

# NORTH CAROLINA REGISTER

VOLUME 30 • ISSUE 18 • Pages 1970 - 2037

March 15, 2016

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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<br>31st legislative day of the session beginning: | 270 <sup>th</sup> 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   |
| 30:24                 | 06/15/16   | 05/24/16            | 06/30/16                         | 08/15/16                       | 08/22/16   | 10/01/16                             | 01/2017   | 03/12/17   |
| 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   |
| 31:03                 | 08/01/16   | 07/11/16            | 08/16/16                         | 09/30/16                       | 10/20/16   | 12/01/16                             | 01/2017   | 04/28/17   |
| 31:04                 | 08/15/16   | 07/25/16            | 08/30/16                         | 10/14/16                       | 10/20/16   | 12/01/16                             | 01/2017   | 05/12/17   |
| 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   |
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| 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   |

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## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

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

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

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



# State of North Carolina

**PAT McCRORY**  
GOVERNOR

February 17, 2016

**EXECUTIVE ORDER NO. 88**

**DISASTER DECLARATION FOR THE VILLAGE OF BALD HEAD ISLAND, THE TOWN OF CAROLINA SHORES, THE TOWN OF NAVASSA, THE TOWN OF CAROLINA BEACH, THE TOWN OF NORTH TOPSAIL BEACH, AND THE TOWN OF SURF CITY**

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

**WHEREAS**, the Village of Bald Head Island (Brunswick County), the Town of Carolina Shores (Brunswick County), the Town of Navassa (Brunswick County), the Town of Carolina Beach (New Hanover County), the Town of North Topsail Beach (Onslow County), and the Town of Surf City (Pender County) were impacted by the severe rain and flooding associated with the Hurricane Joaquin/Nor'easter event that occurred between September 25, 2015 and October 5, 2015; and

**WHEREAS**, the six municipalities each declared local states of emergency for this event; and

**WHEREAS**, due the impact of the severe rain and flooding associated with Hurricane Joaquin/Nor'easter event, a joint preliminary damage assessment was done by federal, state and local emergency management officials; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in the following municipalities; the Village of Bald Head Island (Brunswick County), the Town of Carolina Shores (Brunswick County), the Town of Navassa (Brunswick County), the Town of Carolina Beach (New Hanover County), the Town of North Topsail Beach (Onslow County), and the Town of Surf City (Pender County); and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Village of Bald Head Island (Brunswick County), the Town of Carolina Shores (Brunswick County), the Town of Navassa (Brunswick County), the Town of Carolina Beach (New Hanover County), the Town of North Topsail Beach (Onslow County), and the Town of Surf City (Pender County) declared local states of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in G.S. 166A-19.41(b)(2)a.;

and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

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

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

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Village of Bald Head Island (Brunswick County), the Town of Carolina Shores (Brunswick County), the Town of Navassa (Brunswick County), the Town of Carolina Beach (New Hanover County), the Town of North Topsail Beach (Onslow County), and the Town of Surf City (Pender County).

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

- a. Debris clearance.
- b. Emergency protective measures.
- c. Roads and bridges.

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

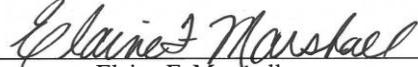
**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventeenth day of February in the year of our Lord two thousand and sixteen, and of the Independence of the United States of America the two hundred and forty.

  
 Pat McCrory  
 Governor



**ATTEST:**

  
 Elaine F. Marshall  
 Secretary of State

**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 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0205, .1801, 1802, .1804, .1805, .2505, .2701, .2704, and .2705.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://nccoastalmanagement.net/web/cm/proposed-rules>

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

**Public Hearing:**

**Date:** May 11, 2016

**Time:** 1:30 p.m.

**Location:** Dare County Government Complex, 954 Marshall C. Collins Dr., Manteo, NC 27954

**Reason for Proposed Action:** 15A NCAC 07H .0205 is the Coastal Resources Commission's (CRC) rule that defines coastal wetlands, describes their significance and management objectives, and establishes use standards. The CRC is proposing to amend its rule governing coastal wetlands in order to describe how "regular and occasional flooding" of wetlands shall be determined. The terms "regular" and "occasional" flooding are currently used in the rule, but are not defined and this has led to confusion. 15A NCAC 07H .1800 (.1801, .1802, .1803, .1804, and .1805) defines procedures for requesting and approving a General Permit (GP) for the purpose of beach bulldozing above the Mean High Water (MHW); and also defines general and specific permit conditions. Currently, specific conditions only allows this activity above MHW. However, the U.S. Army Corps of Engineers (USACE) also has a General Permit for this activity allowing beach bulldozing below MHW. The Coastal Resources Commission proposes the amendments to current rules to permit beach bulldozing below MHW, and align the CRC's General Permit conditions with those in the USACE General Permit. Section 07H .2700 defines the specific development requirements for the construction of marsh sills. The proposed amendments will remove unnecessary coordination requirements and would also remove redundant and unnecessary conditions. The CRC is proposing to amend its rules governing the construction of marsh sills in order for this general permit to become consistent with other general permits that govern construction of shoreline stabilization methods such as bulkheads.

**Comments may be submitted to:** Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, email [Braxton.Davis@ncdenr.gov](mailto:Braxton.Davis@ncdenr.gov)

**Comment period ends:** May 16, 2016

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

**Fiscal impact (check all that apply).**

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

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS**

**15A NCAC 07H .0205 COASTAL WETLANDS**

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (~~whether or not the tide waters reach the marshland areas through natural or artificial watercourses~~), tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators including the observation of tidal water on the site, changes in elevation, presence of periwinkle (littoraria spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain the following marsh plant species:

- (1) Cord Grass (Spartina alterniflora),
- (2) Black Needlerush (Juncus roemerianus),
- (3) Glasswort (Salicornia spp.),

- (4) Salt Grass (*Distichlis spicata*),
- (5) Sea Lavender (*Limonium* spp.),
- (6) Bulrush (*Scirpus* spp.),
- (7) Saw Grass (*Cladium jamaicense*),
- (8) Cat-tail (*Typha* spp.),
- (9) Salt Meadow Grass (*Spartina patens*),
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of ~~DENR~~ DEQ pursuant to G.S. 113-230 (a).

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (~~decayed plant material~~) and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained.

Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational businesses along the seacoast.

The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing suspended organic and inorganic particles to settle out. In this manner, the nutrient storehouse is maintained, and sediment harmful to marine organisms is removed. Also, pollutants and excessive nutrients are absorbed by the marsh plants, thus providing an inexpensive water treatment service.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere.

Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural

uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Mowing or cutting of coastal wetlands by academic institutions associated with research efforts is allowed subject to approval from the Division of Coastal Management. Alteration of coastal wetlands is governed according to the following provisions:

- (1) Alteration of coastal wetlands is exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
  - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
  - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
  - (C) Alteration of the substrate is not allowed;
  - (D) All cuttings/clippings shall remain in place as they fall;
  - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
  - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule requires a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have an adverse impact on the habitat or fisheries resources.

*Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124.*

**SECTION .1800 - GENERAL PERMIT TO ALLOW  
BEACH BULLDOZING MARK IN THE OCEAN  
HAZARD AEC**

**15A NCAC 07H .1801 PURPOSE**

This permit will allow beach bulldozing needed to reconstruct or repair frontal and/or primary dune systems. For the purpose of this general permit, beach bulldozing is defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to repair damage to frontal and/or primary ~~dunes caused by a major storm event.~~ dunes. This general permit is being developed according to the procedures outlined in Subchapter 7J .1100 and will apply only to the Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC.

*Authority G.S. 113-229(c); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

**15A NCAC 07H .1802 APPROVAL PROCEDURES**

(a) The applicant ~~must shall~~ shall contact the Division of Coastal Management ~~or local permit officer (LPO)~~ and complete an application ~~form~~ requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and ~~his~~ their name and address.

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and ~~appropriate LPO or~~ Division of Coastal Management representative so that the existing first line of stable natural vegetation can be appropriately marked and recorded on the application. Written authorization to proceed with the proposed development may be issued during this visit. All bulldozing must be completed within 30 days of the date of permit issuance or the general authorization expires.

*Authority G.S. 113-229(c); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

**15A NCAC 07H .1804 GENERAL CONDITIONS**

~~(a) Any future setback determinations which may be required shall be made using the first line of stable natural vegetation established prior to the bulldozing activity.~~

~~(b)~~(a) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~ Environmental Quality to make periodic inspections at any time deemed necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

~~(c)~~(b) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights. If a shipwreck is unearthed, all work shall stop and both the ~~Division of Archives and History and Coastal Management~~ Department of Natural and Cultural Resources and the Division of Coastal Management shall be contacted immediately.

~~(d)~~(c) This permit does not eliminate the need to obtain any other required state, local or federal authorization.

~~(e)~~(d) Development carried out under this permit must be consistent with all local requirements, ~~AEC Commission~~ rules, and local Land Use Plans current at the time of authorization.

*Authority G.S. 113-229(c); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

**15A NCAC 07H .1805 SPECIFIC CONDITIONS**

(a) The area in which this activity is being performed must maintain a slope of ~~adequate grade so as to not endanger the public or the public's use of the beach and should follow that follows~~ the pre-emergency slopes as closely as possible possible so as not to endanger the public or the public's use of the beach. The movement of material by a bulldozer, front-end loader, backhoe, scraper or any type of earth moving or construction equipment shall not exceed ± one foot in depth measured from the pre-activity surface elevation.

(b) The activity must not exceed the lateral bounds of the applicant's property unless ~~he has~~ the written permission of the adjoining landowner(s)-property owner(s) is obtained.

(c) Movement of material from seaward of the mean ~~high-low~~ water line is not authorized.

(d) The activity must not ~~demonstratively~~ increase erosion on neighboring properties.

(e) Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The fill areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

(f) In order to minimize adverse impacts to nesting sea turtles, no work shall occur within the period of ~~May-April~~ April 1 through November 15 of any year, without the ~~prior~~ approval of the Division of Coastal Management, in coordination with the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service and the United States Army Corps of Engineers, that the work can be accomplished without adversely impacting sea turtle nests or suitable nesting habitat.

(g) If one contiguous acre or more of oceanfront property is to be excavated or filled, an erosion and sedimentation control plan must be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

Authority G.S. 113-229(c); 113A-107(a)(b); 113A-113(b); 113A-118.1.

**SECTION .2500 - EMERGENCY GENERAL PERMIT, TO BE INITIATED AT THE DISCRETION OF THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR REPLACEMENT OF STRUCTURES, THE RECONSTRUCTION OF PRIMARY OR FRONTAL DUNE SYSTEMS, AND THE MAINTENANCE EXCAVATION OF EXISTING CANALS, BASINS, CHANNELS, OR DITCHES, DAMAGED, DESTROYED, OR FILLED IN BY HURRICANES OR TROPICAL STORMS, PROVIDED ALL REPLACEMENT, RECONSTRUCTION AND MAINTENANCE EXCAVATION ACTIVITIES CONFORM TO ALL CURRENT STANDARDS**

**15A NCAC 07H .2505 SPECIFIC CONDITIONS**

(a) The replacement of a damaged or destroyed structure shall take place within the footprint and dimensions that existed immediately prior to the damaging hurricane or tropical storm. No structural enlargement or additions shall be allowed.

(b) Structure replacement, dune reconstruction, and maintenance excavation authorized by this permit shall conform to the existing use standards and regulations for exemptions, minor development permits and major development permits, including general permits. These use standards include, but are not limited to:

- (1) 15A NCAC 07H .0208(b)(6) for the replacement of docks and piers;
- (2) 15A NCAC 07H .0208(b)(7) for the replacement of bulkheads and shoreline stabilization measures;
- (3) 15A NCAC 07H .0208(b)(9) for the replacement of wooden and riprap groins;
- (4) 15A NCAC 07H .1500 for maintenance excavation activities; and
- (5) 15A NCAC 07H .1800 for beach bulldozing ~~landward of the mean high water mark.~~ Ocean Hazard AEC.

(c) The replacement of an existing dock or pier facility, including associated structures, marsh enhancement breakwaters or groins shall be set back 15 feet from the adjoining property lines and the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(q), illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal

Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable. The setback may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before replacement of the structure begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the structure.

Authority G.S. 113A-107; 113A-118.1.

**SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF MARSH SILLS**

**15A NCAC 07H .2701 PURPOSE**

A general permit pursuant to this Section shall allow for the construction of ~~riprap~~ marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 7J .1100 and according to the rules in this Section. Marsh sills are generally shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

Authority G.S. 113A-107; 113A-118.1.

**15A NCAC 07H .2704 GENERAL CONDITIONS**

(a) Structures authorized by a permit issued pursuant to this Section shall be ~~riprap or stone~~ marsh sills conforming to the standards in these Rules.

(b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.

(c) The placement of ~~riprap or stone~~ marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.

(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 07H. 0200, and local land use plans current at the time of authorization.

Authority G.S. 113A-107; 113A-118.1.

**15A NCAC 07H .2705 SPECIFIC CONDITIONS**

(a) A general permit issued pursuant to this Section shall be applicable only for the construction of ~~riprap or stone~~ marsh sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall consist only of native species.

~~(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.~~

~~(c) On shorelines where no fill is proposed, the~~ The landward edge of the sill shall be positioned no more than 5 feet waterward of the waterward depth contour of locally growing wetlands or to mid-tide depth contour, whichever is greater, wetlands. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the mean high water or normal high water or normal water line.

~~(d) On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.~~

~~(e) The permittee shall maintain the authorized sill and existing or planted wetlands including wetlands and tidal inundation in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification from the Division of Coastal Management.~~

~~(f) The height of sills shall not exceed six~~ 12 inches above mean normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is greater, higher.

~~(g) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.~~

~~(h) Sills shall be porous to allow water circulation through the structure.~~

~~(i) The sills shall have at least one five-foot drop down or opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot drop down or separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these drop down opening requirements shall be allowable following coordination with the N.C. Division of Marine Fisheries and the National Marine Fisheries Service. N.C. Division of Coastal Management.~~

~~(j) The riprap sill structure shall not exceed a slope of a one and a half foot rise over a two one foot horizontal distance and a minimum slope of a one and a half foot rise over a one two foot horizontal distance. The width of the structure on the bottom shall be no wider than 15~~ 12 feet.

~~(k) For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.~~

~~(l) The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.~~

~~(m)(h) For water bodies more narrow~~ narrower than 150 feet, no portion of the structures shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

~~(n)(i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.~~

~~(o)(j) The sill shall not interfere with leases or franchises for shellfish culture.~~

~~(p)(k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the mean normal high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge. Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.~~

~~(q) The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.~~

~~(r)(l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean normal high water or normal water level.~~

~~(s)(m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the riprap sill structure. Material used to construct the sill shall not be stockpiled directly on existing wetlands or in open water unless fully contained in a containment structure supported by construction mats.~~

~~(t)(n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.~~

~~(u)(o) No excavation or filling of any native submerged aquatic vegetation is authorized by this general permit. filling, other than that necessary for the construction and proper bedding of the sill structure, is authorized by this general permit.~~

~~(v)(p) No excavation of the shallow water bottom or any wetland is authorized by this general permit.~~

~~(w) No more than 100 square feet of wetlands may be filled as a result of the authorized activity.~~

~~(x) Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.~~

~~(y)(q) The riprap sill material shall consist of clean rock, rock, marl, oyster shell, or masonry materials such as granite or broken concrete, concrete or other materials that are approved by the N.C. Division of Coastal Management. Riprap-Sill material shall be free of loose sediment or any pollutant, pollutant, excluding rebar. The structures sill material shall be of sufficient size and slope to prevent its movement from the site approved alignment by wave or current action.~~

(z) ~~If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land disturbing activity.~~

(aa) ~~In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.~~

(bb) ~~Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement shall be required for the proposed activity.~~

(cc)(r) Following issuance of this general permit, the permittee shall contact the ~~N.C. Division of Water Quality and the U.S. Army Corps of Engineers~~ to determine any additional permit requirements. Any such required permits, or a certification from the ~~appropriate agency(s)~~ U.S. Army Corps of Engineers that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.

Authority G.S. 113A-107; 113A-118.1.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0366.

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

Proposed Effective Date: September 1, 2016

Public Hearing:

Date: March 31, 2016

Time: 10:00 a.m.

Location: WRC Headquarters 5<sup>th</sup> Floor, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: The Macon County Board of Commissioners made formal application to the WRC requesting an extension of a no wake zone surrounding the Lakes End Cove dock on Lake Nantahala, to create a no wake zone within all of Lakes End Cove, shore to shore from a line near the mouth of the of the cove. County leaders and leaders of Nantahala Township held a public hearing on November 10, 2015 and submitted a Resolution to the WRC, requesting an amendment to 15A NCAC 10F .0366(a)(1) to enlarge the no wake zone to the area within the entire cove for purposes of mitigating hazards to swimmers caused by motorboat traffic around the dock.

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

Comment period ends: May 16, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0366 MACON COUNTY

(a) Regulated Area. This Rule applies to the following waters of Nantahala Lake:

- (1) ~~That area within 50 yards of the Lakes End Boat Dock—Lakes End Cove shore to shore, beginning at a line from a point on the northwest shore at 35.19602 N, 83.64184 W to a point on the southeast shore at 35.19544 N, 83.64053 W.~~
- (2) That area within 100 yards from the end of the Mountain Shadows Community ~~Dock~~ Dock.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed in the waters of the regulated area specified in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Macon County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

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

*Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.*

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

**Rule-making Agency:** *Commission for Public Health*

**Rule Citation:** *10A NCAC 41A .0101*

**Effective Date:** *March 1, 2016*

**Findings Reviewed and Approved by the Codifier:** *February 17, 2016*

**Reason for Action:** *Zika virus is an emerging arboviral infection that first spread into the western hemisphere in 2015. Four out of five infected persons remain asymptomatic following infection. The remainder of infected persons experience mild clinical illness (fever, rash, joint pain, or conjunctivitis) that lasts up to one week. There is no treatment or vaccine for this infection.*

*During the current Zika virus outbreak in Brazil, a marked increase has been reported in the number of infants born with a birth defect known as microcephaly. Other poor pregnancy outcomes, including fetal loss, have also been reported in babies of mothers who were infected with Zika virus while pregnant. However, additional studies are needed to further characterize the relationship of the virus to these outcomes.*

*It is imperative that public health authorities be rapidly notified when this infection is suspected so that appropriate education can be provided and control measures can be implemented to mitigate the risk of local transmission. For this reason, the State Health Director issued a temporary order required immediate reporting of either condition effective February 1, 2016. An emergency rule is needed to replace the temporary order while temporary and eventually permanent rules are pursued.*

**CHAPTER 41 - HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL**

**SECTION .0100 - COMMUNICABLE DISEASE CONTROL**

**10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS**

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;

- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chikungunya virus infection - 24 hours;
- (8) chlamydial infection (laboratory confirmed) - 7 days;
- (9) cholera - 24 hours;
- (10) Creutzfeldt-Jakob disease – 7 days;
- (11) cryptosporidiosis – 24 hours;
- (12) cyclosporiasis – 24 hours;
- (13) dengue - 7 days;
- (14) diphtheria - 24 hours;
- (15) Escherichia coli, shiga toxin-producing - 24 hours;
- (16) ehrlichiosis – 7 days;
- (17) encephalitis, arboviral - 7 days;
- (18) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
- (19) gonorrhea - 24 hours;
- (20) granuloma inguinale - 24 hours;
- (21) Haemophilus influenzae, invasive disease - 24 hours;
- (22) Hantavirus infection – 7 days;
- (23) Hemolytic-uremic syndrome – 24 hours;
- (24) Hemorrhagic fever virus infection – immediately;
- (25) hepatitis A - 24 hours;
- (26) hepatitis B - 24 hours;
- (27) hepatitis B carriage - 7 days;
- (28) hepatitis C, acute – 7 days;
- (29) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (30) influenza virus infection causing death – 24 hours;
- (31) legionellosis - 7 days;
- (32) leprosy – 7 days;
- (33) leptospirosis - 7 days;
- (34) listeriosis – 24 hours;
- (35) Lyme disease - 7 days;
- (36) lymphogranuloma venereum - 7 days;
- (37) malaria - 7 days;
- (38) measles (rubeola) - 24 hours;
- (39) meningitis, pneumococcal - 7 days;
- (40) meningococcal disease - 24 hours;
- (41) Middle East respiratory syndrome (MERS) - 24 hours;
- (42) monkeypox – 24 hours;
- (43) mumps - 7 days;
- (44) nongonococcal urethritis - 7 days;

- (45) novel influenza virus infection – immediately;
- (46) plague - immediately;
- (47) paralytic poliomyelitis - 24 hours;
- (48) pelvic inflammatory disease – 7 days;
- (49) psittacosis - 7 days;
- (50) Q fever - 7 days;
- (51) rabies, human - 24 hours;
- (52) Rocky Mountain spotted fever - 7 days;
- (53) rubella - 24 hours;
- (54) rubella congenital syndrome - 7 days;
- (55) salmonellosis - 24 hours;
- (56) severe acute respiratory syndrome (SARS) – 24 hours;
- (57) shigellosis - 24 hours;
- (58) smallpox - immediately;
- (59) *Staphylococcus aureus* with reduced susceptibility to vancomycin – 24 hours;
- (60) streptococcal infection, Group A, invasive disease - 7 days;
- (61) syphilis - 24 hours;
- (62) tetanus - 7 days;
- (63) toxic shock syndrome - 7 days;
- (64) trichinosis - 7 days;
- (65) tuberculosis - 24 hours;
- (66) tularemia – immediately;
- (67) typhoid - 24 hours;
- (68) typhoid carriage (*Salmonella typhi*) - 7 days;
- (69) typhus, epidemic (louse-borne) - 7 days;
- (70) vaccinia – 24 hours;
- (71) vibrio infection (other than cholera) – 24 hours;
- (72) whooping cough – 24 hours; ~~and~~
- (73) yellow fever - 7 ~~days~~ days; ~~and~~
- (74) Zika virus – 24 hours.

(b) For purposes of reporting, "confirmed human immunodeficiency virus (HIV) infection" is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
  - (A) Any hantavirus or hemorrhagic fever virus.
  - (B) Arthropod-borne virus (any type).
  - (C) *Bacillus anthracis*, the cause of anthrax.
  - (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).

- (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
- (F) *Brucella* spp., the causes of brucellosis.
- (G) *Campylobacter* spp., the causes of campylobacteriosis.
- (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
- (I) *Clostridium botulinum*, a cause of botulism.
- (J) *Clostridium tetani*, the cause of tetanus.
- (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
- (L) *Coxiella burnetii*, the cause of Q fever.
- (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
- (N) *Cyclospora cayentanesis*, the cause of cyclosporiasis.
- (O) *Ehrlichia* spp., the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, the cause of AIDS.
- (T) *Legionella* spp., the causes of legionellosis.
- (U) *Leptospira* spp., the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) Middle East respiratory syndrome virus.
- (X) Monkeypox.
- (Y) *Mycobacterium leprae*, the cause of leprosy.
- (Z) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (AA) Poliovirus (any), the cause of poliomyelitis.
- (BB) Rabies virus.
- (CC) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (DD) Rubella virus.
- (EE) *Salmonella* spp., the causes of salmonellosis.
- (FF) *Shigella* spp., the causes of shigellosis.
- (GG) Smallpox virus, the cause of smallpox.

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**EMERGENCY RULES**

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- (HH) Staphylococcus aureus with reduced susceptibility to vanomycin.
- (II) Trichinella spiralis, the cause of trichinosis.
- (JJ) Vaccinia virus.
- (KK) Vibrio spp., the causes of cholera and other vibrioses.
- (LL) Yellow fever virus.
- (MM) Yersinia pestis, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
  - (A) Group A Streptococcus pyogenes (group A streptococci).
  - (B) Haemophilus influenzae, serotype b.
  - (C) Neisseria meningitidis, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:
  - (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
    - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
    - (ii) Any hantavirus or hemorrhagic fever virus.
    - (iii) Chlamydia psittaci, the cause of psittacosis.
    - (iv) Coxiella burnetii, the cause of Q fever.
    - (v) Dengue virus.
    - (vi) Ehrlichia spp., the causes of ehrlichiosis.
    - (vii) Measles (rubeola) virus.
    - (viii) Mumps virus.
  - (ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
  - (x) Rubella virus.
  - (xi) Yellow fever virus.
  - (B) The presence of IgM serum antibodies to:
    - (i) Chlamydia psittaci.
    - (ii) Hepatitis A virus.
    - (iii) Hepatitis B virus core antigen.
    - (iv) Rubella virus.
    - (v) Rubeola (measles) virus.
    - (vi) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes and all results from tests to determine HIV viral load.

*History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141;*  
*Amended Eff. October 1, 1994; February 1, 1990;*  
*Temporary Amendment Eff. July 1, 1997;*  
*Amended Eff. August 1, 1998;*  
*Temporary Amendment Eff. February 13, 2003; October 1, 2002;*  
*February 18, 2002; June 1, 2001;*  
*Amended Eff. April 1, 2003;*  
*Temporary Amendment Eff. November 1, 2003; May 16, 2003;*  
*Amended Eff. January 1, 2005; April 1, 2004;*  
*Temporary Amendment Eff. June 1, 2006;*  
*Amended Eff. April 1, 2008; November 1, 2007; October 1, 2006;*  
*Temporary Amendment Eff. January 1, 2010;*  
*Temporary Amendment Expired September 11, 2011;*  
*Amended Eff. July 1, 2013;*  
*Temporary Amendment Eff. December 2, 2014;*  
*Amended Eff. October 1, 2015;*  
*Emergency Amendment Eff. March 1, 2016.*

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

**TITLE 04 – DEPARTMENT OF COMMERCE**

**Rule-making Agency:** Division of Employment Security

**Rule Citation:** 04 NCAC 24A .0105; 24B .0107; 24C .0506, and .0601

**Effective Date:** March 1, 2016

**Date Approved by the Rules Review Commission:** February 18, 2016

**Reason for Action:** Recently enacted Session Law 2015-238 (Senate Bill 15) "An Act to Make Changes to the Unemployment Insurance Laws, as Recommended by the Joint Legislative Oversight Committee on Unemployment Insurance, and to Confirm Appointments to the Board of Review" makes several sweeping changes requiring temporary rules to be adopted, including repeal of Post-Decision Relief (Requests for Reconsideration) and increasing weekly job contacts for claimants. Specifically, Senate Bill 15 under Section 2.3(a) removes the requirement from G.S. 96-14.9(e), that claimants "[seek] work on at least two different days during the week" and instead only requires that claimant's make "five" job contacts with "potential employers during the week. As such, DES must now define what constitutes a valid job search for purposes of the statute due to the increase in weekly job contact now required by law, as well as define what is a valid job contact, in light of the statutory change no longer requiring claimants seek work on "at least two different days during the week." Specifically, 04 NCAC 24A .0105 DEFINITIONS is amended to now include and define "Application for a position" which is previously undefined term now used throughout 04 NCAC 24B .0107 VALID JOB CONTACTS, which is necessary to properly effectuate that rule. If these rules are not adopted under temporary procedures, DES could potentially risk a sudden increase in claim activity resulting from public misunderstanding of what constitutes a valid job search for purposes of receiving unemployment benefits. These rules specifically clarify what qualifies as a job contact for purposes of recently amended G.S. 96-14.9(e). As such, DES has promulgated these temporary rules as a result of a recent change in legislation, and such changes are needed as soon as possible to effectively carry out the functions of the agency and prevent any disturbance in unemployment benefits to the citizens of North Carolina.

Recently enacted Session Law 2015-238 (Senate Bill 15) "An Act to Make Changes to the Unemployment Insurance Laws, as Recommended by the Joint Legislative Oversight Committee on Unemployment Insurance, and to Confirm Appointments to the Board of Review" makes several sweeping changes requiring

temporary rules to be adopted, including repeal of Post-Decision Relief (Requests for Reconsideration) and increasingly weekly job contacts for claimants. Specifically, Senate Bill 15 under Section 2.3.(a) indicates that all decisions from the Board of Review will become final within 30 days, eliminating requests for post-decision relief or reconsideration. As such, all references to post-decision relief and/or reconsideration must be removed from all DES rules. 04 NCAC 24C .0506 and .0601 indicates instructions for seeking post-decision relief and/or reconsideration which is no longer valid under Senate Bill 15 and should be removed. If these rules are not adopted under temporary procedures, DES could risk unnecessary and improper appeals from its Board of Review decisions, subjecting both the agency and the public seeking immediate review of their higher authority Board of Review decisions unnecessary delay and cost.

**CHAPTER 24 – EMPLOYMENT SECURITY**

**SUBCHAPTER 24A - GENERAL**

**SECTION .0100 - GENERAL**

**04 NCAC 24A .0105 DEFINITIONS**

(a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this Chapter:

- (1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits after a claimant, as defined in Item (15) of this Rule, ceased filing a weekly certification as defined in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of eligibility filed after a claim has been reopened shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
- (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits from another state.
- (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and render a determination as required by G.S. 96-15(b).
- (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section of DES or the Board of Review to review a determination or decision that is adverse to that party.
- (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal from a determination by an adjudicator and issues involving the rights, status, and

- liabilities of an employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).
- (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial administrative evidentiary hearings and make decisions in contested cases for unemployment insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.
- (7) "Application for a position" means truthfully supplying the information required by an employer to place an individual in a particular position or opening. Such information may include proof of the qualifications or license required by the position or opening, employment history, and personal information, such as full name, Social Security Number or other identification number, telephone number, and current address. An application for a position may be accomplished in whatever manner acceptable to an employer, including, including but not limited to, the completion of a designated form, the provision of a written resume, or verbally.
- ~~(7)~~(8) "Authorized Representative" means an individual authorized by an employer or employing unit to act on the employer or employing unit's behalf before DES.
- ~~(8)~~(9) "Base period" means as defined in 96-1(b)(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- ~~(9)~~(10) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- ~~(10)~~(11) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits. Benefit wage credits consist of the wages a claimant received or should have received during the claimant's base period of employment and to include those wages that were awarded and paid to the claimant after the base period pursuant to a court order; a National Labor Relations Board determination; another adjudicative agency; or by private agreement, consent, or arbitration for loss of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages should have been paid.
- ~~(11)~~(12) "Board of Review" means as defined in G.S. 96-4(b) and is the body that conducts "higher authority review" of appeals arising from the decisions of the Division, tax liability hearings, and labor disputes. The Board of Review is also referred to as the "Board" or "BOR."
- ~~(12)~~(13) "Calendar Period" means the fifty-two week period beginning with the first day of a week in which an individual first files a valid claim for benefits and registers for work. The week begins on the first Sunday preceding the initial claim filed and ends the following year at 11:59 p.m. on Saturday.
- ~~(13)~~(14) "Charging cycle" means the fifty-two week period beginning August 1<sup>st</sup> and ending July 31<sup>st</sup> the year following the year in which the employer's account is assessed and charged for erroneous payments against its account, due to establishing a pattern of untimely and inadequate responses to Requests for Separation Information (NCUI 500AB) during the preceding reporting cycle.
- ~~(14)~~(15) "Chief Appeals Referee" includes the Chief Appeals Referee's designee, unless otherwise stated.
- ~~(15)~~(16) "Claimant" means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.
- ~~(16)~~(17) "Clear and convincing evidence" ~~is~~ means evidence indicating that the thing to be proved is highly probable or reasonably certain.
- ~~(17)~~(18) "Customarily," as the term is used in G.S. 96-16, means during at least seventy-five percent of the calendar years of an observation interval.
- ~~(18)~~(19) "Day" means a calendar day.
- ~~(19)~~(20) "Delivery service" means an authorized designated carrier pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).
- ~~(20)~~(21) "DES website" means the internet address found at www.ncesc.com.
- ~~(21)~~(22) "Due diligence" means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and exercised by a reasonable and prudent person under the particular circumstances.
- ~~(22)~~(23) "Effective date of a claim" means either the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or the benefit year beginning on the Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered for work if the claimant is not payroll attached.
- ~~(23)~~(23) "Electronic transmission" means transmission by facsimile or internet.
- ~~(24)~~(25) "Equity and good conscience" means fairness as applied to a given set of circumstances.
- ~~(25)~~(26) "Fault" means an error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement.
- ~~(26)~~(27) "Good cause" means a legally sufficient reason.
- ~~(27)~~(28) "In-person/telephone hearing" means an administrative hearing before the Appeals Section, Board of Review, or other designated Hearing Officer where at least one party or witness appears in-person, and another party or witness appears by telephone.

- ~~(28)~~(29) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits may be paid to unemployed claimants absent from the state (or states) where benefit wage credits accumulated. This rule incorporates the United States Department of Labor's Interstate Benefit Payment Plan, Interstate Agreements, ET Handbook No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.
- ~~(29)~~(30) "Interstate claimant" means a claimant who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any claimant who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that this exclusion would create an undue hardship.
- ~~(30)~~(31) "Labor dispute" means a dispute between an employer and its employees about wages, hours, working conditions, or issues concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between those who could be concerned in the controversy.
- ~~(31)~~(32) "Last known address" means the most recent address provided to DES by the claimant or taxpayer located in its official record, except that DES shall update addresses maintained in its official records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information (NCOA Database). If the claimant or taxpayer's name and last known address in DES's official records match the claimant or taxpayer's name and previous mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer's last known address. This rule incorporates the United States Postal Service's National Change of Address Database by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.
- ~~(32)~~(33) "Legal representative" means a licensed attorney or a person supervised by a licensed attorney.
- ~~(33)~~(34) "Liable state" means any state against which a claimant files a claim for benefits through another state.
- ~~(34)~~(35) "Observation interval" means an interval of time including the four consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities have changed, the observation interval may be less than four calendar years.
- ~~(35)~~(36) "Party with appeal rights" means a party who has the right to appeal an unfavorable determination or decision pursuant to G.S. 96-4(q) and G.S. 96-15.
- ~~(36)~~(37) "Public employment office" means a local office managed and operated by the Division of Workforce Solutions (DWS) of the North Carolina Department of Commerce.
- ~~(37)~~(38) "Regularly recurring" means a period or periods of operational activity and shall be deemed regularly recurring if, during at least 75 percent of the calendar years in the observation interval, the beginning and ending dates of the period or periods do not vary more than four weeks.
- ~~(38)~~(39) "Reopened claim" means the resumption of a valid initial claim following a break in filing weekly certifications during a benefit year and the break was caused by reasons other than intervening employment. The first week of eligibility following the effective date of the reopened claim shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
- ~~(39)~~(40) "Reporting cycle" means the 52 week period beginning August 1<sup>st</sup> and ending July 31<sup>st</sup> the following year in which the employer's account is examined and recorded for any inadequate responses to Requests for Separation Information (NCUI 500AB).
- ~~(40)~~(41) "State" means any of the 50 states in the United States and includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
- ~~(41)~~(42) "Wages paid" means both wages actually received by a worker, and wages "constructively paid." Wages are constructively paid when they are credited to the account of, or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made, and shall be made available so that the worker may draw upon them at any time, and payment brought within

the worker's control and disposition, although not then actually reduced to possession.

~~(42)~~(43) "Wages payable" means wages earned but not paid.

~~(43)~~(44) "Weekly period" means a seven day period beginning at 12:00 a.m. Sunday and ending on the following Saturday at 11:59 p.m.

~~(44)~~(45) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits for the week are claimed.

*History Note: Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20; Eff. July 1, 2015; Temporary Amendment Eff. March 1, 2016.*

**SUBCHAPTER 24B - BENEFITS**

**SECTION .0100 - CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS**

**04 NCAC 24B .0107 VALID JOB CONTACTS**

(a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall actively seek work and make the minimum valid job contacts per week as required under G.S. 96-14.9(e). A valid job contact for purposes of this Section is a submitted application for a position.

(b) For job contacts conducted on an employer's or employment website:

- (1) ~~Each~~ a valid job contact is each separate and distinct position requiring a separate application, even if with the same employer, shall count as a separate job contact; and
- (2) each claimant shall record, and provide to DES upon request, the name of the employer, the URL or address of the website, the job title of the ~~job position~~ for which the claimant applied, the date of submission, and the confirmation number or email.

(c) For job contacts conducted by electronic mail (e-mail) or facsimile:

- (1) A valid job contact is a message sent to a valid e-mail address or facsimile number of an employer, or their designee, for the sole purpose of obtaining employment with that employer; and
- (2) the claimant shall record, and provide to DES upon request, the name of the employer, the e-mail address or facsimile number used for the contact, the name and job title of the person contacted, the date of the contact, and the job title of the position for which the claimant applied.

(d) For job contacts conducted by telephone:

- (1) A valid job contact is a verbal conversation with an employer, or their designee, for the sole purpose of obtaining employment with that employer.

~~(2)~~ ~~The~~ ~~the~~ claimant shall record, and provide to DES upon request, the name of the employer, the telephone number used for the contact, the name and job title of the person contacted, and the date of the contact; and

~~(2)~~(3) a message left on an answering service or a voice-mailbox shall not be a valid job contact for purposes of G.S. 96-14.9(e)(3).

(e) For job contacts conducted in person:

- (1) ~~A~~ a valid job contact is a meeting with an employer, or their designee, for the sole purpose of obtaining employment with that employer;
- (2) the claimant shall record, and provide to DES upon request, the name of the employer, the location at which the contact occurred, the name and job title of the person with whom the claimant met, the date of the contact, and the job title of the position for which the claimant applied; and
- (3) an in-person contact with an employer on a single day shall be considered a single contact for purposes of G.S. 96-14.9(e)(3), unless multiple applications are submitted that day for separate and distinct positions.

(f) The following shall be considered invalid job contacts:

- (1) Duplicative job contacts. A contact is duplicative when a claimant contacts the same employer regarding the same position or opening more than once during the same week with no change in the result of the contact. The following are examples of a change in the result of contact:
  - (A) a contact to or from an employer that occurs after an initial contact, involves scheduling an interview, and an interview is in fact scheduled; or
  - (B) a contact to an employer in response to a request for additional ~~information~~ information.
- (2) Contact with an employer for a job that the claimant would be unable to accept if offered. A ~~job~~ job that a claimant would be unable to accept if ~~offered~~ offered ~~is one~~ means a job position for which the claimant lacks the necessary knowledge, ability, or skill required for that job, as stated in the job posting or as required by applicable licensing authority.

(g) Initial registration via NCWorks shall be considered a valid job contact for the week during which the registration was completed.

(h) If a claimant customarily obtains employment through a union agent or hiring hall, then contact with the same shall be considered a valid job contact for the week in which it occurred. The claimant shall record, and provide to DES upon request, the name of the union agent or applicable union, the address of the hiring hall or where contact was made, the name of the person with whom the claimant spoke, and the date of the contact. Contact with a union

agent or hiring hall shall be considered a single valid job contact for the week in which it occurred.

(i) Longshoremembers registered with their union satisfy the requirements of G.S. 96-14.9(e) by submitting on a weekly basis their union number, the address where they made contact as required by their union's reporting requirements, the name and job title of the person with whom they spoke, and the dates on which they made ~~contact~~, contact, and Longshoreman shall provide information about their union's reporting requirements to DES upon request.

(j) An application to a blind job advertisement ~~same~~ shall be considered a valid job contact for each separate and distinct position sought or employer contacted. In addition to the requirements set forth above in this Section, the claimant shall also retain, and provide to DES upon request, a copy of the blind advertisement. A copy of the blind advertisement shall be accepted by DES in lieu of the employer name, the name of the person contacted, and the job title of the person contacted if these are unavailable.

*History Note: Authority G.S. 96-4; 96-14.9; Temporary Adoption Eff. March 1, 2016.*

**SUBCHAPTER 24C - INITIAL APPEALS FROM DETERMINATION AND HIGHER AUTHORITY REVIEW**

**SECTION .0500 – LABOR DISPUTES**

**04 NCAC 24C .0506 CONTENT OF HIGHER AUTHORITY DECISION**

(a) The Board of Review shall issue a written Higher Authority Decision that includes the following:

- (1) the names of the members of the Board of Review who participated in the review;
- (2) findings of fact, conclusions of law, and the decision of the Board of Review;
- (3) instructions for filing an appeal of the Higher Authority Decision to the superior court and the date the Higher Authority Decision was mailed;
- ~~(4) instructions for requesting any post decision relief or reconsideration if applicable under Rule .0601 of this Subchapter; and~~
- ~~(5)~~(4) notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

*History Note: Authority G.S. 96-4; 96-11.4; 96-15; Eff. July 1, 2015; Temporary Amendment Eff. March 1, 2016.*

**SECTION .0600 - POST-DECISION RELIEF**

**04 NCAC 24C .0601 POST-DECISION RELIEF**

~~(a) A written request for reconsideration or post decision relief shall:~~

- ~~(1) be in the form of a motion or petition, and shall be clearly identified as a Request for~~

~~Reconsideration or a Motion or Petition for Post Decision Relief;~~

- ~~(2) identify the party seeking post decision relief;~~
- ~~(3) contain the name of each party, and the docket number of the Higher Authority Decision;~~
- ~~(4) contain a statement that a copy was mailed or personally delivered to each party to the proceedings; and~~
- ~~(5) explain the reasons why post decision relief should be granted.~~

~~(b) The written request shall be filed no later than 30 days after the Higher Authority Decision was mailed to each party, and the timeliness requirements of 04 NCAC 24A .0100 apply.~~

~~(c) The written request shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(n).~~

~~(d) Any order granting or denying a party's request for post decision relief shall contain the following notices:~~

- ~~(1) that a party has a right to petition for judicial review by appealing the original Higher Authority Decision to the superior court; and~~
- ~~(2) that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.~~

*History Note: Authority G.S. 96-4; 96-11.4; 96-15; Eff. July 1, 2015; Temporary Repeal March 1, 2016.*

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

**Rule-making Agency:** *NC Medical Care Commission*

**Rule Citation:** *10A NCAC 13B .2102; 13C .0206*

**Effective Date:** *March 31, 2016*

**Date Approved by the Rules Review Commission:** *February 18, 2016*

**Reason for Action:** *The proposed temporary amendment to the rules in Chapter 10A NCAC 13B Licensing of Hospitals and 13C Licensing of Ambulatory Surgical Facilities is in response to a recent act of the General Assembly, specifically Session Law 2015-241, House Bill 97, "Current Operations and Capital Improvements and Appropriations Act of 2015" which became effective on September 18, 2015. In Section 12A.15.(a) of this law, revisions to the Health Care Cost Reduction and Transparency Act were made. G.S. 131E-214.13 was changed from requiring quarterly reporting of data to requiring annual reporting of data from hospitals and ambulatory surgical facilities beginning with the reporting period ending September 30, 2015. This law also requires N.C. Medical Care Commission to adopt rules to ensure that the provisions of the law are properly implemented. The availability of information related to health care pricing and transparency of that information is of significant importance to the citizens of North Carolina. The rule amendment protects*

*patients' rights to be fully informed of charges they have incurred or may incur, and will also empower patients to make informed health care decisions. The proposed temporary rule addresses a change in the data reporting timeframe requirement for a hospital and an ambulatory surgical facility from quarterly data submission to annual data submission. The time frame for the annual reporting of the data has been mandated by the general assembly in S.L. 2015-241. Annual data reporting will be used in the reporting of the statewide 100 most frequently reported DRGs, 20 most common outpatient imaging procedures and 20 most common surgical procedures for hospitals; however, ambulatory surgical facilities will only use annual data in reporting of the 20 most common outpatient imaging procedures and 20 most common surgical procedures to ensure that these practices are transparent, fair and reasonable to the health care consumer as intended by the General Assembly. A process was established for the data to be submitted to the statewide data processor and for the information to be provided to the public following data submission and receipt by the Department.*

*Transparency in health care pricing and billing is important to North Carolina. The posting of quarterly data has been of some use to the public since posting of the data began; however, the General Assembly recognized the need for more data with each data report submission and amended the reporting timeframe requirement to an annual submission. This proposed rule addresses a change in the established process for health care pricing data submission. With the change to hospital and ambulatory surgical facility annual data report submission, the larger volume of data submitted will lend itself to be transparent, consistent and accurate, thus ensuring that it is meaningful and useful to the public.*

**CHAPTER 13 – NC MEDICAL CARE COMMISSION**

**SUBCHAPTER 13B – LICENSING OF HOSPITALS**

**SECTION .2100 – TRANSPARENCY IN HEALTH CARE COSTS**

**10A NCAC 13B .2102 REPORTING REQUIREMENTS**

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

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

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

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

(c) In accordance with G.S. ~~131E-214.13 and quarterly per year,~~ 131E-214.13, all licensed hospitals shall report the data required in Paragraph (e) of this Rule related to the statewide 100 most frequently reported DRGs to the certified statewide data processor in a format provided by the certified statewide processor. Commencing with the reporting period ending September 30, 2015, ~~a rolling four quarters an annual~~ data report shall be submitted that includes all sites operated by the licensed hospital. Each annual report shall be ~~for the period ending three months prior to submitted by~~ the due date of the report. January 1.

(d) In accordance with G.S. ~~131E-214.13 and quarterly per year,~~ 131E-214.13, all licensed hospitals shall report the data required in Paragraph (e) of this Rule related to the statewide 20 most common outpatient imaging procedures and the statewide 20 most common outpatient surgical procedures to the certified statewide data processor in a format provided by the certified statewide processor. This report shall include the related primary CPT and HCPCS codes. Commencing with the reporting period ending September 30, 2015, ~~a rolling four quarters an annual~~ data report shall be submitted that includes all sites operated by the licensed hospital. Each annual report shall be ~~for the period ending three months prior to submitted by~~ the due date of the report. January 1.

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

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

- (4) the amount of Medicare reimbursement for each DRG, CPT code, or procedure; and
- (5) on behalf of patients who are covered by a Department of Insurance licensed third-party and teachers and State employees, the lowest, average, and highest amount of payments made for each DRG, CPT code, or procedure by each of the hospital's top five largest health insurers.
  - (A) each hospital shall determine its five largest health insurers based on the dollar volume of payments received from those insurers;
  - (B) the lowest amount of payment shall be reported as the lowest payment from each of the five insurers on the DRG, CPT code, or procedure;
  - (C) the average amount of payment shall be reported as the arithmetic average of each of the five health insurers payment amounts;
  - (D) the highest amount of payment shall be reported as the highest payment from each of the five insurers on the DRG, CPT code, or procedure; and
  - (E) the identity of the top five largest health insurers shall be redacted prior to submission.

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

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

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

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

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

inpatients with a variety of medical conditions, and that may provide outpatient services, anatomical pathology services, diagnostic imaging services, clinical laboratory services, operating room services, and pharmacy services, that is not defined by the categories listed in this Subparagraph and Subparagraphs (i)(1), (2), or (5) of this Rule.

- (4) "Critical Access Hospital," means a hospital defined in the Centers for Medicare & Medicaid Services' State Operations Manual, Chapter 2 – The Certification Process, 2254D – Requirements for Critical Access Hospitals (Rev. 1, 05-21-04), including all subsequent updates and revisions. The manual may be accessed at the website: [http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_a\\_hospitals.pdf](http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf) at no cost.
- (5) "Mental Health Hospital," means a hospital providing psychiatric services pursuant to G.S. 131E-176(21).

*History Note:* Authority G.S. 131E-214.4; 131E-214.13; S.L. 2015-241, s. 12A.15.(a); Temporary Adoption Eff. December 31, 2014; Eff. September 30, 2015; Temporary Amendment Eff. March 31, 2016.

**SUBCHAPTER 13C – LICENSING OF AMBULATORY SURGICAL FACILITIES**

**SECTION .0200 - LICENSING PROCEDURES**

**10A NCAC 13C .0206 REPORTING REQUIREMENTS**

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

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

selecting the top 20 to be provided to the Department.

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

(c) In accordance with G.S. ~~131E-214.13~~ and ~~quarterly per year, 131E-214.13,~~ all licensed ambulatory surgical facilities shall report the data required in Paragraph (d) of this Rule related to the statewide 20 most common outpatient imaging procedures and the statewide 20 most common outpatient surgical procedures to the certified statewide data processor in a format provided by the certified statewide processor. This report shall include the related primary CPT and HCPCS codes. Commencing with the reporting period ending September 30, 2015, a rolling four quarters an annual data report shall be submitted. Each annual report shall be ~~for the period ending three months prior to submitted by~~ the due date of the report January 1.

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

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

for each CPT code or procedure by each of the facility's top five largest health insurers.

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

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

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

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

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

*History Note: Authority G.S. 131E-147.1; 131E-214.4; 131E-214.13; S.L. 2015-241, s. 12A.15.(a); Temporary Adoption Eff. December 31, 2014; Eff. September 30, 2015; Temporary Amendment Eff. March 31, 2016.*

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**RULES REVIEW COMMISSION**

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*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 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)

Robert A. Bryan, Jr.

Margaret Currin

Jay Hemphill

Jeffrey A. Poley

**Appointed by House**

Garth Dunklin (Chair)

Stephanie Simpson (2<sup>nd</sup> Vice Chair)

Anna Baird Choi

Jeanette Doran

Danny Earl Britt, Jr.

**COMMISSION COUNSEL**

Abigail Hammond (919)431-3076

Amber Cronk May (919)431-3074

Amanda Reeder (919)431-3079

Jason Thomas (919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

March 17, 2016

April 21, 2016

May 19, 2016

June 16, 2016

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**RULES REVIEW COMMISSION MEETING  
MINUTES**

***February 18, 2016***

The Rules Review Commission met on Thursday, February 18, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, and Jeff Poley.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:04 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the January 21, 2016 meeting. There were none and the minutes were approved as distributed.

Commissioner Poley was not present during the vote.

**FOLLOW UP MATTERS**

**911 Board**

09 NCAC 06C .0105, .0106, .0107, and .0304 (renumbered to .0302) were unanimously approved.

09 NCAC 06C .0302 and .0303 were withdrawn at the request of the agency.

09 NCAC 06C .0111, .0112, .0113, .0114, .0205, and .0216 – The agency is addressing the objections from the January meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

**Environmental Management Commission**

15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, and .0515 - All rules were unanimously approved.

**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, and .0705 - All rules were unanimously approved.

**Property Tax Commission**

17 NCAC 11 .0216, and .0217 - The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

**Board of Chiropractic Examiners**

21 NCAC 10 .0214 was unanimously approved.

The Commission continued the extension of review for 21 NCAC 10 .0208 in accordance with G.S. 150B-21.10.

21 NCAC 10 .0106 was withdrawn at the request of the agency.

**LOG OF FILINGS (PERMANENT RULES)**

**Department of Commerce - Credit Union Division**

All rules were unanimously approved.

Prior to the review of the rules from the Credit Union Division, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she is a state employee with the Department of Commerce.

Prior to the review of the rules from the Credit Union Division, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the rules because he has an apparent conflict of interest.

**State Board of Elections**

08 NCAC 17 .0106 was unanimously approved.

**Department of Information Technology**

All rules were unanimously approved.

**Environmental Management Commission**

All rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of the approved rules.

**Department of Revenue**

All rules were unanimously approved.

**Board of Architecture**

21 NCAC 02 .0302 was unanimously approved.

Prior to the review of the rules from the Board of Architecture, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board in general matters.

**Board of Dental Examiners**

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review to allow the North Carolina Board of Dental Examiners additional time to revise the rules in response to the technical change requests.

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because she participated in the review of these Rules with another client.

**Board of Examiners of Fee-Based Practicing Pastoral Counselors**

21 NCAC 45 .0401 was unanimously approved.

**Board of Podiatry Examiners**

21 NCAC 52 .0208 was unanimously approved.

**Board of Recreational Therapy Licensure**

All rules were unanimously approved.

**Office of Administrative Hearings**

All rules were unanimously approved.

Commissioner Currin presented these Rules to the Commission.

**Building Code Council**

All rules were unanimously approved.

**LOG OF RULES (TEMPORARY RULES)**

**Commerce - Division of Employment Security**

All rules were unanimously approved.

Prior to the review of the rules from the Division of Employment Security, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she is a state employee with the Division of Employment Security.

**Medical Care Commission**

All rules were unanimously approved.

Prior to the review of the rules from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict with his law firm.

**Coastal Resources Commission**

The Commission objected to these Rules, with Commissioners Choi and Doran voting against the objection.

The Commission objected to the rules finding the agency did not have statutory authority to engage in temporary rulemaking after December 31, 2015.

Mary Lucasse, with the Attorney General's Office representing the agency, addressed the Commission.

**EXISTING RULES REVIEW**

**Social Services Commission**

10A NCAC 10 - The Commission unanimously approved the report as submitted by the agency.

**DHHS - Vocational Rehabilitation Services**

10A NCAC 89 - The Commission unanimously approved the report as submitted by the agency.

**Department of Labor**

13 NCAC 07 - The Commission unanimously approved the report as submitted by the agency.

13 NCAC 12 - The Commission unanimously approved the report as submitted by the agency.

**Medical Board**

21 NCAC 32 - The Commission unanimously approved the report as submitted by the agency.

**Board of Examiners of Fee-Based Practicing Pastoral Counselors**

21 NCAC 45 - The Commission unanimously approved the report as submitted by the agency.

**Social Services Commission**

The agency requested a waiver of 26 NCAC 05 .0211 pursuant to 26 NCAC 05 .0204 for the reports for 10A NCAC 70A-H.

The waiver request was approved. The Commission rescheduled the date of review for the reports, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its August 2017 meeting.

**COMMISSION BUSINESS**

Staff advised the Commissioners that the RRC rules that were reviewed at the January meeting have been published in the North Carolina Register, and the public hearing is scheduled for March 17, 2016 for public comments.

The Chair reminded the Commissioners about the upcoming oral arguments scheduled before the North Carolina Court of Appeals pertaining to the lawsuit filed by the State Board of Education against the Rules Review Commission.

The Chair issued a reminder to the Commissioners that the RRC will present at the Administrative Law Section's annual CLE, scheduled for April 8, 2016 from 9:30-10:30 a.m.

The meeting adjourned at 11:11 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 17<sup>th</sup> at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

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Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

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Garth Dunklin, Chair



**LIST OF APPROVED PERMANENT RULES  
February 18, 2016 Meeting**

**COMMERCE, DEPARTMENT OF - CREDIT UNION DIVISION**

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

**ELECTIONS, STATE BOARD OF**

|   |    |               |
|---|----|---------------|
| <u>Signage Notifying One-Stop Voters of the Option to Reques...</u> | 08 | NCAC 17 .0106 |
|---|----|---------------|

**INFORMATION TECHNOLOGY, DEPARTMENT OF**

|   |    |                |
|---|----|----------------|
| <u>Procurement Procedures</u>                       | 09 | NCAC 06B .0301 |
| <u>Methods of Source Selection</u>                  | 09 | NCAC 06B .0302 |
| <u>Advertisement and Notice</u>                     | 09 | NCAC 06B .0314 |
| <u>Mandatory Conferences/Site Visits</u>            | 09 | NCAC 06B .0315 |
| <u>Negotiation</u>                                  | 09 | NCAC 06B .0316 |
| <u>Debriefing Offerors</u>                          | 09 | NCAC 06B .0405 |
| <u>Use and Description</u>                          | 09 | NCAC 06B .0701 |
| <u>Conditions for Limited or Waived Competition</u> | 09 | NCAC 06B .0901 |
| <u>Emergency Situations or Pressing Need</u>        | 09 | NCAC 06B .1302 |
| <u>General Delegations</u>                          | 09 | NCAC 06B .1304 |
| <u>Procurement File Records</u>                     | 09 | NCAC 06B .1402 |

**911 BOARD**

|   |    |                |
|---|----|----------------|
| <u>Service Provider Failure to Comply with Rules</u>                | 09 | NCAC 06C .0105 |
| <u>PSAP Failure to Comply with Rules</u>                            | 09 | NCAC 06C .0106 |
| <u>Review 911 Funds Expenditures, Disbursements and Reimburs...</u> | 09 | NCAC 06C .0107 |
| <u>CMRS Service Provider Reimbursement</u>                          | 09 | NCAC 06C .0302 |

**ENVIRONMENTAL MANAGEMENT COMMISSION**

|  |     |                |
|--|-----|----------------|
| <u>Purpose and Scope</u>                                       | 15A | NCAC 02L .0501 |
| <u>Definitions</u>   | 15A | NCAC 02L .0502 |
| <u>Rule Application</u>  | 15A | NCAC 02L .0503 |
| <u>Required Initial Abatement Actions by Responsible Party</u> | 15A | NCAC 02L .0504 |
| <u>Requirements for Limited Site Assessment</u>                | 15A | NCAC 02L .0505 |
| <u>Discharge or Release Classifications</u>                    | 15A | NCAC 02L .0506 |
| <u>Reclassification of Risk Levels</u>                         | 15A | NCAC 02L .0507 |
| <u>Assessment and Remediation Procedures</u>                   | 15A | NCAC 02L .0508 |
| <u>Notification Requirements</u>                               | 15A | NCAC 02L .0509 |
| <u>Departmental Listing of Discharges or Releases</u>          | 15A | NCAC 02L .0510 |
| <u>Establishing Maximum Soil Contamination Concentrations</u>  | 15A | NCAC 02L .0511 |
| <u>Analytical Procedures for Soil Samples</u>                  | 15A | NCAC 02L .0512 |
| <u>Analytical Procedures for Groundwater Samples</u>           | 15A | NCAC 02L .0513 |

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|---|--------------------|
| <u>Required Laboratory Certification</u>                            | 15A NCAC 02L .0514 |
| <u>Discharges or Releases from Other Sources</u>                    | 15A NCAC 02L .0515 |
| <u>Activities Exempted from Permit Requirements</u>                 | 15A NCAC 02Q .0102 |
| <u>Facilities Not Likely to Contravene Demonstration</u>            | 15A NCAC 02Q .0302 |
| <u>Changes Not Requiring Permit Revisions</u>                       | 15A NCAC 02Q .0318 |
| <u>Emergency Generators and Stationary Reciprocating Interna...</u> | 15A NCAC 02Q .0903 |

**COASTAL RESOURCES COMMISSION**

|   |                    |
|---|--------------------|
| <u>Purpose</u>  | 15A NCAC 07L .0102 |
| <u>Consistency with Plans and Rules</u>                             | 15A NCAC 07L .0502 |
| <u>Priorities for Funding Land Use Plans and Implementation ...</u> | 15A NCAC 07L .0503 |
| <u>Eligible Projects</u>  | 15A NCAC 07L .0504 |
| <u>Scoping of Planning Needs</u>                                    | 15A NCAC 07L .0505 |
| <u>Public Participation</u>   | 15A NCAC 07L .0506 |
| <u>Minimum CAMA Land Use Planning and Funding Requirements</u>      | 15A NCAC 07L .0507 |
| <u>State Technical Assistance, Review and Comment on Prelimi...</u> | 15A NCAC 07L .0508 |
| <u>Intergovernmental Coordination</u>                               | 15A NCAC 07L .0509 |
| <u>Public Hearing and Local Adoption Requirements</u>               | 15A NCAC 07L .0510 |
| <u>Required Periodic Implementation Status Reports</u>              | 15A NCAC 07L .0511 |
| <u>Sustainable Communities Component of the Planning Program</u>    | 15A NCAC 07L .0512 |
| <u>Project Duration</u>   | 15A NCAC 07L .0513 |
| <u>Relation to Other Funding</u>                                    | 15A NCAC 07L .0514 |
| <u>Application Form</u>   | 15A NCAC 07L .0601 |
| <u>Assistance in Completing Applications and Submittal</u>          | 15A NCAC 07L .0602 |
| <u>Procedure for Approval and Disapproval</u>                       | 15A NCAC 07L .0603 |
| <u>Contract Agreement</u>   | 15A NCAC 07L .0701 |
| <u>Progress Reports and Grant Monitoring</u>                        | 15A NCAC 07L .0702 |
| <u>Payment</u>  | 15A NCAC 07L .0703 |
| <u>Project Completion Report</u>                                    | 15A NCAC 07L .0704 |
| <u>Accountability</u>   | 15A NCAC 07L .0705 |

**REVENUE, DEPARTMENT OF**

|  |                   |
|--|-------------------|
| <u>Made to Order and Installation Sales: Generally</u> | 17 NCAC 07B .0802 |
| <u>Cabinetmakers</u>                                   | 17 NCAC 07B .0803 |
| <u>Sign Fabricating and Painting</u>                   | 17 NCAC 07B .0805 |
| <u>Repairs and Alterations: Generally</u>              | 17 NCAC 07B .0806 |
| <u>Clothing Alterations</u>                            | 17 NCAC 07B .0807 |
| <u>Reupholstering</u>                                  | 17 NCAC 07B .0808 |
| <u>Laminating Services</u>                             | 17 NCAC 07B .0809 |
| <u>Bullets and Shells-Reloading</u>                    | 17 NCAC 07B .0810 |
| <u>Fire Extinguishers: Recharging</u>                  | 17 NCAC 07B .0811 |
| <u>Shoe Repairmen</u>                                  | 17 NCAC 07B .1002 |
| <u>Watch: Clock and Jewelry Repairmen</u>              | 17 NCAC 07B .1003 |
| <u>Tire Recapping Materials</u>                        | 17 NCAC 07B .1901 |
| <u>Tire Repair Materials</u>                           | 17 NCAC 07B .1903 |
| <u>Sales by Tire Recappers</u>                         | 17 NCAC 07B .1904 |

|   |    |          |       |
|---|----|----------|-------|
| <u>Memorial Stone Sales</u>   | 17 | NCAC 07B | .3401 |
| <u>Supplies to Install Memorial Stones/Monuments/Bronze Grav...</u> | 17 | NCAC 07B | .3403 |
| <u>Funeral Expenses</u>   | 17 | NCAC 07B | .3601 |
| <u>Lubricating Service</u>  | 17 | NCAC 07B | .3701 |
| <u>Sales by Laundries: Linen Rentals: and Solicitors for suc...</u> | 17 | NCAC 07B | .4501 |
| <u>Garment Repairs and Storage</u>                                  | 17 | NCAC 07B | .4506 |
| <u>Rug Reinstallation Charges</u>                                   | 17 | NCAC 07B | .4507 |
| <u>Motor Vehicle Service Businesses</u>                             | 17 | NCAC 07B | .4603 |
| <u>Special Equipment-Accessories: Motor Vehicles</u>                | 17 | NCAC 07B | .4604 |
| <u>Manufactured Homes</u>   | 17 | NCAC 07B | .4615 |

**ARCHITECTURE, BOARD OF**

|                    |    |         |       |
|--------------------|----|---------|-------|
| <u>Examination</u> | 21 | NCAC 02 | .0302 |
|--------------------|----|---------|-------|

**CHIROPRACTIC EXAMINERS, BOARD OF**

|                                  |    |         |       |
|----------------------------------|----|---------|-------|
| <u>Random Office Inspections</u> | 21 | NCAC 10 | .0214 |
|----------------------------------|----|---------|-------|

**EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS, BOARD OF**

|                                   |    |         |       |
|-----------------------------------|----|---------|-------|
| <u>Certification Renewal Form</u> | 21 | NCAC 45 | .0401 |
|-----------------------------------|----|---------|-------|

**PODIATRY EXAMINERS, BOARD OF**

|                             |    |         |       |
|-----------------------------|----|---------|-------|
| <u>Continuing Education</u> | 21 | NCAC 52 | .0208 |
|-----------------------------|----|---------|-------|

**RECREATIONAL THERAPY LICENSURE, BOARD OF**

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

**ADMINISTRATIVE HEARINGS, OFFICE OF**

|                                     |    |         |       |
|-------------------------------------|----|---------|-------|
| <u>General</u>                      | 26 | NCAC 03 | .0101 |
| <u>Definitions and Construction</u> | 26 | NCAC 03 | .0102 |
| <u>Definitions</u>                  | 26 | NCAC 03 | .0501 |
| <u>General</u>                      | 26 | NCAC 03 | .0502 |
| <u>Registrants</u>                  | 26 | NCAC 03 | .0503 |
| <u>Integration with Other Rules</u> | 26 | NCAC 03 | .0504 |

**BUILDING CODE COUNCIL**

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

**LIST OF APPROVED TEMPORARY RULES  
February 18, 2016 Meeting**

**COMMERCE - EMPLOYMENT SECURITY, DIVISION OF**

|   |                   |
|---|-------------------|
| <u>Definitions</u>                          | 04 NCAC 24A .0105 |
| <u>Valid Job Contacts</u>                   | 04 NCAC 24B .0107 |
| <u>Content of Higher Authority Decision</u> | 04 NCAC 24C .0506 |
| <u>Post-Decision Relief</u>                 | 04 NCAC 24C .0601 |

**MEDICAL CARE COMMISSION**

|                               |                    |
|-------------------------------|--------------------|
| <u>Reporting Requirements</u> | 10A NCAC 13B .2102 |
| <u>Reporting Requirements</u> | 10A NCAC 13C .0206 |

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
February 18, 2016  
Necessary with Substantive Public interest**

|                                   |                   |                      |
|-----------------------------------|-------------------|----------------------|
| <b>Social Services Commission</b> | 10A NCAC 10 .0602 | 10A NCAC 10 .1007    |
| 10A NCAC 10 .0102                 | 10A NCAC 10 .0701 | 10A NCAC 10 .1101    |
| 10A NCAC 10 .0202                 | 10A NCAC 10 .0702 | 10A NCAC 10 .1102    |
| 10A NCAC 10 .0203                 | 10A NCAC 10 .0902 | 10A NCAC 10 .1103    |
| 10A NCAC 10 .0306                 | 10A NCAC 10 .0903 |                      |
| 10A NCAC 10 .0307                 | 10A NCAC 10 .0904 | <b>Medical Board</b> |
| 10A NCAC 10 .0308                 | 10A NCAC 10 .0905 | 21 NCAC 32A .0104    |
| 10A NCAC 10 .0309                 | 10A NCAC 10 .0906 | 21 NCAC 32A .0111    |
| 10A NCAC 10 .0310                 | 10A NCAC 10 .0907 | 21 NCAC 32K .0101    |
| 10A NCAC 10 .0311                 | 10A NCAC 10 .0908 | 21 NCAC 32K .0201    |
| 10A NCAC 10 .0312                 | 10A NCAC 10 .0909 | 21 NCAC 32K .0202    |
| 10A NCAC 10 .0313                 | 10A NCAC 10 .0910 | 21 NCAC 32K .0203    |
| 10A NCAC 10 .0502                 | 10A NCAC 10 .1001 | 21 NCAC 32K .0204    |
| 10A NCAC 10 .0503                 | 10A NCAC 10 .1002 | 21 NCAC 32K .0205    |
| 10A NCAC 10 .0504                 | 10A NCAC 10 .1003 | 21 NCAC 32K .0206    |
| 10A NCAC 10 .0505                 | 10A NCAC 10 .1004 | 21 NCAC 32K .0207    |
| 10A NCAC 10 .0506                 | 10A NCAC 10 .1005 | 21 NCAC 32K .0208    |
| 10A NCAC 10 .0601                 | 10A NCAC 10 .1006 | 21 NCAC 32M .0111    |

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
February 18, 2016  
Necessary without Substantive Public Interest**

|   |                             |                   |
|---|-----------------------------|-------------------|
| <b>Social Services Commission</b>               | 10A NCAC 89C .0203          | 13 NCAC 07A .0303 |
| 10A NCAC 10 .0101                               | 10A NCAC 89C .0204          | 13 NCAC 07A .0501 |
| 10A NCAC 10 .0201                               | 10A NCAC 89C .0205          | 13 NCAC 07A .0502 |
| 10A NCAC 10 .0301                               | 10A NCAC 89C .0206          | 13 NCAC 07A .0503 |
| 10A NCAC 10 .0501                               | 10A NCAC 89C .0301          | 13 NCAC 07A .0504 |
| 10A NCAC 10 .0901                               | 10A NCAC 89C .0302          | 13 NCAC 07A .0507 |
|   | 10A NCAC 89C .0303          | 13 NCAC 07A .0508 |
| <b>HHS - Vocational Rehabilitation Services</b> | 10A NCAC 89C .0304          | 13 NCAC 07A .0512 |
| 10A NCAC 89A .0101                              | 10A NCAC 89C .0305          | 13 NCAC 07A .0513 |
| 10A NCAC 89A .0102                              | 10A NCAC 89C .0306          | 13 NCAC 07A .0601 |
| 10A NCAC 89B .0101                              | 10A NCAC 89C .0307          | 13 NCAC 07A .0602 |
| 10A NCAC 89B .0102                              | 10A NCAC 89C .0308          | 13 NCAC 07A .0603 |
| 10A NCAC 89B .0103                              | 10A NCAC 89C .0309          | 13 NCAC 07A .0604 |
| 10A NCAC 89B .0104                              | 10A NCAC 89C .0310          | 13 NCAC 07A .0605 |
| 10A NCAC 89B .0106                              | 10A NCAC 89C .0311          | 13 NCAC 07A .0606 |
| 10A NCAC 89B .0107                              | 10A NCAC 89C .0312          | 13 NCAC 07A .0607 |
| 10A NCAC 89B .0108                              | 10A NCAC 89C .0313          | 13 NCAC 07A .0701 |
| 10A NCAC 89B .0201                              | 10A NCAC 89C .0314          | 13 NCAC 07A .0702 |
| 10A NCAC 89B .0202                              | 10A NCAC 89C .0315          | 13 NCAC 07A .0703 |
| 10A NCAC 89B .0203                              | 10A NCAC 89C .0316          | 13 NCAC 07A .0704 |
| 10A NCAC 89B .0204                              | 10A NCAC 89C .0401          | 13 NCAC 07A .0705 |
| 10A NCAC 89B .0205                              | 10A NCAC 89C .0402          | 13 NCAC 07A .0706 |
| 10A NCAC 89B .0206                              | 10A NCAC 89C .0403          | 13 NCAC 07A .0707 |
| 10A NCAC 89B .0207                              | 10A NCAC 89C .0404          | 13 NCAC 07A .0708 |
| 10A NCAC 89B .0208                              | 10A NCAC 89C .0501          | 13 NCAC 07A .0709 |
| 10A NCAC 89B .0209                              | 10A NCAC 89C .0502          | 13 NCAC 07A .0710 |
| 10A NCAC 89B .0210                              | 10A NCAC 89C .0601          | 13 NCAC 07A .0711 |
| 10A NCAC 89B .0211                              | 10A NCAC 89C .0602          | 13 NCAC 07A .0712 |
| 10A NCAC 89B .0212                              | 10A NCAC 89C .0603          | 13 NCAC 07A .0713 |
| 10A NCAC 89B .0213                              | 10A NCAC 89C .0604          | 13 NCAC 07A .0714 |
| 10A NCAC 89B .0214                              | 10A NCAC 89C .0605          | 13 NCAC 07A .0715 |
| 10A NCAC 89B .0215                              | 10A NCAC 89C .0606          | 13 NCAC 07A .0716 |
| 10A NCAC 89B .0216                              | 10A NCAC 89C .0607          | 13 NCAC 07A .0717 |
| 10A NCAC 89B .0217                              | 10A NCAC 89D .0101          | 13 NCAC 07A .0718 |
| 10A NCAC 89B .0218                              | 10A NCAC 89D .0201          | 13 NCAC 07A .0801 |
| 10A NCAC 89B .0219                              | 10A NCAC 89D .0202          | 13 NCAC 07A .0802 |
| 10A NCAC 89B .0220                              | 10A NCAC 89D .0203          | 13 NCAC 07A .0803 |
| 10A NCAC 89B .0221                              | 10A NCAC 89D .0204          | 13 NCAC 07A .0804 |
| 10A NCAC 89B .0222                              | 10A NCAC 89D .0205          | 13 NCAC 07A .0901 |
| 10A NCAC 89B .0223                              | 10A NCAC 89D .0206          | 13 NCAC 07A .0902 |
| 10A NCAC 89B .0224                              | 10A NCAC 89D .0301          | 13 NCAC 07A .0903 |
| 10A NCAC 89B .0225                              | 10A NCAC 89D .0302          | 13 NCAC 07A .0904 |
| 10A NCAC 89B .0226                              | 10A NCAC 89D .0303          | 13 NCAC 07A .0905 |
| 10A NCAC 89B .0227                              | 10A NCAC 89D .0304          | 13 NCAC 07F .0101 |
| 10A NCAC 89C .0103                              | 10A NCAC 89D .0305          | 13 NCAC 07F .0103 |
| 10A NCAC 89C .0104                              | 10A NCAC 89D .0306          | 13 NCAC 07F .0105 |
| 10A NCAC 89C .0105                              | 10A NCAC 89D .0307          | 13 NCAC 07F .0201 |
| 10A NCAC 89C .0106                              |                             | 13 NCAC 07F .0202 |
| 10A NCAC 89C .0107                              | <b>Labor, Department of</b> | 13 NCAC 07F .0203 |
| 10A NCAC 89C .0109                              | 13 NCAC 07A .0101           | 13 NCAC 07F .0204 |
| 10A NCAC 89C .0201                              | 13 NCAC 07A .0102           | 13 NCAC 07F .0205 |
| 10A NCAC 89C .0202                              | 13 NCAC 07A .0103           | 13 NCAC 07F .0207 |
|   | 13 NCAC 07A .0301           | 13 NCAC 07F .0301 |

13 NCAC 07F .0302  
13 NCAC 07F .0501  
13 NCAC 07F .0502  
13 NCAC 07F .0601  
13 NCAC 07F .0602  
13 NCAC 07F .0603  
13 NCAC 07F .0604  
13 NCAC 07F .0605  
13 NCAC 07F .0606  
13 NCAC 07F .0607  
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13 NCAC 07F .0701  
13 NCAC 07F .0702  
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13 NCAC 12 .0102  
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13 NCAC 12 .0902  
13 NCAC 12 .0903  
13 NCAC 12 .0904  
13 NCAC 12 .0905  
13 NCAC 12 .0906

**Medical Board**

21 NCAC 32A .0101  
21 NCAC 32A .0112  
21 NCAC 32A .0113  
21 NCAC 32A .0114  
21 NCAC 32B .1001  
21 NCAC 32B .1301  
21 NCAC 32B .1302  
21 NCAC 32B .1303  
21 NCAC 32B .1350  
21 NCAC 32B .1360  
21 NCAC 32B .1370  
21 NCAC 32B .1401  
21 NCAC 32B .1402  
21 NCAC 32B .1501  
21 NCAC 32B .1502  
21 NCAC 32B .1601  
21 NCAC 32B .1602  
21 NCAC 32B .1701  
21 NCAC 32B .1702  
21 NCAC 32B .1703  
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21 NCAC 32B .1705  
21 NCAC 32B .2001  
21 NCAC 32C .0102  
21 NCAC 32C .0103  
21 NCAC 32C .0104  
21 NCAC 32C .0105  
21 NCAC 32C .0106  
21 NCAC 32C .0108  
21 NCAC 32C .0109  
21 NCAC 32F .0106  
21 NCAC 32M .0101  
21 NCAC 32M .0102  
21 NCAC 32M .0103  
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21 NCAC 32M .0105  
21 NCAC 32M .0106  
21 NCAC 32M .0107  
21 NCAC 32M .0108  
21 NCAC 32M .0109  
21 NCAC 32M .0110  
21 NCAC 32M .0112  
21 NCAC 32M .0115  
21 NCAC 32M .0116  
21 NCAC 32N .0106  
21 NCAC 32N .0107  
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21 NCAC 32N .0109  
21 NCAC 32N .0110  
21 NCAC 32N .0111  
21 NCAC 32N .0112  
21 NCAC 32N .0113  
21 NCAC 32P .0101  
21 NCAC 32P .0102  
21 NCAC 32P .0103  
21 NCAC 32P .0104  
21 NCAC 32P .0105  
21 NCAC 32P .0106  
21 NCAC 32R .0101  
21 NCAC 32R .0102  
21 NCAC 32R .0103  
21 NCAC 32R .0104  
21 NCAC 32S .0201  
21 NCAC 32S .0202  
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21 NCAC 32S .0215  
21 NCAC 32S .0216  
21 NCAC 32S .0217  
21 NCAC 32S .0218  
21 NCAC 32S .0219  
21 NCAC 32S .0220  
21 NCAC 32S .0221  
21 NCAC 32S .0222  
21 NCAC 32T .0101  
21 NCAC 32U .0101

**NC Medical Board/Perfusion  
Advisory Committee**

21 NCAC 32V .0102  
21 NCAC 32V .0103  
21 NCAC 32V .0104  
21 NCAC 32V .0105  
21 NCAC 32V .0106  
21 NCAC 32V .0107  
21 NCAC 32V .0108  
21 NCAC 32V .0109  
21 NCAC 32V .0110  
21 NCAC 32V .0111  
21 NCAC 32V .0112  
21 NCAC 32V .0113  
21 NCAC 32V .0114  
21 NCAC 32V .0115

**Medical Board**

21 NCAC 32W .0101  
21 NCAC 32W .0102  
21 NCAC 32W .0103  
21 NCAC 32W .0104  
21 NCAC 32W .0105

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**RULES REVIEW COMMISSION**

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21 NCAC 32W .0106  
21 NCAC 32W .0107  
21 NCAC 32W .0108  
21 NCAC 32W .0109  
21 NCAC 32W .0110  
21 NCAC 32W .0111  
21 NCAC 32W .0112  
21 NCAC 32W .0113  
21 NCAC 32W .0114  
21 NCAC 32W .0115  
21 NCAC 32X .0101

21 NCAC 32X .0102  
21 NCAC 32X .0103  
21 NCAC 32X .0104  
21 NCAC 32X .0105

**Examiners of Fee-Based  
Practicing Pastoral Counselors**

21 NCAC 45 .0101  
21 NCAC 45 .0201  
21 NCAC 45 .0202  
21 NCAC 45 .0203

21 NCAC 45 .0301  
21 NCAC 45 .0302  
21 NCAC 45 .0303  
21 NCAC 45 .0401  
21 NCAC 45 .0402  
21 NCAC 45 .0501  
21 NCAC 45 .0601  
21 NCAC 45 .0701  
21 NCAC 45 .0801

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
February 18, 2016  
Unnecessary**

**Social Services Commission**

10A NCAC 10 .0302  
10A NCAC 10 .0303  
10A NCAC 10 .0304  
10A NCAC 10 .0305  
10A NCAC 10 .0801  
10A NCAC 10 .0802  
10A NCAC 10 .0803  
10A NCAC 10 .0804  
10A NCAC 10 .0805  
10A NCAC 10 .0806

10A NCAC 10 .0807  
10A NCAC 10 .0808  
10A NCAC 10 .0809  
10A NCAC 10 .0810  
10A NCAC 10 .0811

**HHS - Vocational Rehabilitation  
Services**

10A NCAC 89B .0105  
10A NCAC 89C .0101  
10A NCAC 89C .0102

10A NCAC 89C .0108

**Medical Board**

21 NCAC 32F .0105  
21 NCAC 32S .0205  
21 NCAC 32S .0223

**NC Medical Board/Perfusion  
Advisory Committee**

21 NCAC 32V .0101

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**CONTESTED CASE DECISIONS**

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

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge  
JULIAN MANN, III*

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

**ADMINISTRATIVE LAW JUDGES**

|                        |                  |
|------------------------|------------------|
| Melissa Owens Lassiter | A. B. Elkins II  |
| Don Overby             | Selina Brooks    |
| J. Randall May         | Phil Berger, Jr. |
| J. Randolph Ward       | David Sutton     |

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| <u>AGENCY</u>   | <u>CASE<br/>NUMBER</u> | <u>DATE</u> | <u>PUBLISHED<br/>DECISION<br/>REGISTER<br/>CITATION</u> |
|---|------------------------|-------------|---|
| <b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>   |                        |             |   |
| Chief's Inc. v. Alcoholic Beverage Control Commission   | 13 ABC 18939           | 02/19/15    |   |
| 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 <sup>th</sup> 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    |   |
| <b><u>BOARD OF ARCHITECTURE</u></b>   |                        |             |   |
| Board of Architecture v. Anthony Hunt   | 14 BOA 04954           | 03/03/15    | 30:01 NCR 77  |

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**CONTESTED CASE DECISIONS**

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**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

**DEPARTMENT OF COMMERCE**

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

Edward Andrew Carder v. NC Division of Victim Compensation Services 14 CPS 08579 08/25/15 30:14 NCR 1561

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**

Strategic Interventions Inc. v. Western Highlands Network A LME-MCO 13 DHR 05119 06/21/13

Kenneth Terrell Ford v. DHHS, Division of Facility Services 13 DHR 10745 05/04/15 30:03 NCR 360

Joyce Carol Hunter v. DHHS, Division of Health Service Regulation 13 DHR 17855 01/03/14

Rex Hospital v. DHHS, Division of Medical Assistance 13 DHR 18151 05/29/15 30:03 NCR 372

Paul M Stella v. DHHS, Division of Public Health 13 DHR 19269 02/06/14

UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance 13 DHR 19653 05/29/15 30:03 NCR 387

UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance 13 DHR 19654 05/29/15 30:03 NCR 387

A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation 13 DHR 19835 05/22/15

Stepping Stone Counseling v. NCDHHS, Division of Medical Assistance 13 DHR 19837 05/12/15

Carolina Community Support Services, Inc. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01500 04/02/15 30:04 NCR 480

Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01503 04/02/15 30:01 NCR 97

Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01594 04/02/15 30:01 NCR 133

Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare 14 DHR 02198 06/17/15 30:07 NCR 794

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

Cumberland County Hospital System, Inc d/b/a Cape Fear Valley Health System and Hoke Healthcare LLC v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section 14 DHR 04692 01/21/15

**CONTESTED CASE DECISIONS**

|   |              |          |                |
|---|--------------|----------|----------------|
| Bio-Medical Applications of NC, Inc d/b/a BMA Rocky Mount v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care Inc d/b/a Nash County Dialysis | 14 DHR 05495 | 03/26/15 | 30:02 NCR 196  |
| Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry   | 14 DHR 05566 | 03/10/15 | 30:02 NCR 229  |
| First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation  | 14 DHR 06332 | 02/12/15 |                |
| Carrie's Loving Hands, Felicia McGee v. NCDHHS, Division of Health Service Regulation, Certification  | 14 DHR 06565 | 02/13/15 |                |
| Erica Chante Johnson v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry  | 14 DHR 06571 | 03/10/15 | 30:02 NCR 236  |
| A United Community LLC v. Alliance Behavioral Healthcare as legally authorized contractor of and agent for NC Department of Health and Human Services                                       | 14 DHR 06837 | 07/20/15 | 30:08 NCR 930  |
| Brenda Buck v. NCDHHS, Division of Health Service Regulation  | 14 DHR 07027 | 01/02/15 |                |
| Humble Beginnings Child Care Inc v. Division of Child Development and Early Education   | 14 DHR 07029 | 05/22/15 |                |
| Peace Of Mind Adult Group Home Kimberly Goolsby v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section   | 14 DHR 07325 | 05/22/15 |                |
| Peace of Mind Adult Group Home and Kimberly Goolsby v. DHHS, Division of Health Service Regulation  | 14 DHR 07626 | 08/31/15 |                |
| Peace of Mind Adult Group Home Kimberly Goolsby, v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section  | 14 DHR 07327 | 05/22/15 |                |
| Dennis Reid v. NCDHHS   | 14 DHR 07992 | 04/17/15 |                |
| Hanna Lawrence v. DHHS  | 14 DHR 08026 | 01/09/15 |                |
| CMS Agency Inc. v. NC DHHS and Eastpointe human Services LME/PHP  | 14 DHR 08147 | 10/30/15 | 30:12 NCR 1351 |
| Sharda R Wilkes v. NCDHHS, Division of Health Service Regulation  | 14 DHR 08575 | 01/21/15 |                |
| Sandy's Playschool LLC, Michelle Bailey-Motley v. DHHS, Division of Child Development   | 14 DHR 08580 | 02/16/15 |                |
| Alicia Staton v. Department of Health and Human Services  | 14 DHR 08589 | 02/02/15 |                |
| Tiffany Leary v. NCDHHS, Division of Health Services, Health Care Personnel Registry  | 14 DHR 08785 | 01/06/15 |                |
| Patrician Shearin v. NCDHHS   | 14 DHR 09012 | 06/29/15 |                |
| Mr. Imad Sider, EMSS Inc d/b/a New Bern Minimart v. NC Department of Health and Human Services, Division of Public Health   | 14 DHR 09906 | 07/28/15 | 30:08 NCR 950  |
| Tomika Jones Moore v. NCDHHS, Division of Health Service Regulation   | 14 DHR 10137 | 04/06/15 |                |
| Jones Country Mart, Inesar M Ahmad v. NCDHHS, WIC   | 14 DHR 10138 | 02/03/15 |                |
| Theresa L Greene v. DHHS, Division of Health Service Regulation   | 14 DHR 10160 | 02/10/15 |                |
| Jeanette Peele v. Health Care Personnel Registry, Nurse Aide I  | 14 DHR 10162 | 05/18/15 |                |
| The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification   | 14 DHR 10167 | 04/27/15 |                |
| The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification   | 14 DHR 10171 | 04/27/15 |                |
| Shawn Williams v. Rutherford-Polk-McDowell District Health Department, Environmental Health Division  | 14 DHR 10277 | 08/21/15 |                |
| Sarah M Carr, Agape v. Division of Child Development and Early Learning in DHHS   | 14 DHR 10278 | 08/28/15 |                |
| Sophia B Pierce and Associates d/b/a Sunny Acres Group Home v. DHHS, Division of Facility Services, Mental Health Licensure and Certification Section                                       | 14 DHR 10281 | 04/02/15 |                |
| Freida M. Butler v. DHHS, Division of Health Service Regulation   | 15 DHR 00009 | 05/12/15 |                |
| Kandice T. Stigger v. DHHS, Division of Health Service Regulation   | 15 DHR 00271 | 05/15/15 |                |
| Mildred R. Walker v. DHHS, Division of Health Service Regulation  | 15 DHR 00390 | 05/21/15 |                |
| The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification   | 15 DHR 00462 | 04/27/15 |                |
| Phyllis Bryant Duren v. NCDHHS  | 15 DHR 00578 | 04/01/15 |                |
| New Life Child Care Ctr, Ruby McKinzie v. DHHS, Division of Public Health   | 15 DHR 00667 | 03/20/15 |                |
| Brown Therapeutic Home Inc. v. DHHS, Division of Health Service Regulation  | 15 DHR 00707 | 03/25/15 |                |
| Christina Renee Jones v. DHHS, Division of Health Service Regulation  | 15 DHR 00845 | 04/30/15 |                |
| Samerian Lynn Davis v. Victorian Senior Care, DHHS, DHSR, Health Care Personnel Registry  | 15 DHR 00991 | 05/27/15 |                |
| Jean's Rest Home Inc., Lula J. McDonald v. DHHS, Division of Health Service Regulation, ACLS Jan Brickley   | 15 DHR 01123 | 06/26/15 |                |
| Crystal Watson Sanjak v. DHHS, Health Care Personnel Registry   | 15 DHR 01152 | 04/29/15 |                |
| H. Urquiza Corp., La Esmeralda 2, Hermilo Urquiza v. DHHS, Division of Public Health, WIC   | 15 DHR 01193 | 05/22/15 |                |
| Donna Lewis v. DHHS, Division of Health Service Regulation  | 15 DHR 01205 | 08/07/15 |                |
| Tiny Hands of Hope Daye, Felecia Fuller v. DHHS, Division of Child Development and Early Education  | 15 DHR 01354 | 05/29/15 |                |
| Bridgette Squires v. DHHS, Health Service Regulation  | 15 DHR 01471 | 04/08/15 |                |

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**CONTESTED CASE DECISIONS**

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| Strategic Interventions, Inc. v. Smoky Mountain Center Area Authority LME/MCO  | 15 DHR 01519 | 08/26/15 | 30:13 NCR 1435 |
| Gentlehands of North Carolina Inc. John O. Okonji v. DHHS  | 15 DHR 01546 | 07/01/15 |                |
| 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 |                |
| Melissa Ann Peaden v. DHHS, Division of Health Service Regulation  | 15 DHR 01832 | 06/03/15 |                |
| Ray D. McGee v. DHHS   | 15 DHR 01906 | 05/22/15 |                |
| Kenneth Grimes v. NC Asbestos Hazard Management Program  | 15 DHR 01975 | 07/01/15 |                |
| Henry and Barbara Brown and Quality Professional Multiservices LLC v. DHHS, Division of Health Service Regulation  | 15 DHR 02306 | 07/01/15 |                |
| Daniel Tafesse v. DHHS, Division of Health Service Regulation  | 15 DHR 02582 | 06/25/15 |                |
| Dr. Najla Ahmed, Pediatric Associates of Cleveland County v. DHHS, Division of Medical Assistance  | 15 DHR 02635 | 06/09/15 |                |
| Michael Darnelle South v. DHHS   | 15 DHR 02770 | 06/19/15 |                |
| Gemika Steele, First Steps Child Development v. Division of Child Development and Early Education of Health and Human Services                                   | 15 DHR 02905 | 07/09/15 |                |
| Sandra Kay Laney Stewart v. Medicaid Estate Recovery, Glana M Surlis   | 15 DHR 03057 | 07/23/15 |                |
| Special K Enrichment and Melanie James v. Partners Behavioral Health Management  | 15 DHR 03194 | 08/19/15 |                |
| Fredricklyn E. Johnson v. Division of Child Development and Early Education  | 15 DHR 03217 | 07/17/15 |                |
| Stop-N-Drop Academic Charlotte McLean v. NCDCCDEE  | 15 DHR 03243 | 07/17/15 |                |
| Cynthia Jones v. Onslow County Department of Social Services, Elaine Lacy, Danielle Kurman   | 15 DHR 03345 | 07/31/15 |                |
| Christian Prep Academy Inc., Pamela Powell v. DHHS, Division of Public Health, Child and Adult Care Food Program   | 15 DHR 03347 | 06/19/15 |                |
| Hernando Felix Sanchez Claudia Perales, LA Superior Supermarket v. Department of Health and Human Services Division  | 15 DHR 03374 | 07/16/15 |                |
| Seon M. Oh, Express international Trading Inc. d/b/a Southside Fish and Grocery V. Nutrition Services, WIC Program, DHHS   | 15 DHR 03419 | 07/16/15 |                |
| Roshanda McClure v. DHHS, Division of Health Service Regulation  | 15 DHR 03477 | 07/17/15 |                |
| Tangy Nance v. DHHS  | 15 DHR 03479 | 07/01/15 |                |
| Emmanuel Baptist Ministries Inc., Debbie Hildreth and Sandy Tarlton v. DHHS, Division of Public Health, CACFP-Program  | 15 DHR 03562 | 07/01/15 |                |
| Pamela McNeil v. NC Center for Aide Regulation and Education   | 15 DHR 03570 | 07/20/15 |                |
| Desteni Akira Lucas v. DHHS, Division of Health Service Regulation   | 15 DHR 03605 | 07/30/15 |                |
| Zakkee Hill Sr. v. DHHS  | 15 DHR 03739 | 06/25/15 |                |
| Donil Marchil Warren v. DHHS, Division of Health Service Regulation  | 15 DHR 04251 | 09/16/15 |                |
| Jehnston Health Pamela L. Pflaum v. DHHS-Hearing Office  | 15 DHR 04253 | 08/13/15 |                |
| Elite Home Health Care Inc. c/o Tara Ellerbe v. NC DHHS  | 15 DHR 04328 | 10/30/15 |                |
| Patrice M. Harris-Powell NC Healthcare Personnel, NC Nurse Aide Registry   | 15 DHR 04353 | 08/18/15 |                |
| Marleen Monique Ore v. DHHS, Division of Child Development and Early Education   | 15 DHR 04421 | 08/31/15 |                |
| Marleen Monique Ore v. Beaufort County Department of Social Services   | 15 DHR 04423 | 08/10/15 |                |
| Hasson Omar Dawkins v. DHHS, Health Service Regulation   | 15 DHR 04459 | 09/28/15 |                |
| Jennifer R. Lewis, Executive Director of Youth Focus Inc. MHL #041-631 v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification | 15 DHR 04515 | 09/22/15 |                |
| Onass Place Inc, Onas Perry v. Smoky Mountain LME/MCO and NC DHHS, Division of Medical Assistance  | 15 DHR 04658 | 10/07/15 |                |
| Onass Place Inc, Onas Perry v. Smoky Mountain LME/MCO and NC DHHS, Division of Medical Assistance  | 15 DHR 04659 | 10/07/15 |                |
| Margaret Jumper v. Medicaid State Recovery   | 15 DHR 04780 | 09/01/15 |                |
| L.I.M.S. MHL #013-176, Sharon Edwards-Berryman v. DHHS, Mental Health Licensure and Certification Section  | 15 DHR 04842 | 09/09/15 |                |
| Kristin N. Kaul, MS LPS (Partner at Albemarle Counseling Group, PLLC)  | 15 DHR 04881 | 09/15/15 |                |
| Gemini Johnson v. East Carolina Behavioral Health (N.K.A Trillium Health Resources)  | 15 DHR 04882 | 09/15/15 |                |
| James E. Kronlage v. East Carolina Behavioral Health (N.K.A. Trillium Health Resources)  | 15 DHR 04883 | 09/15/15 |                |
| Dorothy H. Rosenke v. East Carolina Behavioral Health (N.K.A Trillium Health Resources)  | 15 DHR 04884 | 09/15/15 |                |
| Hilary K. Hunsberger, MSW LCSW (Partner at Albemarle Counseling Group, PLLC) v. East Carolina Behavioral Health  | 15 DHR 04885 | 09/15/15 |                |
| David G. Webb v. DHHS, Office of the Controller  | 15 DHR 04886 | 09/24/15 |                |
| Treasures of Joy, Patricia S. Stinson v. DHHS, Division of Child Development and Early Education   | 15 DHR 05112 | 09/24/15 |                |
| Carolina Community Ventures Inc., Gina Bell  | 15 DHR 05214 | 12/03/15 |                |
| Lawanda D. Bland v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry  | 15 DHR 05218 | 10/26/15 |                |
| 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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| Carolyn Rhone v. NC DHHS, Division of Health Service Regulation   | 15 DHR 05601 | 10/30/15 |                |
| 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 |                |
| <b><u>DEPARTMENT OF JUSTICE</u></b>   |              |          |                |
| Thomas Eliza Anderson v. Private Protective Services Board  | 11 DOJ 10367 | 06/24/14 |                |
| Daniel Joseph Steele v. NC Private Protective Services Board  | 13 DOJ 03346 | 06/29/15 | 30:07 NCR 838  |
| Ronnie Earl Smith Jr. v. NC Criminal Justice Education and Training Standards Commission                  | 14 DOJ 04114 | 04/09/15 | 30:02 NCR 243  |
| Aisha Christina Burston v. NC Criminal Justice Education and Training Standards Commission                | 14 DOJ 04118 | 01/13/15 |                |
| Susan Maney v. NC Criminal Justice Education and Training Standards Commission                            | 14 DOJ 05067 | 04/14/15 | 30:02 NCR 252  |
| Dewayne Rosean Ward v. NC Criminal Justice Education and Training Standards Commission                    | 14 DOJ 05116 | 05/16/15 |                |
| Tobias La'Trell Clagon v. NC Criminal Justice Education and Training Standards Commission                 | 14 DOJ 05117 | 07/01/15 |                |
| Arthur Randall Griffin v. NC Criminal Justice Education and Training Standards Commission                 | 14 DOJ 05118 | 04/27/15 |                |
| Rachel Elisabeth Hoffman v. NC Criminal Justice Education and Training Standards Commission               | 14 DOJ 05502 | 03/11/15 | 30:04 NCR 513  |
| Rayburn Darrell Rowe v. NC Criminal Justice Education and Training Standards Commission                   | 14 DOJ 05503 | 04/20/15 | 30:06 NCR 692  |
| Robert Boyce Sherrill Jr. v. NC Criminal Justice Education and Training Standards Commission              | 14 DOJ 05504 | 03/04/15 |                |
| 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 Bureson v. NC Criminal Justice Education and Training Standards Commission                      | 14 DOJ 07924 | 07/28/15 | 30:09 NCR 1034 |
| Darin Clay Whitaker v. NC Criminal Justice Education and Training Standards Commission                    | 14 DOJ 07925 | 06/12/15 |                |
| Sandy Hargrove Cowan v. NC Sheriffs' Education and Training Standards Commission                          | 14 DOJ 07927 | 08/19/15 |                |
| Ahmad Malik Lance v. NC Criminal Justice Education and Training Standards Commission                      | 14 DOJ 08050 | 01/27/15 |                |
| 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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**CONTESTED CASE DECISIONS**

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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 Lavergne 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 |                |
| Donnelle Farrar v. NC Private Protective Services Board                                       | 15 DOJ 03448 | 08/27/15 | 30:10 NCR 1206 |
| Ashley Bryant Helms v. NC Sheriffs' Education and Training Standards Commission               | 15 DOJ 03885 | 11/13/15 | 30:15 NCR 1700 |
| Rae Marie Bishop v. NC Sheriffs' Education and Training Standards Commission                  | 15 DOJ 03888 | 10/13/15 |                |
| John Paul Melki v. NC Private Protective Services Board                                       | 15 DOJ 03983 | 10/01/15 |                |
| Matthew Dixon Lawhorn v. NC Sheriffs' Education Training Standards Commission                 | 15 DOJ 03987 | 11/24/15 |                |
| Brandon Lee Hargrave Sr. v. NC Alarm Systems Licensing Board                                  | 15 DOJ 04292 | 07/30/15 |                |
| Michael Ross Pitchford v. NC Private Protective Services Board                                | 15 DOJ 04293 | 09/25/15 |                |
| Frank Shipley Heberer v. NC Alarm Systems   | 15 DOJ 04294 | 08/04/15 | 30:11 NCR 1249 |
| William Elmore Burwell Jr. v. NC Criminal Justice Education and Training Standards Commission | 15 DOJ 04849 | 01/19/16 | 30:18 NCR 2010 |
| Timothy T.J. Conterras v. NC Private Protective Services Board                                | 15 DOJ 05300 | 09/30/15 | 30:11 NCR 1254 |
| Phillip Joel Trivette v. NC Sheriffs' Education and Training Standards Commission             | 15 DOJ 05546 | 01/13/16 | 30:18 NCR 2016 |
| 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 |                |
| Tracey Renee Thorpe v. NC Private Protective Services Board                                   | 15 DOJ 05830 | 12/01/15 |                |
| Justin Charles Guffey v. NC Private Protective Services Board                                 | 15 DOJ 05832 | 12/08/15 |                |
| Scott Christopher Baucom v. NC Private Protective Services Board                              | 15 DOJ 07051 | 01/26/16 | 30:18 NCR 2021 |

**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

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| 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 |
| 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 |                |

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

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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 Mcvey 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 |                |
| Premier Builders and Development Co. Inc. Petitioner v. NC Department of Environment and Natural Resources                 | 15 EHR 03567 | 08/17/15 |                |

**DEPARTMENT OF INSURANCE**

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| Thelma Grant POA Marilyn Howard v. State Health Plan for Teachers and State Employees          | 13 INS 20396 | 05/22/15 |                |
| Kristin Jean Wilkinson v. State Health Plan for Teachers and State Employees                   | 14 INS 04418 | 09/01/15 |                |
| Angela Joyner-Perry v. NC State Health Plan for Teachers and State Employees Retirement System | 15 INS 00208 | 05/13/15 |                |
| Kathy Fields v. NC State Health Plan   | 15 INS 00799 | 12/02/15 | 30:18 NCR 2025 |
| 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 |                |
| Kristen Jean Wilkinson v. NC State Health Plan, Blue Cross and Blue Shield of NC               | 15 INS 06986 | 12/30/15 |                |

**BOARD OF LICENSED PROFESSIONAL COUNSELORS**

|   |              |          |  |
|---|--------------|----------|--|
| Beth Ford v. NC LPC Board                                 | 14 LPC 05203 | 08/01/14 |  |
| Beth Ford v. NC Board of Licensed Professional Counselors | 14 LPC 07355 | 05/20/15 |  |

**MISCELLANEOUS**

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| Thomas Charles Fogarty v. Town of Maggie Valley   | 13 MIS 19252 | 01/14/14 |                |
| Jeanne McIntosh v. NC Medical Board   | 14 MIS 05206 | 09/30/14 |                |
| Tornello Faontaine: Pierce the Tribe of El and/or Bey Living Soul and Citizen of the Most High Adonai in Care of Postal Department 49308, Greensboro, NC Non-Domestic | 14 MIS 08305 | 02/19/15 |                |
| Dennis Goodson v. Office of Administrative Hearings   | 14 MIS 10144 | 02/19/15 |                |
| Larsen Pant v. Charlotte Mecklenburg Police Department  | 15 MIS 05219 | 10/30/15 |                |
| Gloria Caudle v. Town of Enfield  | 15 MIS 05295 | 12/02/15 | 30:18 NCR 2030 |

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| Linda Huggins v. Department of Administration, NC Human Relations Commission               | 08 OSP 01153 | 01/23/15 |                |
| Lauren Wilson Burch v. NC Alcohol Law Enforcement  | 12 OSP 08548 | 04/14/15 | 30:06 NCR 0681 |
| Deni Crawley v. NCDPS Foothills Correctional Institution                                   | 13 OSP 11438 | 04/28/15 | 30:01 NCR 62   |
| Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety                | 13 OSP 14194 | 08/14/14 |                |
| Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety                | 13 OSP 14195 | 08/14/14 |                |
| Willie Joyce Partin v. DOT, Division of Motor Vehicles, Traffic Records, Crash Report Unit | 13 OSP 17728 | 12/04/13 |                |
| Deni Crawley v. NCDPS Foothills Correctional Institution                                   | 13 OSP 19135 | 04/28/15 | 30:01 NCR 62   |
| 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 |                |

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**CONTESTED CASE DECISIONS**

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| Estate of Todd McCracken v. Department of Revenue   | 14 OSP 07170 | 08/24/15 | 30:09 NCR 1076 |
| Clara Rogers v. NC Department of Public Safety/Community Corrections Boyce Fortner, 4 <sup>th</sup> Judicial Division Administrator, Karey Treadway, Asst. Judicial Division Administrator, Kevin Miller, Judicial District Manager District 25 | 14 OSP 07799 | 01/14/15 |                |
| Raymond Gene Gonzales v. NCDHHS, Division of Vocational Rehabilitation Services   | 14 OSP 07804 | 02/27/15 | 30:04 NCR 534  |
| Joseph Tenhagen v. NC Department of Public Safety, Employee Advisory Committee  | 14 OSP 07837 | 03/23/15 | 30:05 NCR 571  |
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| 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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| Chandra Edwards v. Chapel Hill-Carrboro City Schools  | 15 OSP 00579 | 04/01/15 |                |
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| Ronnie Evans v. Angela Tarantini, Department of Correction  | 15 OSP 01232 | 07/30/15 |                |
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| 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 |                |
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| Johnnie M Darden Sr. v. Department of Public Safety   | 15 OSP 05439 | 12/31/15 |                |
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| John David Kimrey Jr. v. NC Department of Revenue   | 14 REV 04924 | 07/10/15 |                |
| Trumilla L. Howard v. NC Department of Revenue  | 14 REV 06018 | 03/09/15 |                |
| 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 |                |
| Cassidy Linker v. NC Department of Revenue  | 14 REV 09956 | 02/20/15 |                |
| 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 |                |

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**CONTESTED CASE DECISIONS**

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| 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 |                |
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| North Carolina Substance Abuse Professional Practice Board v. John Patrick Craven   | 14 SAP 05713 | 01/06/15 |                |
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| 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<br>and filing Division Department of the NC Secretary of State | 14 SOS 07998 | 01/28/15 |                |
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| Qadir El Bey, Mesu El Bey, Asas Ashu El Bey, Fatama El Bey v. State of North Carolina<br>Department of Secretary of State                                 | 15 SOS 02377 | 07/21/15 |                |
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| 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 |                |

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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 04849

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| <p>WILLIAM ELMORE BURWELL JR.<br/><br/>Petitioner,<br/><br/>v.<br/><br/>NORTH CAROLINA CRIMINAL JUSTICE<br/>EDUCATION AND TRAINING<br/>STANDARDS COMMISSION<br/><br/>Respondent.</p> | <p><b>PROPOSAL FOR DECISION</b></p> |
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On November 17, 2015, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing in Raleigh, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes. Petitioner had requested a hearing with Respondent to appeal Respondent's June 5, 2015 Proposed Denial of Petitioner's Law Enforcement Officer Certification.

On December 15, 2015, the undersigned issued an Order ruling that Respondent had probable cause to deny Petitioner's law enforcement certification based on Petitioner's failure to comply with the minimum standards for law enforcement certification, as required by 12 NCAC 09A.0204(b)(2) and 12 NCAC 09B.0101(3). On January 14, 2016, Respondent filed a draft Proposal for Decision with the Office of Administrative Hearings.

**APPEARANCES**

For Petitioner: Brian Aus, Attorney at Law, 2232 Page Road, Suite 202, Durham, North Carolina 27702

For Respondent: Lauren Tally Earnhardt, Attorney for Respondent, N.C. Department of Justice, Law Enforcement Liaison Section, P.O. Box 629, Raleigh, N.C. 27602-0629

**ISSUE**

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification for lack of good moral character?

**RULES AT ISSUE**

12 NCAC 09A .0204(b)(2)  
12 NCAC 09B .0101(3)

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on June 5, 2015.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09B, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. Petitioner is an applicant for law enforcement certification with the Woodlawn Police Department, and was certified with Hillsborough Police Department until January 7, 2015. Petitioner was employed by the Hillsborough Police Department for seven (7) years, eight (8) months when he resigned, in lieu of termination, after Hillsborough Police Department found that Petitioner violated four (4) Hillsborough police department policies.

4. Petitioner was working as undercover narcotics officer when he met Ms. Lashara Bradshaw. Petitioner received information about drug dealers and other crimes from Ms. Bradshaw for several years. Petitioner asked Ms. Bradshaw to consider becoming an official confidential informant with Hillsborough Police Department during this time. However, Ms. Bradshaw declined. Ms. Bradshaw assisted Petitioner in identifying people based on their street names. Petitioner would meet Ms. Bradshaw at one of two locations, and in exchange for the information, would give Bradshaw money for gas from police department funds.

5. In 2012, Petitioner began a new drug campaign during the course of his employment. During this time, he and Ms. Bradshaw exchanged telephone numbers. In April 2013, Petitioner and Ms. Bradshaw exchanged texts about personal matters and that were also of a sexual nature.

6. In May 2013, Petitioner began having an affair with Ms. Bradshaw. Petitioner sent a text to Ms. Bradshaw asking her to meet him on a portion of Hwy 57 they called "the cave" after work. At this meeting, Petitioner met Ms. Bradshaw in his personal vehicle, and had sex with her.

7. Petitioner's sexual relationship with Ms. Bradshaw continued off and on for about one year. Petitioner continued receiving information from Ms. Bradshaw during this time, and continued paying her with money he received from the Hillsborough Police Department funds. Petitioner paid Ms. Bradshaw 7-8 times without her being enrolled in the Hillsborough Police's confidential informant program.

8. In June or July 2013, Petitioner signed Ms. Bradshaw up to become a confidential informant for the Hillsborough Police Department. Petitioner explained to Ms. Bradshaw that while she was a confidential informant they would not be able to continue their sexual relationship.

9. After a short time, Ms. Bradshaw wanted to resume their sexual relationship and in spring 2014, Petitioner started having sex with Ms. Bradshaw again. Petitioner would stop having sex with Ms. Bradshaw when she made drug buys for him, but resumed having sex with Bradshaw a few days after the buy was complete. Petitioner thought that once the drug buy was complete, and he was no longer working toward a target suspect, Ms. Bradshaw was no longer a confidential informant.

10. Petitioner and Ms. Bradshaw continued to have sex approximately once or twice a month until September 2014. During their sexual relationship, Petitioner and Ms. Bradshaw met for sex at the locations he would meet other informants (Hwy 57 or Hwy 40). Petitioner and Ms. Bradshaw had sex outside his Hillsborough Police Department vehicles, a Chevy Malibu and surveillance van. Petitioner met with Bradshaw after his shift with the Hillsborough Police Department was over, when Petitioner was on the way to return his department vehicle to the office, or when Petitioner was on his way home in his personal vehicle, a 1990 Mazda pickup truck. Petitioner admitted to having sex with Ms. Bradshaw at least 20 times, all of which was either at the Hwy 57 location or at the Hwy 40 location. Petitioner never met Bradshaw while Petitioner was wearing his Hillsborough Police Department uniform, and only twice while he was driving his department vehicle. Petitioner never disclosed his relationship with Ms. Bradshaw to the district attorney or anyone at Hillsborough Police Department.

11. In the spring of 2014, Petitioner ended the sexual relationship with Ms. Bradshaw. Bradshaw started threatening to tell the police department and Petitioner's wife about their relationship, and continued contacting Petitioner via telephone and texts. Although Petitioner had called off the relationship with Bradshaw, Petitioner still contacted Bradshaw, and asked her to meet him for sex.

12. After an argument between Petitioner and Ms. Bradshaw, Ms. Bradshaw started calling Petitioner's wife. Bradshaw told the Hillsborough Chief of Police about her relationship with Petitioner, and obtained an Ex Parte Protective Order against Petitioner.

Petitioner was served with the Ex Parte Protective Order while he was in the Chief's office.

13. The Hillsborough Police Department investigated Petitioner's relationship with Ms. Bradshaw, found Petitioner to be in violation of four Department policies, and allowed Petitioner to resign in lieu of termination. Petitioner admitted there is a Department policy prohibiting officers having a personal relationship with confidential informants. Petitioner further admitted that his actions with Bradshaw were not conduct becoming of a law enforcement officer, or were not in good judgment or in good taste. Petitioner didn't know why he got involved with Ms. Bradshaw in the first place. Since then, he met with a counselor weekly until his employment with the Hillsborough Police Department ended.

14. At all times relevant to this case, Lieutenant Davis Trimmer was a uniform Patrol Commander and Investigations Division Commander at the Hillsborough Police Department. Lt. Trimmer was assigned to investigate the allegations that Petitioner had an improper personal relationship with a confidential informant, Ms. Bradshaw. During his investigation, Lt. Trimmer spoke with Ms. Bradshaw several times, and received documentation to support the allegations. Ms. Bradshaw told Lt. Trimmer the affair between she and Petitioner lasted more than 2 years, the sexual activity occurred while Petitioner was on and off duty, and that they had sex at locations along Highways 57 and 40. Bradshaw advised Lt. Trimmer that she and Petitioner had sex outside both the Petitioner's department vehicles, to wit: a Malibu, a van, and a white jeep vehicle.

15. During Lt. Trimmer's investigation, Trimmer was unable to determine if Petitioner and Ms. Bradshaw had sex inside department vehicles. Lt. Trimmer determined that Petitioner's vehicle was an unmarked vehicle, but was well known in the community. When Lt. Trimmer interviewed Petitioner, Petitioner was cooperative, and admitted to the relationship with Bradshaw. Petitioner admitted that he drove the department vehicle to the various locations and had sex on or around the department vehicle. Lt. Trimmer determined that, at least one time, Petitioner and Ms. Bradshaw had sex while Petitioner on duty, because Petitioner and Bradshaw's communication occurred during Petitioner's shift, and the conversation about the recent sexual encounter occurred via text. (Respondent Exhibits 3-4)

16. At hearing, Lt. Trimmer explained that Ms. Bradshaw's confidential informant paperwork was signed, but not dated. Lt. Trimmer also explained that confidential informants do not need to be "signed up" with the Hillsborough Police Department as "informants," in order to be paid for their information. During his investigation, Lt. Trimmer audited Petitioner's log entries, and found ten (10) small payments to Ms. Bradshaw from Department funds.

17. Based on his investigation, Lt. Trimmer concluded that Petitioner and Ms. Bradshaw had an improper relationship in violation of Hillsborough Police Department policy, General Order 350-10, Rules of Conduct, section F. Unbecoming Conduct," Section MM, Sexual Activity, and General Order 600-05, Confidential Informants, section

E. Control of Confidential Informant Activities. Section E specifically prohibits officers from having personal or romantic relationships with confidential informants.

**CONCLUSIONS OF LAW**

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

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

3. 12 NCAC 09A .0204(b)(2) states that Respondent Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification.

4. 12 NCAC 09B .0101(3) states that every criminal justice officer employed by an agency in North Carolina shall: (3) be of good moral character pursuant to G.S. 17C-10, and as determined by a thorough background investigation.

5. The findings of Respondent's Probable Cause Committee regarding Petitioner are supported by substantial evidence, and are not arbitrary and capricious.

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

7. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't of Env't & Natural Resources*, 172 N.C. App. 697, 635 S.E. 2d 442 (2006).

8. In this case, Petitioner failed to show that he has complied with the minimum standards for law enforcement certification as required by 12 NCAC 09A .0204(b)(2) and 12 NCAC 09B .0101(3).

9. A preponderance of the evidence supports the conclusion that Petitioner lacks the good moral character that is required of a sworn law enforcement officer in this State. Petitioner admitted to engaging in sexual acts with Mrs. Bradshaw while she was

being used as a confidential informant, and being paid with department funds. Although the majority of the sexual conduct occurred while Petitioner was off-duty, Petitioner used his undercover department vehicle to meet Ms. Bradshaw, and paid Ms. Bradshaw with department money, while never disclosing their relationship to any other law enforcement officer or the district attorney's office. Such outrageous conduct demonstrates that Petitioner does not possess the good moral character that is required of a sworn justice officer in this State. This conduct is so extreme that it constitutes a manifest indifference to Petitioner's Oath of Office, and to the public trust that it bestowed upon a sworn officer. The essence of a sworn justice officer, and what defines that officer, is complete moral integrity at all times. Where, as here, a sworn justice officer engages in sexual acts while discharging his duties, that officer has demonstrated that he does not possess the good moral character required of a sworn justice officer under Respondent's rules.

**PROPOSAL FOR DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent **DENY** Petitioner's certification as a law enforcement officer.

**NOTICE**

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

This the 19th day of January, 2016.



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Melissa Owens Lassiter  
Administrative Law Judge

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STATE OF NORTH CAROLINA  
COUNTY OF WARREN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 05546

|   |                              |
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| Phillip Joel Trivette<br>Petitioner,<br><br>v.<br><br>N C Sheriffs' Education And Training<br>Standards Commission<br>Respondent. | <b>PROPOSAL FOR DECISION</b> |
|---|------------------------------|

On November 17, 2015, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes.

**APPEARANCES**

For Petitioner: Phillip Joel Trivette, *Pro Se*, 2146 Warren Plains Road, Warrenton, North Carolina 27589

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

**ISSUE**

Whether Petitioner has been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors, pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on July 2, 2015.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "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. Petitioner is an applicant for justice officer certification through the Halifax County Sheriff's Office.

4. Before seeking certification from the Sheriffs' Commission, Petitioner worked as a police officer with the Rolesville Police Department, Bunn Police Department, and the Lake Royal Police Department. Petitioner is no longer certified through the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner has not previously held certification through the Sheriff's Commission.

5. 12 NCAC 10B .0204(d)(5) provides the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

- (5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

6. The evidence presented at the administrative hearing established that Petitioner has been convicted of a combination of 4 or more criminal offenses, such that his application for certification is subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

7. On April 7, 1989, Petitioner was convicted of one (1) count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1989 CR 001347. (Respondent's Exhibit 3, Attachment A) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

8. On April 7, 1989, Petitioner was convicted of a second count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1989 CR 001348. (Respondent's Exhibit 3, Attachment B) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

9. On April 7, 1989, Petitioner was convicted of a third count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1989 CR 001349. (Respondent's Exhibit 3, Attachment C) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

10. Finally, on October 29, 1999, Petitioner was convicted of a fourth misdemeanor Worthless Check offense in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1999 CR 005428. (Respondent's Exhibit 3,

Attachment D) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

11. Petitioner has obtained legal counsel in order to have some of the above criminal convictions set aside and possibly expunged. However, such expunction has not taken place as of the disposition of this matter before the Office of Administrative Hearings. In the event Petitioner is able to get one or more of his convictions set aside and expunged, Petitioner would be free to reapply for certification.

12. Pursuant to 12 NCAC 10B .0103 (10)(a), Petitioner's first three (3) worthless check convictions constitute Class A misdemeanor convictions pursuant to the Commission's Rules. However, pursuant to North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), a fourth (4<sup>th</sup>) and all subsequent convictions for misdemeanor worthless check pursuant to N.C.G.S. § 14-107 constitute Class B misdemeanors as set forth in the Class B Misdemeanor Manual adopted by the Commission. Therefore, the record establishes Petitioner stands convicted of one (1) Class B misdemeanor and three (3) Class A misdemeanors.

13. A preponderance of the evidence presented at the administrative hearing established that Petitioner has been convicted of a combination of four or more class A or class B misdemeanors such that his application for certification is subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

#### CONCLUSIONS OF LAW

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

2. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has been convicted of:

- (5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

3. Pursuant to 12 NCAC 10B .0103(2), "convicted" or "conviction" means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.

4. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but

continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

5. 12 NCAC 10B .0103 (10)(a), provides that Petitioner's first three (3) worthless check convictions (1989 CR 001347, 1989 CR 001348, and 1989 CR 001349) constitute Class A misdemeanor convictions pursuant to the Commission's Rules.

6. North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), provides that a fourth (4<sup>th</sup>) and all subsequent convictions for misdemeanor worthless check, pursuant to N.C.G.S. § 14-107, constitute Class B misdemeanor convictions as set forth in the Class B Misdemeanor Manual adopted by the Commission. Therefore, Petitioner's fourth worthless check conviction, 1999 CR 005428, constitutes a Class B misdemeanor conviction.

7. Petitioner has been convicted of a combination of 4 or more offenses classified as either Class A or Class B misdemeanors. All of these convictions were worthless check offenses in violation of N.C.G.S. 14-107 (d)(1). Petitioner's application for certification is, therefore, subject to denial for an indefinite period pursuant to 12 NCAC 10B .0204(d)(5).

8. As an applicant for certification through the Respondent Commission, the Petitioner has the burden of proof.

9. In this case, Petitioner has failed to show by a preponderance of the evidence that Respondent Commission improperly proposed to deny Petitioner's application for certification.

#### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205, the undersigned hereby recommends Respondent **DENY** Petitioner's application for Justice Officer Certification for an indefinite period based on Petitioner having been convicted of a combination of four (4) or more class A or Class B misdemeanors, as set out in greater detail above.

#### **NOTICE**

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. That agency is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact, and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

This the 13th day of January, 2016.



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Melissa Owens Lassiter  
Administrative Law Judge

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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 07051

|   |                              |
|---|------------------------------|
| Scott Christopher Baucom<br>Petitioner,<br><br>v.<br><br>N C Private Protective Services Board<br>Respondent. | <b>PROPOSAL FOR DECISION</b> |
|---|------------------------------|

**THE ABOVE-ENTITLED MATTER** was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The record now closed, this Proposal for Decision is now submitted.

**APPEARANCES**

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

**ISSUE**

Whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of felony embezzlement.

**APPLICABLE STATUTES**

Notice is taken of the following statutes applicable to this case: N.C.G.S. §74C-1, *et seq.*

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT. In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has

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

**FINDINGS OF FACT**

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
2. Petitioner applied to Respondent Board for an unarmed guard registration.
3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following: A conviction in Mecklenburg County, State of North Carolina, on August 8, 2001 for felony embezzlement.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated September 24, 2015, the Respondent advised Petitioner that a hearing on the denial of his unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on October 27, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. Petitioner testified that in 2001 he was living in Charlotte, NC and was working for Ace Vending, a full line vending machine service company which offered drinks, snacks, food, ice cream, coffee, and other products. He worked for the company from 1999 to 2001. He drove a truck filled with merchandise to restock clients' vending machines located in various locations in Charlotte and the surrounding area.
8. As part of restocking the machines, Petitioner was required to take the money out of the machines and place the funds in a money pouch. He would then take the pouch to the truck and deposit it in a safe located inside the truck. At the end of the day he would open the safe and turn the pouch into the accounting office. He was not tasked with counting the money; just placing the money in the pouch and turning it into the accounting office. He started keeping some of the money for himself. It started out small, \$1.00 here and there, then he started keeping \$5.00 or more at a time.

9. The company started struggling financially. The owner started to suspect that all the drivers were keeping some of the money, thus effecting profits. The owner of the company called Petitioner into his office and questioned him about missing funds. He admitted to the owner that he was keeping some of the money for himself. The owner pressed charges against him. He was later arrested at his house and spent one day in jail.
10. The court appointed an attorney to represent him. He entered a guilty plea at his trial. The court found him guilty of taking \$15,000.00 from the company and sentenced him to six years-probation and he had to pay back the \$15,000.00 dollars. He paid restitution in full and his probation ended in 2008.
11. Petitioner worked for Landmark Security, Inc. beginning February 2015. He was assigned to the Concord Mills Mall and South Park Mall. He worked stationary posts and patrolled the area to deter crime. He also began working a number of jobs after his conviction, including S&S Maintenance, to help pay the restitution. He still works for S&S.
12. On August 28, 2015 the Board received a letter of recommendation from Timothy Jayne, Director of Operations for Landmark Security. Mr. Jayne stated Petitioner is very honest and sincere, worthy of the company's trust, and Landmark supports Petitioner's registration as an unarmed guard. This letter was admitted into evidence as Petitioner's Exhibit 1. Also, the Board received a letter of recommendation from Todd Shackelford, President, S & S Maintenance, Inc., stating Petitioner is a key employee with his company and is "honest and dependable." This letter was admitted into evidence as Petitioner's Exhibit 2. Petitioner's resume was admitted into evidence as Petitioner's Exhibit 3.

**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 parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74C-8(d)(2), conviction of any crime involving an act of larceny and/or fraud is *prima facie* evidence that the applicant does not have good moral character or temperate habits.

4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Mecklenburg County, North Carolina for a felony embezzlement.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and, based upon the letter of character from his employers, including Landmark Security, has rebutted the presumption.

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

**PROPOSAL FOR DECISION**

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that Petitioner be granted an unarmed guard registration.

**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 Private Protective Services Board. A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

**IT IS SO ORDERED.**

This the 26th day of January, 2016.



Augustus B Elkins II  
Administrative Law Judge

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STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 INS 00799

KATHY FIELDS )  
Petitioner, )  
 )  
vs. )  
 )  
 )  
NORTH CAROLINA STATE HEALTH PLAN )  
Respondent )

**FINAL DECISION**

On February 2, 2015, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing Respondent's September 23, 2014 denial of benefits for a breast pump. On May 19, 2015, the undersigned conducted an administrative hearing in this case in Raleigh, North Carolina. Respondent submitted a proposed decision on November 10, 2015. The record in the case is now closed.

The undersigned hereby issues the Final Decision on the preponderance of the evidence presented in the case:

**APPEARANCES**

For Petitioner: Kathy Fields  
20 West Bridlewood Trail  
Durham, NC 27713

For Respondent: Heather H. Freeman  
Special Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

**ISSUE**

Whether Respondent substantially prejudiced Petitioner's rights or acted erroneously when it denied Petitioner's a breast pump, a non-covered benefit under Petitioner's PPO plan?

**RELEVANT STATUTES AND POLICIES**

N.C. Gen. Stat. Chap. 135; N.C. Gen. Stat. Chap. 150B, Article 3; and, the State Health Plan PPO Benefits Booklet.

**EXHIBITS ADMITTED INTO EVIDENCE**

For the Petitioner: Exhibits 1-2

For the Respondent: Exhibits 1-3

**WITNESSES**

For the Petitioner: Kathy Fields

For the Respondent: Connie Rominger, Medical Team Lead, Blue Cross Blue Shield of North Carolina

**FINDINGS OF FACT**

1. Respondent is an agency of the State of North Carolina, and offers health care benefits to eligible active and retired employees and their enrolled dependents in accordance with the applicable North Carolina General Statutes, the benefit booklets for Respondent's preferred provider organization (hereinafter "PPO") plans, and Respondent's health care policies.

2. Blue Cross Blue Shield of North Carolina ("BCBSNC") is the third party administrator for the State's healthcare plans. As the State Health Plan's third party administrator, BCBSNC processes State Health members' claims on behalf of the State Health Plan.

3. At all times relevant to the issue in this contested case Petitioner Kathy Fields was a member of Respondent's 70/30 PPO Plan. The Petitioner had received a copy of the then current 70/30 PPO Plan Benefits Booklet.

4. On August 13 2014, at 11:56 am, Petitioner emailed her employer's health benefits consultant, Nancy Maltais, to inquire about coverage under her 70/30 PPO Plan. In the email, Petitioner specifically inquired about coverage for a breast pump.

5. Two minutes later, Ms. Maltais responded that she too could not locate the information about coverage for breast pumps in the 70/30 Benefits Booklet. Ms. Maltais suggested that Petitioner call Respondent's Customer Service and gave her the toll free number. (Pet. Ex. 1)

6. Almost four and a half hours later, at 4:23 pm on the same day, Petitioner called the number supplied by Ms. Maltais and spent nine minutes on the phone call. (Pet. Ex. 1)

7. Thereafter, Petitioner ordered a breast pump from Byram Healthcare. By invoice dated September 23, 2014, Byram sought payment for \$216.74, and Petitioner now seeks that amount as payment for the breast pump. Byram's invoice notes "NON-COVERED ITEM PER BENEFIT PACKAGE." (Rsp. Ex. 1)

8. In September 2014, Petitioner requested coverage of a breast pump under her health benefit plan with the State Health Plan. Petitioner's request for coverage for the breast pump was denied as non-covered.

9. Petitioner filed an internal appeal of the denial of coverage with BCBSNC. The denial of coverage for the breast pump was upheld on internal appeal by BCBSNC and Petitioner was notified by letter dated December 17, 2014.

10. In the December 17, 2014 letter, Petitioner was notified that the denial of coverage for the breast pump was upheld because Petitioner's 70/30 PPO Plan Benefits Booklet states that "your health benefit plan does not cover charges for breast pumps."

11. The December 2014 letter does not deny that Petitioner called Respondent; only that there is no notation that the customer service representative advised Petitioner that the pump was covered.

12. Even after the denial, apparently Petitioner telephoned Respondent and was told that Respondent had her entered as being on the 80/20 plan which might have accounted for some of the confusion.

8. In the "What is NOT Covered" section of Petitioner's 70/30 PPO Plan Benefits Booklet, it states that Petitioner's "health benefit plan does not cover services, supplies, drugs or charges . . . for breast pumps." Breast pumps are covered in the 80/20 Plan.

**CONCLUSIONS OF LAW**

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter.

2. Petitioner has the burden of proof by a preponderance of the evidence, regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).

3. With N.C. Gen. Stat. Chapter 135, the General Assembly created an optional State Health Plan for the benefit of its state employees, retired employees and their eligible dependents. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide healthcare coverage under optional benefit plans and benefits are to be provided under contracts between the Plan and the third party administrator.

4. Respondent's State Health Plan Benefit Booklet for the 70/30 PPO Plan sets forth the benefits available to members. There is no question that Petitioner's 70/30 PPO Plan excluded services, supplies, drugs or charges for breast pumps.

5. Case law is clear that a person is justified in relying on representations by a state agency and its representatives or agents when the inquiry is made directly to the agency or its agent/representative, even if the information given by the agent/representative is erroneous. *See,*

*e.g.*, Fike v. Board of Trustees, State Employees' Retirement System, 53 N.C. App. 78, 279 S.E.2d 910, *rev. den.* 304 N.C. 194 (1981); Stallings v. North Carolina Department of the State Treasurer Retirement Systems Division, 194 N. C. App. 372 (2008) (Unpublished opinion); Walker v. Department of State Treasurer, Retirement Systems Division, 207 N.C. App. 266 (2010)(Unpublished opinion affirming Undersigned's decision); Weibenson v. Bd. of Trustees, State Employees Retirement System, 123 N. C. App. 246 (1996), 472 S.E.2d 592 (1996), *aff'd on other grounds*, 345 N.C. 734, 483 S.E.2d 153 (1997).

6. The fact that the 70/30 Plan specifies that the pump is not covered is not controlling under the facts and circumstances of this case. Petitioner looked in the booklet on her own without success. She contacted her benefits representative, who likewise had no success in finding the answer about coverage for the pump. The Petitioner then contacted Respondent directly. The credible evidence is that she engaged in a 9 minute telephone call with Respondent. The only question was about coverage for the breast pump. From the evidence, there was no other reason for Petitioner to contact Respondent. It is only logical that Petitioner inquired of the Respondent about coverage for the pump. Why there was no documentation of that conversation is not known. There is no evidence of what Respondent contends was documented as the essence of the phone call.

7. Had Petitioner relied solely on representations made to her by Ms. Maltais, Respondent would not have been responsible since Ms. Maltais is not employed by nor acting as an agent of Respondent. Petitioner's contention that she was told by Byram Healthcare that the breast pump was covered likewise would not have been sufficient to make Respondent responsible. Likewise, Byram's notation on the invoice about coverage for the breast pump is of no consequence. In this contested case, Petitioner spoke directly with Respondent and acted in reliance on the representations of Respondent.

8. In Weibenson v. Bd. of Trustees, State Employees Retirement System, 123 N. C. App. 246 (1996), 472 S.E.2d 592 (1996), *aff'd on other grounds*, 345 N.C. 734, 483 S.E.2d 153 (1997), the Court of Appeals cites with particularity a statute which would have precluded Ms. Weibenson from participation in the retirement system for the time period at issue because she did not meet the required definition of "employee." In ruling for the Petitioner in that case, the Court of Appeals disregards that she is not an "employee" and decides the case on the basis of estoppel.

9. Estoppel is a cause of action recognized in and based on law. While it may have been founded in "equity", many if not most civil causes of action have a historical basis in equity, i. e. trying to right a wrong by doing what is fair and just. Courts of equity were created as a corollary to courts of law in order to mete out "equity" when none was available by strict adherence to the law. Those distinctions between the courts no longer exist and courts of law may rely on equity as a remedy.

10. The Office of Administrative Hearings is not a "constitutional" court and is a statutory creation and with only the authority granted to it by the General Assembly. OAH does not grant equitable relief; however, estoppel is a cause of action based in law, and is not merely an equitable remedy. Estoppel is a cause of action within the jurisdiction of the Office of

Administrative Hearings. As an example, Weibenson began as a contested case in OAH, just as many other cases have.

11. Petitioner did meet her burden of proving that Respondent deprived Petitioner of property or acted erroneously by denying Petitioner's request for coverage of a breast pump.

**DECISION**

**NOW THEREFORE, based on the foregoing,** the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. It is hereby **ORDERED** that Respondent's denial of Petitioner's request for coverage of a breast pump under the State Health Plan be **REVERSED**.

**NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to the Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires services of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This is a **Final Decision** pursuant to N.C. GEN. STAT. § 150B-36(c).

**IT IS SO ORDERED.**

This the 2nd day of December, 2015.



Donald W Overby  
Administrative Law Judge

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OFFICE OF ADMINISTRATIVE HEARINGS  
12/02/2015 4:14 PM

STATE OF NORTH CAROLINA  
HALIFAX COUNTY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15-MIS-5295

GLORIA CAUDLE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE TOWN OF ENFIELD, )  
 )  
 Respondent. )

**FINAL DECISION**

This matter came on for hearing before the undersigned on October 22, 2015, at the Historic Halifax County Courthouse, Commissioners Meeting Room. Petitioner Gloria Caudle ("Petitioner") appealed the Town of Enfield's ("Respondent") submission of a claim under the Setoff Debt Collection Act, G.S. § 105A-1, *et. seq.*, to the North Carolina Department of Revenue for money owed on account by Petitioner for utility services provided by Respondent.

**APPEARANCES**

For Petitioner: Gloria Caudle, *Pro Se*  
203 Dr. Martin Luther King, Jr. Ave.  
Enfield, North Carolina 27823

For Respondent: Kris Gardner, Esq.  
Tharrington Smith, L.L.P.  
150 Fayetteville Street, Suite 1800  
Post Office Box 1151  
Raleigh, North Carolina 27602-1151

**WITNESSES**

For Petitioner: Gloria Caudle

For Respondent: None



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 credible evidence in the case. Based upon these standards, the Court makes the following findings of fact:

1. Respondent Town of Enfield is a municipal corporation organized and existing under Chapter 160A of the North Carolina General Statutes. It provides utility services to businesses and residents in town, including Petitioner/Faith House.

2. Petitioner is the chief organizer and primary representative of Faith House, Inc., a nonprofit organization incorporated in the State of North Carolina. Faith House's primary mission was to provide shelter and counseling to victims of domestic violence.

3. Petitioner served on the Town of Enfield Board of Commissioners for several years before the incorporation of Faith House. Petitioner resigned from the Board of Commissioners in or around November 2012. (**Ex. D**).

4. Utility bills for service provided to Faith House went unpaid. For several years, Respondent attempted to work with Petitioner/Faith House to find a reasonable solution. (See **Ex. C-C3**). Respondent and Petitioner/Faith House entered into repayment agreements in an effort to maintain utility service to Faith House while also enabling Respondent to collect money owed on the account. (See **Ex. G-G2**). The final repayment agreement was entered into on or about December 29, 2010. (**Respondent's Ex. 1**).

5. Petitioner has failed to make regular payments to Respondent pursuant to these repayment agreements despite multiple attempts by Respondent to modify the repayment terms and try to help Petitioner.

6. Respondent followed the procedure necessary to submit a claim against Petitioner under the Debt Setoff Collection Act. G.S. § 105A-1, *et. seq.* (See **Ex. A-A6**). The purpose of the submission is to redirect any potential income tax refunds that would otherwise be paid to Petitioner to instead be paid to Respondent to offset money owed on the utility account. At the time of the submission to Debt Setoff, Petitioner/Faith House owed Respondent approximately \$11,132.66 in outstanding utility bills. (**Ex. A**).

7. The Court finds that Faith House was the alter ego of Petitioner.

8. According to Petitioner, initially Faith House's Board of Directors met every month, but when questioned about specifics, Petitioner acknowledged that the Board did not meet every month.

9. Petitioner could not identify all of the members of the Faith House Board of Directors.

10. Petitioner stated that she explained the terms of the first repayment agreement to the Faith House Board of Directors but did not convene a meeting for Board approval despite testifying the Board met every month. (**Ex. G**) Despite the fact that Faith House's by-laws required Petitioner to obtain approval of the agreement from legal counsel, Petitioner failed to do so. (**Ex. B3**).

11. With respect to the second repayment agreement Petitioner did not get permission from the Faith House Board of Directors to enter into the agreement despite stating that the Board of Directors continued to have regular meetings. (**Ex. G1**) As required by the corporate by-laws, legal counsel did not review or approve this agreement either.

12. With respect to the third and fourth repayment agreements, Petitioner did not get permission from the Faith House Board of Directors to enter into the agreement. **(Ex. G2 and Respondent's Ex. 1)** By this time, the Faith House Board of Directors were no longer conducting regular meetings. Legal counsel did not review or approve this agreement. Petitioner acknowledged that Faith House has never had legal counsel.

13. According to Petitioner, she did not have access to any of Faith House's meeting minutes or other records from the time of the second repayment agreement to the time Faith House closed its doors because the house was padlocked by the owner and the records have since been destroyed. **(Ex. G1)**

14. Petitioner's *Petition for a Contested Case Hearing* alleged Respondent's submission of the claim to the Department of Revenue under the Setoff Debt Collection Act was improper and without legal authority for the following reasons:

- a. Petitioner was ordered to pay a fine or civil penalty and her rights were otherwise substantially prejudiced; and
- b. Respondent failed to use proper procedure, acted arbitrarily and capriciously, and failed to act as required by law or rule.

#### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over this case pursuant to Chapters 105A and 150B of the North Carolina General Statutes. See, e.g., G.S. § 105A-9. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. Petitioner is a “debtor” under the Setoff Debt Collection Act. G.S. § 105A-2(3).
3. Respondent is a “Claimant agency” under the Setoff Debt Collection Act. G.S. § 105A-2(1)(b).
4. Petitioner has the burden of proof in this contested case and must satisfy that burden by a preponderance of the evidence. N.C. Gen. Stat. §150B-34(a).
5. Respondent followed the proper procedures for submitting a claim under the Setoff Debt Collection Act in this matter. G.S. § 105A-5.
6. Petitioner timely filed an appeal arising from Respondent’s submission. G.S. § 105A-9.
7. To the extent the utility debt at issue here was not a personal obligation of Petitioner, Petitioner was the *alter ego* of Faith House for the reasons cited above. Therefore, the Court finds that the corporate veil of Faith House should be pierced such that this debt is the personal liability of Petitioner for purposes of the Setoff Debt Collection Act. *Glenn v. Wagner*, 313 N.C. 450 (1985).
8. In particular, the Court concludes that:
  - a. Petitioner completely dominated and controlled Faith House to the extent that Faith House did not have its own identity;
  - b. Faith House was inadequately capitalized; and
  - c. Faith House and Petitioner failed to recognize most corporate formalities and requirements of the organization’s bylaws.
9. As a result, Faith House was a “mere instrumentality” of Petitioner.

10. Respondent properly submitted its claim individually against Petitioner under the Setoff Debt Collection Act for money owed on the utility account.

**FINAL DECISION**

1. Petitioner failed to meet her burden of proof or burden of production to establish that Respondent ordered her to pay a fine or civil penalty, or that her rights were otherwise substantially prejudiced by Respondent.

2. Petitioner further failed to meet her burden of proof and burden of production to establish that Respondent failed to use proper procedure, acted arbitrarily and capriciously, and failed to act as required by law or rule.

3. Therefore, Petitioner's *Petition for a Contested Case* is hereby **DISMISSED** with prejudice.

**NOTICE**

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

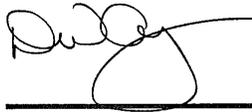
Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. 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 the 2nd day of December, 2015.

A handwritten signature in black ink, appearing to read "D. Overby", is written above a solid horizontal line.

Donald W Overby  
Administrative Law Judge