middle school math materials as a series.
4. Tara Wilsworth (by deposition designations) is a bids and contracts specialist at McGraw-Hill. She helped prepare McGraw-Hill's bid application. Excerpts from her deposition testimony have been entered into evidence as Petitioner's Exhibit 41.

For Respondents

5. Charles Gaffigan (by live testimony) is a member of the Textbook Commission and oversaw the textbook approval process for the 2014-2015 bid cycle. Mr. Gaffigan is currently employed as the principal at East McDowell Middle School.

6. Daniel Novey, Ed.D. (by live testimony) is the Chair of the Textbook Commission. Mr. Novey is currently employed as the superintendent of schools in Carteret County, North Carolina.

7. Donna Brown (by live testimony) is the director of the Federal Program Monitoring and Support Division at the North Carolina DPI. Her division is responsible for grant administration, implementation of federal and state initiatives as well as facilitating the Superintendent's Parent Advisory Council and the textbook adoption process. Ms. Brown was in charge of communication and coordination in the development of the 2014 Invitation.

8. Laura Crumpler (by live testimony) is a Special Deputy Attorney General in the Education Section with the North Carolina Department of Justice. Ms. Crumpler's job duties include advising the North Carolina DPI, the SBE, and the various boards and commissions that report to the SBE.

APPLICABLE STATUTES and RULES

(including but not limited to)

N.C. Gen. Stat. § 115C-85 *seq.*; and N.C. Gen. Stat. § 150B-23; 16
N.C.A.C. 6D.0205, .0206, .0207.

PRELIMINARY MATTERS

Petitioner filed with its Petition for Contested Case Hearing a Motion for Temporary Restraining Order and Preliminary Injunction and Request for Expedited Hearing, with accompanying affidavits of Mr. Wayne Bennett, District Sales Manager for McGraw-Hill. Administrative Law Judge ("ALJ") J. Randall May heard arguments on Petitioner's Motion and granted Petitioner's Motion for Preliminary Injunction.

On January 15, 2015, ALJ May issued an Order on Petitioner's Preliminary Injunction Motion. The Order requires Respondents to place McGraw-Hill's Glencoe middle school math materials on the state-approved textbook list pending the outcome of this contested case, subject to a continuing performance bond by McGraw-Hill.

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

FINDINGS OF FACT

1. Petitioner McGraw-Hill School Education, LLC ("McGraw-Hill" or "Petitioner") is a foreign limited liability company organized under the laws of Delaware with its North Carolina registered agent located at 176 Mine Lake Court, Suite 100, Raleigh, North Carolina 27615. Its learning materials are used in more than 13,000 schools and districts. McGraw-Hill submits about 500 textbook bids each year throughout the United States.

2. Respondent North Carolina State Board of Education ("SBE" or "Respondent") is an administrative organization of the State. The SBE is responsible for the general supervision and administration of this State's free public school system subject to laws enacted by the General Assembly. The policies developed by the North Carolina State Board of Education set the direction for all aspects of the DPI and local public school organization and operations.

3. Respondent North Carolina Textbook Commission ("Commission" or "Respondent") is an appointed 23 member commission. The Commission is responsible for evaluating textbooks and recommending to the SBE which textbooks should be included on the state-approved textbook list.

4. Respondent the North Carolina Department of Public Instruction ("DPI" or "Respondent") is charged with implementing the state's public school laws and SBE's policies and procedures governing pre-kindergarten through 12th grade public education.

5. North Carolina has an established process for adopting textbooks for use in the public schools. The General Statutes have set forth specific mandates and guidelines for the adoption of textbooks, which adoption is under the general jurisdiction of the State Board of Education.

6. The State Board of Education is charged with adopting standards for each subject taught in the public schools. Textbooks must align with those adopted standards. After a set of standards is adopted for a new subject, the State Board of Education must engage in the selection of textbooks that align with those standards.

7. In North Carolina, publishers are invited to submit materials to be placed on the list of textbooks approved by the SBE.

8. Prior to 2010, the textbook adoption process typically operated off of a five year cycle. Due to lack of funding and implementation of the Common Core curriculum, the cycle has changed; however, as new content standards for particular academic subjects are developed, publishers are usually invited to submit bids for the following year.

9. Common Core is a set of standards and philosophies the goal of which is to instill more rigor into the curriculum in order to drive higher outcomes. The Common Core State Standards in North Carolina are almost a copy of the national version of Common Core.

10. For each bid cycle, an Invitation to Submit Bids, essentially a request for proposals, is distributed to publishers inviting them to submit materials for the academic subject which is up for renewal.

11. The applicable statutes provide for a Textbook Commission to ensure impartiality with regard to textbook selection. Textbook Commission members receive training by members of the Department of Public Instruction. The State Board of Education defines a comprehensive, detailed process for requesting bids, ensuring that there are no conflicts of interest, ensuring that publishers comply with requirements, adhering to stringent timelines, and providing the most impartial review of textbooks possible.

12. In addition to Textbook Commission members, the Commission appoints Regional Advisory Committee evaluators ("evaluators") who are assigned the task of reviewing in depth each and every textbook that is submitted for bid.

13. The purpose for the textbook adoption process is to "select and adopt for a period to be determined the most advantageous to the State public school system for the exclusive use in the public schools of North Carolina, the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina." N.C. Gen. Stat. § 115C-86.

14. The 2014 Invitation to Submit Textbooks for Evaluation and Adoption (the "2014 Invitation") focused on mathematics, requiring all submissions to be compatible with the goals and objectives of the North Carolina Standard Course of Study in Mathematics. Materials for the Standard Course of Study in Mathematics are required to align with Common Core State Standards for Mathematics ("CCSS-M") in North Carolina and the Standards for Mathematical Practice. (P. Ex. 3); (Stipulation of the Parties in Pre-Trial Order, 3(a), (b)).

15. As part of the 2014-2015 textbook adoption cycle, on or about February 28, 2014, there was a Textbook Commission planning meeting at which Textbook Commissioners were provided initial training for the upcoming adoption cycle.

16. On or about March 7, 2014, textbook publishers were invited by DPI to submit textbooks/programs on a bid proposal form in response to the 2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina ("Invitation to Submit") developed by the agency and approved by the State Board of Education.

17. The 2014 Invitation was reviewed by the attorneys for the SBE before it was sent to publishers.

18. McGraw-Hill was one of several textbook publishers that received the invitation from DPI. McGraw-Hill is a leading publisher of textbooks in the United States and had participated in multiple textbook selection and adoption cycles in North Carolina in the past.

19. Approval of a publisher's materials by the SBE is significant. If materials are placed on the state-approved textbook list, Local Education Agencies ("LEAs") do not pay sales tax or shipping and handling on the purchase, resulting in essentially a 14% discount in price. The SBE and the publisher enter into a standard textbook contract which provides additional benefits to LEAs to incentivize them to purchase the approved textbooks. Some of these benefits include: free teacher editions for each textbook, a guarantee that the textbook will be purchased at its lowest possible price, and digitized instructional material for individual students using digital texts.

20. School districts may purchase materials that are not on the state-approved textbook list but prices for those materials may not be fixed and the school district will not receive the benefits found in the state's contract, such as free digital materials and teacher editions. Further, publishers cannot offer local school districts a lower price for the materials than it offers to school districts in other states due to the Most Favored Nations clause.

21. The Invitation to Submit issued by DPI and sent to McGraw-Hill and other textbook publishers included a page entitled "Tentative Schedule for 2014-2015 Adoption Process." Among other important dates, the page with the tentative schedule set forth that all publishers that would be submitting bids in response to the Invitation to Submit were encouraged to attend a preliminary publishers' meeting. Also included within the Invitation to Submit was a bid proposal sample form (Attachment 5), along with the instruction that "[o]n the Bid Proposal Form (Attachment 5), publishers must designate each specific category, by number and name, for which a bid submission is to be evaluated." (Petitioner's Ex. 3.)

22. On or about March 13, 2014, DPI hosted a preliminary publishers meeting, at which publishers received additional information and explanation about the 2014-2015 adoption process. Publishers were given the opportunity to ask questions about the process, including about the instructions and information provided in the Invitation to Submit, prior to submitting their bid proposal forms and bid submission samples and correlations. At least one representative from McGraw-Hill attended the preliminary publishers meeting.

23. Following the March 13, 2014 publishers meeting, DPI e-mailed to the textbook publishers, including McGraw-Hill, updated presentation slides from the meeting, a copy of the Invitation to Submit, and a Frequently Asked Questions (FAQ) document. One of the questions in the FAQ document stated: "Publishers may only submit bids in two categories. Does that mean two of the seven program areas?" The answer provided in response was: "K-12 Mathematics is considered to be one category. Publishers may

submit bids for any grades/courses for math; however, publishers must list the grade/course for each textbook on the bid form." (Respondents' Ex. 3, 10)

24. McGraw-Hill participated but did not ask DPI about how to submit its bid as a series because it had no questions regarding its intention or how to do so. McGraw-Hill relied on the instructions in the 2014 Invitation. Neither the 2014 Invitation nor the 2014 Frequently Asked Questions document provided any instruction to publishers regarding the ability to, or the format for, bidding materials as a series.

25. On or about March 27, 2014, the members of the Textbook Commission attended a meeting at which they were trained on K-12 mathematics content standards by curriculum consultants at DPI. Also, prior to conducting the review and evaluation of textbooks, members of the Textbook Commission also received training on the textbook selection and adoption process including specific training on: the evaluation rubrics to be used in evaluating the textbook materials submitted by publishers for consideration by the Textbook Commission, the legal requirements for being a Textbook Commission member, and the ethics requirements imposed on all State commission or board members.

26. McGraw-Hill's bid application was timely submitted to the Office of Textbook Adoption Services. McGraw-Hill submitted some 105 "bids", including mathematic materials for grades 6, 7 and 8.

27. Following the April 8, 2015 deadline for textbook publishers to submit sealed bid proposals, the bids were opened in the Office of Textbook Adoption Services on April 9, 2014. Ms. Sylvia Moore, a DPI staff member, compiled the information submitted by all of the textbook publishers into a spreadsheet, which she then forwarded to the acting Chair of the Textbook Commission, Charles Gaffigan. Mr. Gaffigan assigned a Bid ID Number to each textbook or set of textbook materials identified by the publishers on the bid proposal forms. Then, after assigning Bid ID Numbers to all of the materials identified on the bid proposal forms, Mr. Gaffigan prepared a comprehensive bid submissions list document, which included information on all of the textbook materials identified on the bid proposal forms submitted by all of the textbook publishers who would be submitting textbook materials to be considered by the Textbook Commission. On May 12, 2014, Ms. Moore distributed the comprehensive bid submissions list with the Bid ID Numbers to the textbook publishers and invited publishers to contact her with any questions.

28. Also, after receiving the spreadsheet from Ms. Moore, Mr. Gaffigan, along with other members of the Textbook Commission, began the process of hiring and assigning evaluators to review textbooks. In hiring evaluators to review textbooks, the Textbook Commission took into account the credentials of the prospective evaluators, the total number of textbooks identified on the bid proposal forms submitted by the textbook publishers, the number of textbooks that had been designated for a particular grade or course as set forth on the bid proposal forms submitted by textbook publishers, as well as the content area expertise of the Textbook Commission members.

29. As part of the 2014-2015 textbook adoption cycle, McGraw Hill responded to the Invitation to Submit by submitting a response that included a bid proposal form which identified multiple dozens of textbooks materials to be considered for adoption by the SBE for

use at every grade level, K-12. McGraw-Hill submitted the following materials as corresponding with grades 6 through 8: *Math Course 1*, *Math Course 2*, *Math Course 3* and *Accelerated* (the "Glencoe middle school math materials"). Included in each of these bids were student and teacher editions, as well as digital material. With respect to the Glencoe middle school textbooks identified on the bid proposal form, Petitioner indicated that the "grade level" for each textbook was "6-8".

30. McGraw-Hill purposefully bid its Glencoe middle school math materials as a series by designating the Glencoe middle school math materials as corresponding with grades 6 through 8. It was McGraw-Hill's intent to show that the materials are a series, that they are intended to be implemented as a series, and that the Glencoe middle school math materials met the spirit and intent of the Common Core for grades 6, 7 and 8.

31. The Glencoe middle school math materials were meant to build on each other through what is called a "gradual release methodology" where a topic is introduced at one grade level and then more substance is added to it at a later grade level to meet the standards. Petitioner asserted that building the materials as a series ensures that as the student introduces themselves to new concepts, the student has the same foundation from the previous grades as well as the same tools, the same digital system, the same look and same feel to make sure he or she is able to accurately comprehend and learn the content as opposed to being reintroduced every time.

32. The 2014 Invitation contains the requirements and instructions for publishers to complete the bid and submit official samples. The 2014 Invitation contains six parameters governing textbook submissions. The sample contract is Form A of the bid proposal. The Invitation does not give guidance to publishers as to a manner to present textbooks for each grade level except the box marked "grade level." The Invitation does not specify that one textbook cannot be submitted as a series. McGraw-Hill specified in its bid that the Glencoe middle school math materials were to be evaluated as a series.

33. Following the submission of its bids, every publisher also submits correlations which indicate how the course materials meet the content standards required by the SBE. McGraw-Hill timely submitted its Glencoe middle school math materials correlations, and these correlations were reviewed by the regional advisory evaluators and the Textbook Commission.

34. Mr. Gaffigan was surprised to learn that McGraw-Hill had designated each of the Glencoe middle school textbooks that it would be submitting for consideration as grade levels 6, 7 and 8 textbooks. Mr. Gaffigan testified at the hearing in this matter that while it was not unprecedented for a publisher to represent that a textbook aligned with the standards for multiple grades (as opposed to a single grade), it was unusual, particularly with respect to middle school math materials. Because of that, Mr. Gaffigan wanted to be sure that McGraw-Hill had, in fact, indicated on the bid proposal form that it submitted that each of the Glencoe middle school textbooks correlated with grades 6, 7, and 8. He confirmed with Sylvia Moore at DPI that McGraw-Hill had indicated on the bid proposal form that each of the Glencoe middle school textbooks correlated with grades "6-8."

35. During the 2014-2015 math textbooks selection and adoption cycle, after confirming that McGraw Hill had indicated on the bid proposal form that the "grade" associated with each Glencoe textbook was "6-8," Mr. Gaffigan assigned bid numbers to each textbook or set of textbooks consistent with the way McGraw-Hill presented the materials on the bid proposal form document that it submitted to DPI. Specifically, Mr. Gaffigan assigned: Bid No. 51 to the materials identified on the bid proposal form as *Course 1* materials; Bid No. 52 to the materials identified on the bid proposal form as *Course 2* materials; Bid No. 53 to the materials identified on the bid proposal form as *Course 3* materials; and Bid No. 54 to the materials identified on the bid proposal form as *Math Accelerate* materials. For each of the textbooks or set of materials identified by McGraw Hill on the bid proposal form and assigned Bid No. 51, 52, 53, or 54, McGraw Hill designated the corresponding grade level for each as "6-8."

36. After it submitted its sealed bid proposal, McGraw-Hill timely submitted its textbook samples and correlations for review by the Textbook Commission and the evaluators. Based upon how McGraw-Hill completed the bid proposal form, it was understood by the agency and reiterated to the members of the Textbook Commission that McGraw-Hill would submit textbook samples for evaluation, all of which it should expect to be evaluated against the standards adopted in North Carolina for math in grades 6, 7, and 8. The correlations submitted by McGraw-Hill for the *Course 1* materials, the *Course 2* materials, and the *Course 3* materials, each identified one specific grade for which the textbook materials were offered. Specifically, the correlation document for *Course 1* referenced grade 6; for *Course 2*, grade 7; and for *Course 3*, grade 8. The correlation document for the *Math Accelerated* materials referenced grades 7 and 8.

37. Following the submission of textbook samples and correlations by McGraw-Hill, on or around July 20, 2014, McGraw-Hill (along with all other submitting textbook publishers) was given the opportunity to present to the Textbook Commission and the evaluators concerning its instructional materials submissions.

38. After the textbook samples and correlations were submitted by McGraw-Hill for review, the evaluators assigned to review the materials were advised that McGraw-Hill indicated on the bid proposal form that each of the textbooks or set of materials associated with Bid ID Numbers 51, 52, 53, and 54 were for grade levels 6, 7, and 8, and as such, the textbook materials should be evaluated against the standards for all three grades.

39. For each textbook or set of materials submitted by the Petitioner under Bid Numbers 51, 52, 53, and 54, Textbook Commission members and evaluators reviewed the materials. The majority found deficiencies and evidence that the materials did not conform to the Standard Course of Study and approved objectives for the specific grades for which it was offered, *i.e.* grades 6, 7, and 8. The evaluators' findings and concerns regarding the materials were documented on the evaluation rubrics.

40. The evaluators and Textbook Commission members discussed the merits and deficiencies of the textbooks that had been submitted for consideration. Evaluators were polled by Mr. Gaffigan concerning whether they would vote to recommend or not recommend for adoption the textbooks they reviewed and evaluated. For all of the textbook materials associated with Bid ID Numbers 51, 52, 53 and 54, the majority of the evaluators voted that they would not recommend the textbook materials for adoption

because the materials did not sufficiently align with the standards for the grades for which they were offered, *i.e.*, grades 6, 7, and 8.

41. As follow-up, the evaluators were asked by Textbook Commission members to indicate how they would have voted if McGraw-Hill had indicated on its bid proposal form that the individual course textbook materials were being submitted for a single grade level as opposed to a grade span. With respect to the materials associated with Bid ID No. 51, the evaluators' vote would have been 7-0 in favor of adoption if submitted for grade 6 only. With respect to the materials associated with Bid ID No. 52, the evaluators' vote would have been 5-2 in favor of adoption if submitted for grade 7 only. With respect to the materials associated with Bid ID No. 53, the evaluators' vote would have been 5-0 in favor of adoption if submitted for grade 8 only. And with respect to the materials associated with Bid ID No. 54, the evaluators' vote would have been: 9-0 in favor of adoption if submitted for grade 7 only; 1-8 against adoption if submitted for grade 8 only; and 2-5 against adoption if submitted for grades 7 and 8.

42. Following this discussion and debriefing with the evaluators and after deliberating, the Textbook Commission voted not to recommend the textbook materials associated with Bid Numbers 51, 52, 53, and 54 to the State Board of Education for inclusion on the approved textbooks list.

43. When reviewing a publisher's materials, the Textbook Commission has access to the textbooks themselves, the correlations, the first four columns of the publisher's bid document which contain information on the title, grade level, ISBN and publisher's name, and the evaluations of each course from the regional advisory evaluators employed by the Textbook Commission. All ancillary materials are to be taken into consideration by the Textbook Commission upon making its decision whether to recommend the titles.

44. When evaluating materials, the evaluators fill out a worksheet addressing what the SBE categorizes as "non-negotiable alignment criteria" and "additional alignment criteria and indicators of quality." This worksheet is an evaluation tool that was created by Student Achievement Partners and has been modified for North Carolina. It is used by both the regional advisory evaluators and Textbook Commission members to explain what areas are evaluated for whether the materials meet the content-standards. To be placed on the recommended list, all bid submissions must meet all of the non-negotiable criteria at each grade level to be aligned to CCSS-M. To be aligned to the CCSS-M content standards, materials should devote at least 65% and up to approximately 85% of class time to the major work of each grade. (Stipulation of the Parties in Pre-Trial Order, 3(c)). The majority of both sets of the evaluator's notes on each non-negotiable criteria for McGraw-Hill's Glencoe middle school math materials, both regional advisory evaluators and Commission members, have a "Y" in the box titled "Meet?"; meaning, that each bid's materials met the content standards and the requirement to devote at least 65% of class time to the major work of each grade.

45. In addition to the non-negotiable criteria, there are "additional alignment criteria and indicators of quality" which help regional advisory evaluators and Textbook Commission members determine materials that are more closely aligned to the CCSS-M standards. The majority of both sets of evaluators found

McGraw-Hill's Glencoe middle school math materials met the CCSS-M content standards which textbook materials must meet in order to be placed on the state-approved textbook list.

46. As to McGraw-Hill, the Textbook Commission chose to not recommend the Glencoe middle school math materials because they were bid as "6-8" under the column marked "Grade Level." It felt the individual materials could not be taught across grade levels.

47. All textbook publishers for whom the Textbook Commission voted to non-recommend textbook materials for adoption were notified of the Textbook Commission's decision and given the opportunity to participate in a reconsideration process as set forth in the Invitation to Submit. According to the Invitation to Submit, "[a]t the conclusion of deliberations, each publisher whose submission(s) have not been recommended will have the opportunity to submit additional information that might assist the Textbook Commission in reassessing its recommendation." (Petitioner's Ex. 10; Respondents' Ex. 3)

48. In order to participate in the Reconsideration Process, publishers must appear at the Textbook Commission's Deliberations meeting and make a verbal appeal for reconsideration pursuant to the process set forth in the 2014 Invitation. The purpose for the reconsideration is to allow publishers to present additional information that might assist the Textbook Commission in re-assessing its recommendation. McGraw-Hill took all appropriate procedural steps as set forth in the 2014 Invitation for its Glencoe middle school math materials to be reconsidered. (Stipulation of the Parties in Pre-Trial Order, 3(i)).

49. Out of 23 members of the Textbook Commission, 15 members were present for textbook deliberations and the Reconsideration Process. Three resigned from the Textbook Commission before attending the first meeting.

50. McGraw-Hill participated in the reconsideration process with respect to the textbooks and materials associated with Bid ID Numbers 51, 52, 53 and 54, *i.e.*, the Glencoe middle school textbooks at issue in this contested case. For each of those textbooks or set of materials, in the corresponding grade level column on the bid proposal form, McGraw-Hill designated "6-8." Based on guidance provided during training and throughout the process, Textbook Commission members, as a general rule, evaluated the textbook materials with an eye toward determining whether the materials conformed to the standards for the grade levels for which they were submitted as indicated on the bid proposal forms.

51. In casting their votes against recommending the Glencoe middle school textbooks for adoption, several of the Textbook Commission members echoed the comments of the evaluators and remarked in their documentation recording their votes that if the *Course 1* textbook materials had been submitted as grade 6 only, those Textbook Commission members would have recommended it for adoption. Similarly, several of the Textbook Commission members' reports reflect that if the *Course 2* textbook materials had been submitted as grade 7 only, those Textbook Commission members would have recommended it for adoption; and if the *Course 3* textbook materials had been submitted as grade 8 only, those Textbook Commission members would have

recommended it for adoption. Finally, the Textbook Commission members' notes reflect that if the *Math Accelerated* textbook materials had been submitted as a grade 7 textbook only, those Textbook Commission members might have recommended it for adoption.

52. Prior to the Textbook Commission hearing presentations from McGraw-Hill as part of the reconsideration process, Textbook Commission members inquired of Mr. Gaffigan whether it was appropriate and permissible for it (the Textbook Commission) to reconsider those materials as if the *Course 1* textbook materials, the *Course 2* textbook materials, the *Course 3* textbook materials, and the *Math Accelerated* textbook materials had been submitted for a single grade only, rather than how they were submitted, which was across a grade span of 6-8. Based on Mr. Gaffigan's experience serving on the Textbook Commission, he believed that the Textbook Commission members should not reconsider the materials in a manner inconsistent with how McGraw-Hill had designated them on the bid proposal form.

53. Though Mr. Gaffigan believed that the Textbook Commission members should not reconsider the materials in a manner inconsistent with how McGraw-Hill bid them, for the benefit of the entire Textbook Commission (especially the new Commission members) he asked DPI staff for guidance on the issue. DPI staff, in accordance with advice of legal counsel, advised the Textbook Commission members that they should consider a publisher's materials based on how the materials were identified on the bid proposal form submitted by the publishers. To do otherwise, DPI staff and legal counsel reasoned, would be to allow a textbook publisher to change its bid at the reconsideration. This advice to take the bid submitted as literal was obtained by Dr. Sarah McManus from the DPI through an e-mail to counsel for Respondents, Laura Crumpler and Katie Cornetto. Ms. Crumpler had not seen McGraw-Hill's initial bid of the Glencoe middle school math materials, the correlations, the textbooks, and the evaluations of the materials.

54. During the reconsideration process, the Textbook Commission stated its position to McGraw-Hill, but nonetheless offered McGraw-Hill the opportunity to present to the Commission any additional information that it wanted the Commission to consider.

55. According to DPI policy as conveyed to publishers, each publisher is allowed time to present additional information to the Textbook Commission during the Reconsideration Process according to the DPI. According to the testimony from McGraw-Hill, McGraw-Hill was given 10 to 30 minutes for the reconsideration of multiple bids ranging from its materials for kindergarten through eighth grade, including its Glencoe middle school math materials.

56. During its reconsideration, McGraw-Hill representative Mr. Kedrick Lewis explained to the members of the Textbook Commission that as to its Glencoe middle school math materials, *Course 1* corresponded with Grade 6, *Course 2* with Grade 7, *Course 3* with Grade 8 and *Accelerated* with Grades 7 and 8, and that the materials were purposefully bid as a series and not as a grade span.

57. At the conclusion of the presentation to the Textbook Commission, a vote was taken on each set of textbook materials associated with Bid Numbers 51, 52, 53 and 54. A quorum of the Textbook Commission voted 11 to 2 not to recommend the textbook materials bid under Bid Numbers 51, 52, 53, and 54.

58. During the Discovery phase of this contested case, a notebook containing the Textbook Commission members' comments prior to and following McGraw-Hill's reconsideration was provided to Petitioner. Two Textbook Commission members appear to have copied each other's comments as to whether to recommend and reconsider McGraw-Hill's Glencoe middle school math materials. Some comments were incomplete or did not state a reason behind the Textbook Commission member's decision.

59. On or about August 18, 2014, McGraw-Hill was informed its Glencoe middle school math materials were not recommended to the SBE by the Textbook Commission.

60. On or about September 2, 2014, the Textbook Commission compiled a list of recommended textbooks/instructional materials for Mathematics K-12 for adoption by the State Board of Education. Those recommendations were then submitted to the State Board of Education. McGraw-Hill's Glencoe middle school math materials were not on this list

61. At its regularly scheduled meeting in September 2014, the State Board of Education heard a presentation by two Textbook Commission members, Charles Gaffigan and Dr. Dan Novey, concerning the 2014-2015 textbook selection and adoption cycle. At the conclusion of the presentation, the State Board of Education voted to approve the list of textbooks and instructional materials recommended by the Textbook Commission. Textbook publishers were notified in writing of the list of approved materials on or around September 5, 2014.

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 this matter. To the extent 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 their given labels.

2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

3. The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that the Agency has substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23. See also *Surgical Care Affiliates, LLC v. NC. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), review denied, 768 S.E.2d 564 (N.C. 2015).

4. [A]gency action is considered 'arbitrary and capricious' only if it indicates a 'lack of fair and careful consideration' and fails 'to indicate 'any course of reasoning and the exercise of judgment.'" *Watson v. NC. Real Estate Corn'n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987), quoting *State ex rel. Comm'r of Insurance v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980).

5. An administrative law judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. N.C. Gen. Stat. § 150B-34.

6. Respondents are entitled to a presumption that they acted in good faith in rendering the decision not to recommend for adoption and not adopting the Glencoe middle school math textbooks for inclusion on the State-approved list. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption."

7. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S.E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E.2d 57 (1996); *Comm'r of Ins. v Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible inference." *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

8. In weighing evidence which detracts from the agency decision," "[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand." *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

9. N.C. Gen. Stat. § 115C-85 *et seq.* expressly authorizes the State Board of Education to select and adopt textbooks needed for instructional purposes at each instructional level on all subject matters required by law to be taught in elementary and secondary schools of North Carolina. The State Board of Education is also authorized by statute to make all necessary rules and regulations concerning requests for bids for textbooks to be used in the schools.

10. Textbook publishers were invited by DPI to submit textbooks materials on a bid proposal form in response to the 2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina, which Invitation to Submit had previously been approved by the State Board of Education.

11. Among other requirements, textbook publishers were required to identify all bid submissions that it would be submitting on a bid proposal form and to identify on the bid proposal form, the "grade level" against which the publisher wanted its textbook materials to be evaluated.

12. For all of the Glencoe middle school math materials at issue in this contested case, Petitioner identified the relevant "grade level" as "6-8." Consequently, the textbook materials were considered and evaluated by the evaluators and Textbook Commission members against the standards adopted in North Carolina for math grades 6, 7, and 8.

13. Although McGraw-Hill subsequently submitted correlation documents and samples that more precisely identified the grade levels for which McGraw-Hill intended the Glencoe middle school materials to be evaluated against, because the correlation documents were inconsistent with what McGraw-Hill indicated on its bid proposal form would be the content covered in the Glencoe middle school textbooks, Respondents were within their authority to evaluate the materials based on what McGraw-Hill represented in its bid proposal form that it submitted to DPI by the April 8, 2014 deadline.

14. With respect to McGraw-Hill's contention that the way the Glencoe middle school textbooks were designated on the bid proposal form was both intentional and correct because the materials are able to be used across grade levels rather than in just one grade, such contention does not answer the question of whether the Respondents acted improperly in evaluating the materials against the standards for math grades 6, 7 and 8. Regardless, for example, of whether an eighth grade math teacher could use the *Course 1* textbook materials in his or her classroom to teach a student that struggles in math, by identifying "6-8" as the grade correlated to the *Course 1* textbook materials on the bid proposal form, McGraw-Hill represented that it would submit a math textbook that aligned with the math standards for grades 6, 7, and 8.

15. With respect to McGraw-Hill's contention that the way the Glencoe middle school textbooks were designated on the bid proposal form was both intentional and correct because the materials were intended to be bid as a "series," meaning the concepts in the textbooks build upon each other sequentially from *Course 1* through *Math Accelerated*, such contention does not answer the question of whether the Respondents acted improperly in evaluating the materials against the standards for math grades 6, 7 and 8. Regardless of whether McGraw-Hill intended to market the *Course 1*, the *Course 2*, the *Course 3* and the *Math Accelerated* textbooks to buyers as a series, by identifying on the bid proposal form "6-8" as the grade levels correlating to the *Course 1*, *Course 2*, *Course 3*, and *Math Accelerated* textbook materials, McGraw-Hill represented that each set of materials that it would submit to the agency for consideration would align with the math standards for grades 6, 7, and 8. Nowhere on the bid proposal form that McGraw Hill submitted did it indicate that McGraw Hill was offering the *Course 1* textbook materials for grade 6 only; the *Course 2* textbook materials for grade 7 only;

the *Course 3* textbook materials for grade 8 only; and the *Accelerated Math* textbook materials for grades 7 and 8 only.

16. Substantial evidence was presented at the hearing in this matter that during the reconsideration phase of the textbook adoption process, Petitioner acknowledged that it intended for its *Course 1* textbook materials to be evaluated against the standards for grade 6, for its *Course 2* materials to be evaluated against the standards for grade 7, and its *Course 3* materials to be evaluated against the standards for grade 8, regardless of what was reflected in the bid proposal form it submitted.

17. Substantial evidence exists that even if Petitioner intended to submit the Glencoe middle school textbooks as a "series," and therefore the designation of "6-8" on the bid proposal form was intentional, it was not improper for the evaluators, the Textbook Commission, and the State Board of Education to rely on what McGraw-Hill indicated on the bid proposal form and evaluate each set of materials (*Course 1*, *Course 2*, *Course 3* and *Math Accelerated*) against the standards for grades 6, 7, and 8 as set forth in the bid.

18. While the Respondents might have chosen to allow McGraw-Hill to essentially change its bid during the reconsideration process or afterwards by disregarding how McGraw-Hill designated the Glencoe middle school textbooks on the bid proposal form that it submitted under seal, it was not irrational or unreasonable to decline to do so as a means of promoting the quality and consistency of their decisions, as well as to safeguard the integrity and fairness of the process for all textbook publishers.

19. As previously stated, the Administrative Law Judge shall give due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. The amount of deference given to an agency's interpretation of the statutes is it charged with administering depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade" *Good Hope Health Sys., LLC v. N.C. Dep't of Health & Human Servs.*, 189 N.C. App. 534, 544, 659 S.E.2d 456, 463 (2008).

20. The preponderance of the evidence in this case supports the Respondents' explanation of its bid considerations thus concluding that Respondents acted reasonably. Moreover, the preponderance of the evidence supports the conclusion that the Textbook Commission did not violate N.C. Gen. Stat. § 150B-23 in its application of the Reconsideration Process to McGraw-Hill. In all regards, Respondents' actions in this matter were not arbitrary or capricious; nor did Respondents act erroneously, exceed their authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

21. The Textbook Commission's decision to non-recommend McGraw-Hill's Glencoe middle school textbooks for adoption and the State Board of Education's decision not to adopt those textbooks do not preclude McGraw-Hill from selling the textbooks to schools and school districts in the State. Schools and school districts are free to purchase materials that are not on the State-approved list.

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

FINAL DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned holds that Petitioner failed to carry its burden of proof by a greater weight of the evidence that Respondents violated N.C. Gen. Stat. § 150B-23 through the Textbook Commission's failure to recommend, and the State Board of Education's failure to approve, Petitioner McGraw-Hill's Glencoe middle school math materials and place the materials on the state-approved textbook list. Further, Undersigned holds that Petitioner failed to carry its burden of proof by a greater weight of the evidence that the Textbook Commission violated N.C. Gen. Stat. § 150B-23 in its application of the Reconsideration Process to McGraw-Hill. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondents to the ultimate issues. Respondents' decisions regarding the failure to adopt Petitioner's Glencoe middle school textbooks and ultimately Respondent State Board of Education's decision to not include Petitioner's middle school text books that are the subject of this contested case hearing for inclusion on the State Board of Education's "approved" list is **AFFIRMED**.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, 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. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of 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 is the 23rd day of November, 2015.



Augustus B. Elkins II
Administrative Law Judge

WITNESSES

On behalf of Petitioner: Jose Antonio Perez, III, Petitioner
Lt. A.D. Vanstory, Alexander County Sheriffs' Office

On behalf of Respondent: Diane Konopka, Deputy Director, Sheriffs' Standards Division

EXHIBITS

Petitioner offered no exhibits for admission.

Respondent's exhibit 1 was admitted.

ISSUE

Whether Petitioner's application for justice officer certification should be denied on the ground that Petitioner committed a felony when he was adjudicated delinquent as a juvenile?

FINDINGS OF FACT

1. The Petitioner is a citizen and resident of Alexander County, North Carolina.
2. The North Carolina Sheriffs' Education and Training Standards Commission (Respondent) has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10, Sub Chapter 10B, to certify Justice Officers as either Deputy Sheriffs or Jailers, and to deny, revoke or suspend such certification.
3. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail the proposed Denial of Justice Officer's Certification letter, mailed by the Respondent North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Commission") on June 12, 2012.
4. All parties properly are noticed before this Administrative Law Judge. The Office of Administrative Hearings has both personal and subject matter jurisdiction over the parties and issues raised herein.
5. The Petitioner currently is employed with the Alexander County Sheriff's Office and is assigned to the position of Detention Officer. He has worked for the Alexander County Sheriff's Office since his completion of Basic Law Enforcement Training through Catawba Valley Community College in 2013.

6. Lt. Vanstory is Petitioner's supervisor and participated in the hiring process. Petitioner listed his criminal background on his application for a position at the Alexander County Sheriff's Office. After he interviewed Petitioner, Lt. Vanstory discussed Petitioner's application with the Sheriff who agreed to hire him.

7. According to Lt. Vanstory, the Petitioner is an excellent and dedicated employee, and it is the desire of the Alexander County Sheriff's Office that he be promoted into a sworn position. He described Petitioner as having good skills to de-escalate an inmate, a good reputation and a professional manner, and he foresees future promotions for him.

8. Petitioner has applied for certification as a justice officer through the North Carolina Sheriffs' Education and Training Standards Commission.

9. During the application process, the Petitioner disclosed information regarding a juvenile delinquency proceeding surrounding an incident which occurred in Berwyn, IL, on November 04, 2003.

10. A subsequent background check confirmed that the Petitioner was adjudicated delinquent in connection with the felony offenses of "Burglary" in violation of Illinois Statute 5.0/19-1-A; "Retail Theft" in violation of Illinois Statute 5.0/16A-3-H; and "Knowingly Damage Property" in violation of Illinois Statute 5.0/21-1-1-A.

11. The Petitioner was fourteen (14) years old at the time of adjudication.

12. Respondent's Exhibit 1, introduced at the hearing in this matter, shows that the offense of Knowingly Damaging Property was Nolle Prosequi on May 06, 2004 and that the offense of Burglary was dismissed on October 13, 2005.

13. An order signed by the Honorable Richard F. Walsh, Judge of the Circuit Court of Cook County, entered in Juvenile File Number 03 JD 40331, Cook County, Illinois, states "By the Order of the Honorable Judge Richard F. Walsh On October 13, 2005 - Probation Terminated Satisfactorily - Motion To Vacate Granted - Case Closed."

14. Based upon the records obtained by Respondent from the State of Illinois, Petitioner was never convicted of a felony.

15. The Respondent has denied the Petitioner's application for certification.

16. Petitioner testified that both of his parents were drug addicts and his father was killed when he was ten years old.

17. After his probation was terminated in 2005, Petitioner moved to North Carolina to live with an Uncle and Aunt who treated him like a son, and helped him turn his life around. He

studied and earned his G.E.D., worked at Snappy Lube and later was promoted to the position of manager.

18. At the present time, Petitioner is twenty-six (26) years old, married and has a two-year-old son.

20. In a written statement, given to the Commission and dated June 1, 2014, Petitioner wrote in pertinent part:

...I want to be a positive role model for other people, and be the example that I never had growing up. Being a law enforcement officer gives me the opportunity to show others that life is about choices. I am proud of the man I have become today. Although my past is with me, I use it as a stepping stone and a reference of whom I could have been, but who I choose to be. I am a better person for the struggle that I went through. I do not use my situation as an excuse for my behavior, but allow it as an insight for the direction of where so many young men's lives are steered by way of poverty and peer pressure. This life was not for me, I made an active choice to leave and seek an honest life.

R. Ex. 1

21. Ms. Konopka testified that Petitioner made no attempt to hide or to not disclose his juvenile record.

22. North Carolina treats juvenile matters in a different manner than adult matters.

23. Since 1919, a juvenile, being a youth under the age of 16, is incapable of committing a crime and can only engage in delinquent behavior. Thomas R. Young, *North Carolina Juvenile Code: Practice and Procedure* 2003; 1919 N.C. Sess. Laws 97-3.

24. The North Carolina Juvenile Code addresses the legal effect of an adjudication of delinquency. Any adjudication that a juvenile has committed a delinquent act shall not be considered a conviction of any criminal offense and shall not cause the juvenile to forfeit any citizenship rights. N.C.G.S. §7B-2412.

25. Based upon all of the testimonial and documentary evidence offered, the Undersigned finds the Petitioner to be sincere, forthright, honest and credible in his acknowledgement of past mistakes when he was a juvenile and in his desire to be a good citizen, husband, father and responsible justice officer.

Based on the foregoing Findings of Fact, the Undersigned hereby enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. All parties properly are before this Administrative Law Judge. Both jurisdiction and venue are proper in this matter.
2. This Administrative Law Judge has the authority to make recommendations to the Respondent as it relates to Petitioner's justice officer certification through the North Carolina Sheriffs' Education and Training Standards Commission.
4. The Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
5. 12 NCAC .0301 (a) (10) states:

Every Justice Officer employed or certified in North Carolina shall not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.
6. 12 NCAC 10B .0307 (a) (1) states:

Every Justice Officer employed in North Carolina shall not have committed or been convicted by a local, state, federal or military court of a felony.
7. 12 NCAC 10B .0204(a)(1) states that the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed a felony.
8. Pursuant to 12 NCAC 10B .0103(11), "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
9. 12 NCAC 10B .0204(b)(2) states that the Commission shall deny certification of a justice officer when the Commission finds that the applicant for certification fails to meet any of the certification standards required by 12 NCAC 10B .0300.
10. According to the records received from the State of Illinois, the felony charges against Petitioner as a juvenile were either nolle prosequi, dismissed or vacated.
11. Respondent's denial of the Petitioner's certification is unwarranted.

Based upon the foregoing Findings of Facts and Conclusions of Law it is hereby Ordered, Adjudged and Decreed:

PROPOSED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge hereby recommends that Respondent not revoke, suspend or deny the application of the Petitioner for certification through the North Carolina Sheriffs' Education and Training Standards Commission.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

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

This is the 23rd day of November, 2015.



Selina M. Brooks
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA 2015 NOV 13 10 11 AM IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF LINCOLN OFFICE OF 15 DOJ 03885

ASHLEY BRYANT HELMS,)
)
Petitioner,)
)
v.)
)
NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On September 8, 2015, Administrative Law Judge Selina M. Brooks heard this matter in Morganton, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: R. Wade Carpenter
Attorney for Petitioner
PO Box 1058
Gastonia, NC 28053-1058

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

WITNESSES

For Petitioner: Lieutenant Jordan Cody, Lincoln County Sheriff's Office
Sheriff Carpenter, Lincoln County
Janet Nekoosl
Amy Melissa Helms
Ashley Bryant Helms

For Respondent: Officer Eric Seagale, Gastonia Police Department
Captain Rodney Aldridge, Gastonia Police Department

EXHIBITS

Petitioner's Exhibits 1 through 6 were admitted.

Respondent's Exhibits 1 through 12 were admitted.

ISSUE

Whether Respondent's proposed denial of Petitioner's justice officer certification is supported by substantial evidence.

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 by certified mail the Notification of Probable Cause to Deny Justice Officer Certification letter, mailed by Respondent on March 26, 2015.
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. 12 NCAC 10B .0301(a)(8) provides that all justice officers employed or certified in the State of North Carolina shall be of good moral character.
4. 12 NCAC 10B .0204(b)(2) further provides the Sheriffs' Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.
5. Petitioner was employed as a police officer with the Gastonia Police Department (hereinafter "Gastonia PD") from January 11, 2002, until July 19, 2013. Petitioner served as a police officer at Gastonia PD for approximately 11 years and 6 months. Prior to his employment with Gastonia PD, Petitioner was employed as a police officer with the City of Belmont from 1995-2002. Petitioner received certification as a sworn law enforcement officer through the North Carolina Criminal Justice Education and Training Standards Commission in 1995.
6. Petitioner was terminated from his employment with Gastonia PD effective July 19, 2013 for untruthfulness regarding the use of another officer's study guide. (Respondent's Ex. 4). Petitioner was subsequently hired by the Lincoln County Sheriff's Office on September 27, 2013.
7. Petitioner is now an applicant for justice officer certification through the Sheriffs' Commission. Petitioner has not previously held certification through this Commission.

8. The Sheriff's Commission is tasked with certifying deputy sheriffs in the State of North Carolina, and with ensuring that all applicants meet the minimum standards for certification.

9. Respondent received a Report of Separation Form F-5B from Gastonia PD regarding Petitioner's employment with that agency. (Respondent's Ex. 3) Respondent learned that Petitioner separated from Gastonia PD effective July 19, 2013. Based on this information, the Sheriffs' Division was required to investigate the nature of Petitioner's separation from Gastonia PD prior to certifying Petitioner through the Sheriffs' Commission.

10. During its investigation, the Sheriff's Division learned that the Petitioner was terminated from Gastonia PD for two issues. First, on May 15, 2013, Petitioner reported that he could not come into work because his wife was in the hospital due to heart complications. It was later determined that Petitioner's wife was already discharged when Petitioner called in to work. Second, in June 2013, Petitioner retrieved a study guide from the desk of a fellow officer in order to prepare for an interview for a promotion within the department. When questioned about the study guide, Petitioner was evasive but eventually told the truth about taking the study guide. As stated above, for those reasons, Gastonia PD terminated Petitioner.

11. The Probable Cause Committee of the Sheriffs' Commission is a Committee comprised of five (5) elected Sheriffs that meets regularly to review cases and to determine whether probable cause exists to believe an applicant and/or certified justice officer's certification should be denied, revoked, or suspended.

12. Petitioner's case was submitted to the Commission's Probable Cause Committee for consideration. Among other things, that Committee considered the Gastonia PD's charging documents, investigative reports, Rules of Conduct, report of separation, and transcribed interviews of Petitioner. (Respondent's Exs. 4, 5, 6, 8 and 11). Following their review, the Probable Cause Committee found probable cause existed to deny Petitioner's application for certification based on Petitioner lacking the good moral character that is required of a sworn justice officer in this State. The basis of this finding was Petitioner's false statement to Gastonia PD during the pendency of the investigation into the two incidents. Petitioner properly requested an administrative hearing.

13. Officer E.C. Seagale with the Gastonia PD testified at the administrative hearing. Seagale is a patrol officer who served with Petitioner in the Street Crimes Unit ("SCU") of the Gastonia PD along with Petitioner. Seagale, along with Petitioner, applied for a position on the "Vice" squad. Seagale utilized a study guide entitled "Secret Squirrel Sheet" to help him prepare for his interview. Petitioner also had a copy of the same "Secret Squirrel Sheet". Members of the SCU all shared office space and some younger members even shared desks within their cubicles. Members of the SCU would often take items from the desks of others in the SCU and even play practical jokes on each other. Seagale, however, placed his study guide in an area he considered to be private.

14. Seagale, after his interview, wrote down notes on his study guide to help him in future interviews. These notes include the acronyms "RICO" and [sic] "OSADEF". Seagale placed the study guide on his desk with several other folders.

15. Petitioner, on May 20, 2013, was on the telephone with his wife when he received a call requesting him to attend an interview for the Vice position within the next ten minutes. Petitioner was at the Gastonia PD when he received this call. Instead of going back to his patrol car to retrieve his study guide (which was five minutes away), Petitioner retrieved Seagale's study guide from Seagale's desk without Seagale's permission. Seagale came in the rear door to the SCU office and noticed Petitioner reading Seagale's study guide. Seagale briefly spoke with Petitioner, wishing him good luck in the interview. Seagale did not question Petitioner about why he was using Seagale's study guide. The Undersigned finds his testimony credible and reliable.

16. Petitioner was selected for the Vice position on May 30, 2013. Before transferring to that unit, a member of the SCU complained about Petitioner using Seagale's study guide. Based on this complaint, the Office of Professional Standards ("OPS") initiated an investigation.

17. Petitioner initially denied taking Seagale's study guide when interviewed by OPS. Ultimately, Petitioner confessed to taking the study guide during his interview and explained that it was not his intention to gain an advantage by using Seagale's notes. As stated above, Petitioner was terminated for his actions.

18. Captain Rodney Aldridge testified at the administrative hearing. In 2013, Aldridge served as Sergeant for the SCU. Aldridge investigated Petitioner's whereabouts on May 15, 2013 when Petitioner reported that he could not come into work because his wife was in the hospital. Petitioner's wife was admitted to Carolinas Medical Center in Lincoln County on May 15, 2013 and subsequently released that afternoon. Petitioner admitted that his wife was already discharged from the hospital when he called Aldridge. Petitioner was very emotional and upset due to his wife's health issues that day. Petitioner met with Aldridge later in the evening on May 15, 2013 and apologized for being untruthful. Aldridge accepted his apology and did not report this incident through the chain of command. The Undersigned finds his testimony credible and reliable.

19. The Sheriff of Lincoln County, David Carpenter, testified at the administrative hearing. Sheriff Carpenter was aware of the study guide incident and the hospital incident that led to Petitioner's termination. Sheriff Carpenter hired Petitioner based upon his years of experience and his qualifications in law enforcement. Petitioner has thrived in Lincoln County and was recently promoted to Sergeant. Sheriff Carpenter believes Petitioner possesses the good moral character required of all justice officers and voluntarily came to this hearing to show his support and to convey this belief to the Undersigned and to the Sheriff's Commission. Sheriff Carpenter said that Petitioner was punished in 2013 for those two isolated incidents in a long, successful career in law enforcement. The Undersigned finds his testimony credible and reliable.

20. Lt. Jordan A. Cody of the Lincoln County Sheriff's Office also testified at the hearing. At the direction of Sheriff Carpenter, Lt. Cody conducted a background search of Petitioner. His research included interviews with Petitioner's former co-workers at Gastonia PD. Lt. Cody reported that Petitioner's co-workers spoke very highly of Petitioner. Lt. Cody also reported to Sheriff Carpenter about the two incidents that led to Petitioner's termination. Based upon his background check and interviews, Lt. Cody recommended him for employment based

upon his training and experience. Lt. Cody also found Petitioner to be very respectful and an excellent asset to Lincoln County. The Undersigned finds his testimony credible and reliable.

21. Petitioner's wife, Amy Melissa Helms, testified at the hearing. She produced a copy of her Patient Statement (Petitioner's Ex. 3) which confirmed her admission to Carolinas Medical Center in Lincoln County on May 15, 2013. She is a Registered Nurse and has been married to Petitioner for fifteen (15) years. They have two children. Mrs. Helms confirmed she experienced an elevated heart rate on the morning of May 15, 2013. Petitioner was studying for his "Vice" interview at home when his wife asked him to take her to the emergency room based upon her unexpected medical condition. Mrs. Helms described her husband as being very upset and worried about her health. She testified that Petitioner was crying at one point, concerned for her well-being. Mrs. Helms did need her husband's assistance during her hospitalization and especially after she was released that afternoon to help her and to help with their children. She was unaware of what reason her husband gave his employer for missing work that day. When questioned about her husband's behavior regarding the hospital incident and the study guide incident, she expressed disappointment in him. She further opined that this behavior was uncharacteristic of her husband and his termination placed a tremendous amount of stress on their family. Mrs. Helms testified that she trusted her husband and was happy that he sought counseling to understand his behavior and to not repeat the mistakes he made in 2013 when faced with similar stressors. She further testified that he was thriving in his new job with the Lincoln County Sheriff's Office and was even promoted to Sergeant. The Undersigned finds her testimony credible and reliable.

22. Petitioner's counselor testified at the hearing. Mrs. Janet Nekooasl's resume was received into evidence (Petitioner's Ex. 2). She is a licensed professional counselor and has worked in that capacity since 1995. She is a member of the American Counseling Society as well as the Association for the Treatment of Sexual Abusers. Mrs. Nekooasl's practice focuses in treating individuals and families as well as sex offenders, their families and victims of sexual abuse. Petitioner sought her help to understand his actions surrounding the hospital incident and the study guide incident. He also sought her help to learn coping mechanisms should he experience similar stressors in life in the future. Mrs. Nekooasl met with Petitioner four (4) times prior to this hearing. She assessed him and further opined that he did have good moral character despite his behavior at Gastonia PD in 2013. When questioned by Respondent's counsel about her knowledge of Petitioner's actions at Gastonia PD, she testified that she was provided all of the discovery, including Petitioner's internal affairs file. She attributed Petitioner's behavior to stressors in his life including adjustment disorder with anxiety. Mrs. Nekooasl indicated that Petitioner was scheduled for more sessions regardless of the outcome of this hearing. The Undersigned finds her testimony credible and reliable.

23. Petitioner testified at the hearing. He apologized for his behavior surrounding the two incidents that led to his termination from Gastonia PD. The Undersigned finds his apology to be sincere. Honesty and truthfulness are among the most important attributes of a sworn law enforcement officer. When questioned about the hospital incident, Petitioner responded that he was extremely emotional that day and concerned about his wife's acute medical condition. Petitioner admitted that his wife was already discharged from the hospital in Lincoln County when he called Captain Aldridge and told him that his wife was still in the hospital. Petitioner, later that

evening, apologized to Captain Aldridge for not being truthful. Petitioner further admitted that he should have taken a sick day to care for his wife. He was remorseful for his behavior and understood why Captain Aldridge was upset with him.

24. Regarding the study guide incident, Petitioner admitted that he should not have borrowed Officer Seagale's study guide without asking his permission. Petitioner had the most experience in the Street Crimes Unit and felt that he was well qualified for the Vice position. Petitioner explained that he took Seagale's study guide off Seagale's desk because Petitioner's study guide was locked in his patrol car and his interview was in ten minutes. Petitioner regrets not taking the time to walk to his patrol car to retrieve his own study guide.

25. Petitioner apologized for initially denying that he took the study guide from Officer Seagale's desk during his interview with the OPS. His actions ultimately led to his termination at Gastonia PD and called into question his integrity and whether or not he possessed the good moral character required of all justice officers.

26. Aside from the hospital incident on May 15, 2013 and the study guide incident several weeks later, Petitioner's career as a law enforcement officer is exemplary. He was awarded a certificate for Commendation for Service by Gastonia PD Chief Conley on May 10, 2013 (Petitioner's Ex. 5). Petitioner's behavior during the above described incidents do raise concerns. Petitioner, however, voluntarily submitted himself to counseling to establish safeguards when faced with stressors in his personal and professional life. Furthermore, Petitioner disclosed the circumstances that led to his termination to the Lincoln County Sheriff's Office.

27. After reviewing the documents introduced into the record and after considering the sworn testimony of all witnesses at the hearing of this matter, the Undersigned finds that Petitioner's actions were isolated and not a true reflection of his overall character. For the reasons set out above, Petitioner does possess the good moral character that is required of all sworn law enforcement officers in this State.

GOOD MORAL CHARACTER

28. 12 NCAC 10B .0301(a)(8) provides that every justice officer employed or certified in North Carolina shall be of good moral character.

29. Given the totality of the evidence presented at the administrative hearing, the Undersigned finds that Petitioner possesses the good moral character that is required of all sworn justice officers in this State.

30. Based on the evidence presented and the testimony of the witnesses at the administrative hearing, Respondent's proposed denial of Petitioner's certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301 is NOT supported by a preponderance of the evidence.

31. Petitioner offered several character witnesses at the administrative hearing. All of Petitioner's character witnesses were aware of Petitioner's conduct on May 13, 2013 and during the study guide incident in 2013. They were also aware of the circumstances surrounding the internal affairs investigation at the Gastonia PD involving Petitioner's conduct. Most notably, Sheriff David Carpenter of the Lincoln County Sheriff's Office believed Petitioner's conduct at Gastonia PD in May and June of 2013 was isolated. Furthermore, Sheriff Carpenter promoted Petitioner to the position of Sergeant and testified that Petitioner's integrity and service to the community demonstrated he possesses the good moral character required of all sworn justice officers in this State.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge and jurisdiction and venue are proper.

2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the General Statutes, Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke or suspend such certification.

3. Pursuant to 12 NCAC 10B .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character.

4. Pursuant to 12 NCAC 10B .0204(b)(2), the Commission shall revoke, deny or suspend the certification of a justice officer when the Commission finds that the officer fails to meet or maintain the minimum employment standards required by 12 NCAC 10B .0300.

5. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." In Re Willis, 288 N.C. 1, 10 (1975). In the matter of Daniel Brannon Gray v. North Carolina Sheriffs' Education and Training Standards Commission, 09 DOJ 4364 (2010), ALJ Randall May observed that generally, "isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. However, if especially egregious, even a single incident could suffice to find that an individual lacks good moral character in places [sic] of clear and especially severe misconduct." (Conclusion of Law 5)

6. The preponderance of the evidence presented at the administrative hearing establishes that Petitioner does possess the good moral character that is required of a sworn law enforcement officer in this State. His actions, while not becoming of a law enforcement officer, are not especially egregious and were isolated events over a long, decorated career.

7. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes that Petitioner possesses the good moral character that is required of all sworn justice officers in this State for the reasons set out herein.

PROPOSAL FOR DECISION

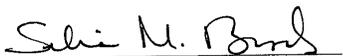
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned recommends Respondent NOT deny Petitioner's certification because he does possess the good moral character that is required of sworn justice officers under 12 NCAC 10B .0300.

NOTICE

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

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 13th day of November, 2015.



Selina M. Brooks
ADMINISTRATIVE LAW JUDGE

FILED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 OSP 01091

OFFICE OF
ADMIN HEARINGS

<p>Joevelyn Heard-Leak Petitioner</p> <p>v.</p> <p>NC State University Center For Urban Affairs Respondent</p>	<p>FINAL DECISION ORDER OF DISMISSAL</p>
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The Petition in this matter was filed on February 16, 2015. This matter extended beyond the mandated 180 days due to extraordinary cause.

THIS MATTER was set for hearing on April 23, 2015 before the Honorable Augustus B. Elkins. For good cause shown, Judge Elkins extended the discovery deadline to June 5, 2015 and continued the hearing in this matter to the week of June 22, 2015 with a stipulation that the parties could seek an earlier hearing date. At the request of the parties, this matter was brought on for evidentiary hearing before the Honorable Donald W. Overby, Administrative Law Judge presiding, on June 15-16, 2015 at the Office of Administrative Hearings ("OAH") in Raleigh, North Carolina, within the 180 day mandated time frame. At the conclusion of the evidence on June 16, 2015, the hearing was recessed until sufficient time could be allotted for conclusion of the hearing. Due to scheduling conflicts among the parties, including the undersigned's hearing docket caseload for the remainder of June and July, the hearing in this matter was scheduled to

resume and be heard to conclusion on August 19 – 21, 2015. In the interim, on August 7, 2015, Petitioner filed with OAH a Motion for Summary Judgment.

Oral argument on the motion for summary judgment was presented by counsel for both parties when the hearing was resumed on August 19, 2015. Although the Respondent had not concluded its evidentiary presentation, Respondent acknowledged that the prospective testimony would be consistent with and corroborative of the testimony of its prior witness Sheila Brown. The testimony of Ms. Brown was that she had considered documentation of the Petitioner's work productivity for about a year before the first written warning was issued and that the decision makers considered the Petitioner's prior work history before the Respondent began a successive discipline program. Respondent had identified and introduced into evidence more than 20 exhibits, dating back as much as a year, documenting Petitioner's work performance history which were not mentioned in any regard in the dismissal letter. As the Undersigned's questions became more directive, Ms. Brown began to back-track somewhat; however, there is no question that matters well beyond the purview of the dismissal letter were considered in Petitioner's dismissal.

N.C. Gen. Stat. § 126-35(a) states

No career State employee subject to the North Carolina Human Resources Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. (Emphasis added)

It is a fundamental premise of "due process" that the employee be given fair notice of the grounds upon which he or she is being disciplined in order to be able to adequately confront the allegations. Otherwise the employee is subject to trial by ambush if matters

beyond the notice become the basis, even in part, for the disciplinary action. The statute further recognizes the importance of proper notice in that it notes that an employee may be suspended without prior warning under certain conditions to preserve the integrity of the work place, but such suspension is still while "pending the giving of written reasons." N.C. Gen. Stat. § 126-35(a)

There is no genuine issue of material fact in this instant case, and, therefore, summary judgment is appropriate. Considerable information concerning Petitioner's work history with Respondent, which was beyond the notice given Petitioner as to the reasons for her termination, was considered by Respondent in making the decision to terminate Petitioner. In so doing, Respondent exceeded its authority, acted erroneously, failed to use proper procedure and failed to act as required by rule or law.

Now, therefore, based upon the foregoing, Petitioner's Motion for Summary Judgment is **ALLOWED**.

It is therefore **ORDERED** Petitioner shall be retroactively reinstated to the same or equivalent position from which she was terminated with back pay and restoration of all accompanying benefits, as well as reasonable attorney's fees paid by Respondent to Petitioner and/or her attorney.

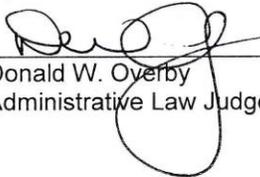
NOTICE

This **Final Decision** is issued under the authority of N.C.G.S. § 150B-34.

Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal

shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 31st day of August, 2015.



Donald W. Overby
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
9/9/2015 1:50 PM

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15OSP02299

<p>Samuel Avery Furlow Petitioner</p> <p>v.</p> <p>N C Department Of Public Safety (Polk Correctional Institution) Respondent</p>	<p>FINAL DECISION GRANTING SUMMARY JUDGMENT FOR RESPONDENT</p>
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THIS MATTER is before the undersigned on Respondent’s Motion for Summary Judgment, filed July 10, 2015, pursuant to Rule 56 of the N.C. Rules of Civil Procedure.

Petitioner Samuel Furlow, a “career state employee” within the meaning of N.C. Gen. Stat. § 126-1.1, alleged in his Petition initiating this contested case that he was “discharged without just cause” on December 4, 2014 for “unacceptable personal conduct,” consisting of the use of “excessive force” on an inmate at Polk Correctional Institution (hereinafter, “Polk”), a constituent facility of Respondent NC Department of Public Safety, Division of Prisons, where he was employed by Respondent as a Correctional Case Manager.

As a career state employee, Petitioner may not be discharged, suspended, or demoted for disciplinary reasons without “just cause.” N.C. Gen. Stat. § 126–35.

[W]hether a State agency had just cause to discipline an employee requires three inquiries: (1) whether the employee engaged in the conduct the employer alleges; (2) whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the North Carolina Administrative Code [set out in 25 NCAC 1J .0614(8), cited *infra*.]; and (3) whether that unacceptable personal conduct amounted to just cause for the disciplinary action taken.

Bulloch v. N.C. Dept. of Crime Control & Pub. Safety, 223 N.C. App. 1, 5, 732 S.E.2d 373, 377 (2012). There are no allegations that Respondent failed to take the administrative steps required by N.C. Gen. Stat. §§ 126-35 and 126-34.01.

“It is not the purpose of [Rule 56] to resolve disputed material issues of fact[,] but rather to determine if such issues exist.” Official Comment to N.C. Gen. Stat. § 1A-1, Rule 56. Regardless of disagreements the parties may have concerning collateral matters, if the undisputed facts of record show that one party is entitled to judgment as a matter of law, it should be summarily granted. “The nonmoving party is entitled to the most favorable view of the

affidavits, pleadings and other materials and all reasonable inferences to be drawn therefrom. See *Prior v. Pruett*, 143 N.C.App. 612, 617, 550 S.E.2d 166, 170 (2001), *disc. rev. den.*, 355 N.C. 493, 563 S.E.2d 572 (2002).” *Turner v. City of Greenville*, 197 N.C.App. 562, 677 S.E.2d 480, 483 (2009). Once jurisdiction is established, summary judgment may be less likely in personnel cases than most civil disputes, due to the prevalence of conflicting testimony. However, unacceptable personal conduct cases may be resolved by summary judgment. “A fact is material only if it constitutes a legal defense to a charge, or would affect the result of the action, or its resolution would prevent the party against whom it is asserted from prevailing on the point at issue.” *Hilliard v. N.C. Dept. of Corr.*, 173 N.C. App. 594, 620 S.E.2d 14 (2005), citing *Bone Int’l, Inc. v. Brooks*, 304 N.C. 371, 375 283 S.E.2d 518, 520 (1981). (Summary judgment affirmed where employee “admit[ed] the alleged conduct, but offer[ed] explanations for it that he argue[d] justified it” that were deemed unavailing.) While “[j]ust cause must be determined based “upon an examination of the facts and circumstances of each individual case,” *Warren v. N.C. Dep’t of Crime Control & Pub. Safety*, 221 N.C. App. 376, 381, 726 S.E.2d 920, 924 (2012), *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012), “[w]hether conduct constitutes just cause...is a question of law....” *Id.*, 221 N.C. App. at 378, 726 S.E.2d at 923. When the critical facts are known, issues of “excessive force” may be resolved by summary judgment. *Turner v. City of Greenville*, 197 N.C.App. 562, 563, 677 S.E.2d 480, 481 (2009).

In this instance, the case can be determined by application of the law to the critical facts known due to a video recording of the actions for which Petitioner was terminated. In addition, the undersigned considered the *Affidavit of Samuel Furlow*; Petitioner’s *Requests for Admissions Responses* and the attached policies and regulations; and the *Affidavit of Irvin Ryan* for the purpose of authenticating the video recording. Other documents, particularly Respondent’s *Document[s] Constituting Agency Action*, were consulted to determine the parties’ allegations and to identify persons shown on the video recording.

It is undisputed that, on October 10, 2014, Petitioner responded, along with several other correctional officers, to a “Code 4” general summons for help issued by Correctional Officer Sandra Jones in Polk’s Building C-3, B-Pod, who was unsuccessfully trying to quell a fight between two inmates, Muldrow and Scott. It is indisputable that following the fight, Petitioner struck inmate Muldrow several times with an expandable baton, because a surveillance camera made a video recording of these events. The video makes plain what testimony sometimes fails to capture. *State v. Sutton*, ___ N.C. App. ___, 754 S.E.2d 464, 468 (2014), *disc. rev. den.*, 367 N.C. 507, 759 S.E.2d 91 (2014)

This compact statement of Petitioner’s view of the incident, not inconsistent with his Affidavit submitted in opposition to the Motion, was abstracted from his written statement of October 17, 2014 for Respondent’s investigation, according to the Dismissal letter, where it was quoted:

I ordered inmate Muldrow to lay on the ground, he refused so I struck him on his lower left leg with the baton ordering him to lie on the ground/floor. He refused to comply with my directive, so I struck inmate Muldrow on his right lower left [*sic*], and again ordered him to get on the ground/floor. He again refused to comply, so I struck inmate Muldrow again with the baton on his upper right leg. Inmate

Muldrow then went to his knees. I ordered him again to lay on the ground/floor, he still refused, so I struck inmate Muldrow on the shoulder blade area and at that time he complied with my directive and laid down on the floor.

In his Affidavit, Petitioner averred that he had been trained at Polk, “among other training, on the use of the Monadnock Baton,” (¶ 2) and had learned that the “use of force in crisis situations is permitted, among other circumstances, based upon (a) the size of the person being detained and the size of the officer involved, (b) [to] ensure compliance with a lawful order, and (c) [when] reasonably necessary to accomplish a legitimate correctional objection [*sic*].” (¶ 8) He argued that his actions were justified because “Muldrow repeatedly refused to follow my order. This was resistance to a lawful order and allowed him to remain in a status where he could again suddenly assault me or assault others. Only after Muldrow repeatedly refused to follow my orders did I employ my baton. The relevant procedures clearly allow me to employ my baton to, among other things, maintain or regain control of the situation[.]” (¶ 10) Petitioner characterized Inmate Muldrow, just before he struck him, as being a threat to others. “I approached Muldrow and intercepted him as he tried to leave the room by another exit that was unguarded by staff. Had I not done so, Muldrow could have been free to attack someone else.” (¶ 7) “When I approached Muldrow...I believed that he continued to represent a danger to others, to himself, or to me.” (¶ 9)

Chapter F of Respondent’s *Prisons Policy & Procedures Manual, Custody and Security*, titled “Use of Force,” was presumably familiar to Petitioner from the mandatory in-service training he described in his Affidavit. It sets out general principles applicable to all uses of force and specifically addresses applications of force with “individual control devices,” including the “expandable baton.” *Id.*, .1502(g). The first paragraph of Subchapter .1504 “Procedures” was partially quoted in Petitioner’s affidavit:

Procedures for the use of force restrict the use of force to instances of justifiable self-defense, protection of others, protection of state property, prevention of escapes, and to maintain or regain control, *and then only as a last resort* and in accordance with appropriate statutory authority. In no event is physical force justifiable as punishment. *** Staff shall be instructed to use only the amount of force that is reasonably necessary to accomplish the correctional objective. Efforts at control through communication should be attempted if feasible prior to any use of force. Pepper spray or other techniques that reduce the risk of injury...Should be used as the first response to an aggressive inmates, if feasible....

(Emphasis added.) Other pertinent, more detailed indications of how these policies are to be applied appear elsewhere in the *Manual*. “When time and circumstances permit, a sergeant or supervisor of higher rank should be present to supervise anticipated use of force or situations likely to result in use of force.” *Id.*, .1503(b). “An officer is prohibited from using force solely as a result of verbal provocation. An officer shall not strike or attempt to strike an inmate who has abandoned his/her resistance or who is effectively restrained.” *Id.*, .1503(d). Use of “individual control devices,” including the “Expandable Baton,” is limited “to [the] control violent or aggressive inmates.” *Id.*, .1504(f)(1). The *Standard Operating Procedures* derived from these policies provide that pepper spray should be the first level response to “violent, threatening or

aggressive acting inmates;" then "hands-on physical force;" and only then the "expanded baton shall be *used as a final means* to maintain order, and to control *violent or aggressive* acting inmates." (Emphasis added.) Standard Operating Procedures, Chapter F, §1503 Conditions for Use, A., B. & C.

The video recording was made with a fixed-position surveillance camera, taking in three levels of cells on the left, and on the right, the only entry/exit door to the "Pod" used during the recording. Beside the door is what appears to be an observation window, presumably for the guard post. A large courtyard or dayroom area in between fills most of the frame. As the recording begins, a half-dozen inmates are at two small tables or watching a TV on the wall, sitting on what appear to be molded plastic chairs. Officer Jones is the sole guard present.

At 9:58:10 AM, Officer Jones released inmate Muldrow from his cell, reportedly because he asked to use a mop. Muldrow immediately brushes past her and heads directly for inmate Scott, who jumps up from a table and comes to meet him, throwing the first punch. They fight with determination for approximately 1¼ minutes, during which Officer Jones attempts to break up the fight with the restrained use of pepper spray and her expandable baton. She sprayed towards them (not in their eyes, per .1504(b)(3)), and tapped them with her baton.

At 9:59:25 AM, after grappling and holding each other for 20 seconds, the inmates "break" and appear ready to re-engage, when Corrections Officer Sharra Gravitte arrives. Both inmates then literally step back as they are approached individually -- Muldrow by Officer Jones, and Scott by Officer Gravitte. Officer Jones pushes Muldrow's arm in the direction of his cell and apparently instructs him to return there, and he compliantly continues to step back. But Scott steps forward, appearing to yell at Muldrow, and Officer Jones turns and goes towards him, with Officer Gravitte also closing on him.

At 9:59:33 AM, Petitioner appears for the first time at the doorway of the guard post. As Officers Jones and Gravitte divert Scott towards the guard post, Muldrow begins walking towards his cell. Muldrow grabs up a plastic chair in his path, and hurls it across the floor into the wall to his right -- away from any people -- just as Petitioner appears to turn his attention towards him. At 9:59:40, seemingly reacting to Muldrow's triumphal demonstration, Petitioner grabs Officer Jones' baton from her hand and pursues Muldrow. Muldrow turns his head, as if reacting to a sound, but keeps walking toward the open door of his cell. Petitioner, running after him, strikes Muldrow on the back of the leg(s) with the baton for the first time at 9:59:42 AM. As Muldrow turns in reaction, Petitioner pushes him on the shoulder so that they face each other and strikes Muldrow in the leg(s) for the second time (9:59:45). Muldrow's arms dangle by his side. At 9:59:46 AM, Muldrow reacts defensively as he sees the third blow coming, but does not reach or move towards Petitioner. Petitioner lands a fourth blow, higher on the legs, at 9:59:48 AM, as Correctional Officer Hugh A. Brown approaches them. Less than a second later, Petitioner strikes Muldrow a fifth time (9:59:48). Each of the four blows to the front of the Muldrow's legs appeared to be progressively harder, and Petitioner administered the last three, and the two following them, gripping the baton with both hands. At 9:59:50 & 9:59:51 AM, with Petitioner and Officer Brown on either side of inmate Muldrow on his knees, Petitioner strikes Muldrow two more times on the back.

Respondent's Dismissal letter states, "There was no reason to use force after inmate Muldrow threw the chair unless you believed that another person was in imminent danger of being harmed and no facts presented indicate that anyone was in imminent danger of harm." The video recording substantiates this observation.

Throughout the incident, inmate Muldrow showed no aggression or animus towards any person other than inmate Scott. At the time that Petitioner struck the inmate, he was moving away from inmate Scott and Officers Jones and Gravitte, and was walking towards and nearing his cell, after being visibly directed there by Officer Jones. He had "abandoned his resistance" to the guards' authority, which had consisted of continuing to fight Scott, contrary to Office Jones' demands that they both stop fighting. While throwing the chair as he returned to his cell was unacceptable behavior, it was not "violent, threatening or aggressive" towards any person, requiring and justifying use of the "expanded baton...as a final means...to control [a] violent or aggressive...inmate[].".

Most of the accounts in the Dismissal letter of the interviews and written statements of five Correctional Officers who witnessed these events confirmed that Petitioner was telling Muldrow to "get down" on the floor while striking him. All of them are also reported to have said that Petitioner's use of force was "unjustified" or "excessive," because the inmate posed no threat to anyone when Petitioner beat him. But assuming, *arguendo*, that assuring human safety urgently required immobilization of the inmate, a total of 7 blows in 9 seconds was excessive and unnecessary to that end.

As this is an employment matter, bearing on fitness to serve, with potential impact on persons that might otherwise come under Petitioner's custody and control, as well as implications for Respondent's mission, and its liability, it appears that this determination should be based on "whether the officer[s] actions [were] 'objectively reasonable' in light of the facts and circumstances confronting [hi]m, without regard to [his] underlying intent or motivation," just as claims of "excessive force" are evaluated in civil actions under 42 U.S.C. § 1983. *Glenn-Robinson v. Acker*, 140 N.C.App. 606, 613, 538 S.E.2d 601, 622 (2000), *disc. rev. denied*, 353 N.C. 372, 547 S.E.2d 811 (2001). However, Petitioner's actions did not evince an intent to merely "gain control" over the prisoner. Striking seven times in nine seconds, without pausing to allow the inmate an adequate opportunity to comply, was not reasonably calculated to merely achieve control. The prisoner might have been fearful that leaving his feet would make him more vulnerable to the ongoing attack. It may be that Petitioner felt, in good faith, that showing dominance over the inmate was a positive thing to do, and simply used poor judgment. However, Petitioner's use of force appeared to be administered as punishment.

In its discharge letter, Respondent cited provisions of the State Human Resources Manual and the Division of Adult Correctional Personnel Manual that parallel the following categories of "unacceptable personal conduct" set out in 25 NCAC 1J .0614(8):

Unacceptable Personal Conduct means: (a) conduct for which no reasonable person should expect to receive prior warning; *** (d) the willful violation of known or written work rules; (e) conduct unbecoming a state employee that is detrimental to state service; (f) the abuse of...a person(s) over whom the

employee has charge or to whom the employee has a responsibility....

The undisputed facts show that on October 10, 2014, Petitioner used excessive force against an inmate at Polk Correctional Institution, where he was employed by Respondent as a Correctional Case Manager, and that this behavior constituted "unacceptable personal conduct" within the meaning of 25 NCAC 1J .0614(8)(a), (d), (e) and (f).

The fact that an employee commits "unacceptable personal conduct" does not necessarily establish just cause for discharge. *Dep't. of Nat. & Economic Resources v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900-01(2004); *Warren*, 221 N.C.App. at 383, 726 S.E.2d at 925. However, in light of all the facts and circumstances of this case, discharge was justified. The act itself -- the way force was used -- would justify termination. But two other considerations militate for this result. The first is the context of the event. Petitioner intentionally inflicted pain on a person over whom Respondent is entrusted with near total control. Secondly, an agency's judgment about the proper application of the rules under which it operates is generally due consideration. *MacPherson v. City of Asheville*, 283 N.C. 299, 307, 196 S.E.2d 200, 206 (1973). Deference seems to be particularly appropriate when dealing with the subject of an officer's behavior towards a prisoner in the "world apart" that is the prison.

FINAL DECISION

As the undisputed facts show that Petitioner engaged in "unacceptable personal conduct" within the meaning of 25 NCAC 1J.0614 (8) (a), (d), (e), and (f) by using excessive and unnecessary force against an inmate in Respondent's prison population on October 10, 2014, Petitioner is subject to discipline pursuant to 25 NCAC 01J .0604(a). The undisputed facts and circumstances show that Respondent's termination of Petitioner was justified. Consequently, Respondent is entitled to a summary decision in its favor as a matter of law. N.C. Gen. Stat. §§ 1A-1, Rule 56, & 150B-33(3a).

Respondent's decision to terminate Petitioner is AFFIRMED.

NOTICE

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 9th day of September, 2015.



J. Randolph Ward
Administrative Law Judge