

# ***NORTH CAROLINA REGISTER***

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**October 17, 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 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
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

*This publication is printed on permanent, acid-free paper in compliance with G.S. 125-11.13*

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

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

### **GENERAL**

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

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

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

### **FILING DEADLINES**

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

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

### **NOTICE OF TEXT**

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

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

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

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



# State of North Carolina

PAT McCRORY

GOVERNOR

September 16, 2016

## EXECUTIVE ORDER NO. 101

### TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE ADEQUATE FUEL SUPPLIES AND PROHIBIT EXCESSIVE PRICING

**WHEREAS**, a major leak in a primary fuel pipeline in Alabama has resulted in a temporary shutdown of that line and has caused a disruption in the delivery of petroleum products, including gasoline; and

**WHEREAS**, there is no shortage of supply of petroleum products, including gasoline, from the Gulf of Mexico region; and

**WHEREAS**, vehicles carrying gasoline and other petroleum products need to transport these products to communities via the highways of North Carolina; and

**WHEREAS**, I declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6), 166A-19.3(19) and 166A-19.20 exists in the State of North Carolina in Executive Order 100, signed September 15, 2016. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina.

**WHEREAS**, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, under the provisions of N.C.G.S. § 166A-19.30(b)(4) the Governor, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a State agency which restricts the immediate relief of human suffering; and

**WHEREAS**, with the concurrence of the Council of State, I have found that vehicles carrying gasoline and petroleum products in North Carolina must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118 and 20-119. I have further found that citizens in this State will likely suffer further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b) and;

**WHEREAS**, the supply of gasoline and petroleum products to citizens is essential to their safety and well-being.

**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.**

Executive Order 100, signed September 15, 2016 is amended to delete Section 2.

**Section 2.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118 and 20-119, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for the vehicles transporting gasoline and other petroleum products to areas within North Carolina.

**Section 3.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

**Section 4.**

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 5.**

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

**Section 6.**

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 2 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with transporting gasoline and other petroleum products.

Section 9.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 10.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 11.

The gasoline truck tank and vapor system requirements of 15A NCAC 02D.0932(c) shall be waived during this time if Method 27 is followed.

Section 12.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 the 16<sup>th</sup> day of September in the year of our Lord two thousand-sixteen.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**PAT McCRORY**  
GOVERNOR

September 21, 2016

## EXECUTIVE ORDER NO. 102

### DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

**WHEREAS**, on September 20, 2016, there was an officer related shooting resulting in the death of Keith Lamont Scott in the City of Charlotte; and

**WHEREAS**, the City of Charlotte has requested assistance from the State of North Carolina to respond to the civil disturbances that have unfolded from the death of Keith Lamont Scott; and

**WHEREAS**, our citizens have the right to peacefully assemble and protest and the State of North Carolina is committed to protecting those rights; and

**WHEREAS**, our citizens and businesses must be protected from violence and damage; and

**WHEREAS**, use of the North Carolina National Guard may be required; and

**WHEREAS**, the execution of my emergency powers under N.C.G.S. § 166A-19.30 is appropriate to ensure the public safety of our citizens.

**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.

I hereby declare, pursuant to N.C.G.S. § 166A-19.20, that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to civil disturbances in the City of Charlotte. The emergency areas as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) are the City of Charlotte, North Carolina and Mecklenburg County, North Carolina.

#### Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

#### Section 3.



I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina,

**Section 4.**

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

**Section 5.**

I further direct Secretary Perry or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

Pursuant to N.C.G.S. § 166A-19.30(c)(1), this declaration allows for the imposition of any prohibitions and restrictions as enumerated in N.C.G.S. § 166A-19.31(b), and may amend or rescind any prohibitions and restrictions imposed by local authorities.

**Section 7.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

**Section 8.**

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) unless the circumstances of the state of emergency prevent or impede, 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 assure proper implementation of this declaration.

**Section 9.**

This declaration is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 21<sup>st</sup> day of September in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor

ATTEST:  
  
Elaine Marshall  
Secretary of State





# State of North Carolina

PAT McCRORY

GOVERNOR

September 22, 2016

## EXECUTIVE ORDER NO. 103

### DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

#### Section 1.

I hereby declare, pursuant to N.C.G.S. § 166A-19.20, that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to flooding from the remnants of Tropical Storm Julia. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Northampton, Pasquotank, and Perquimans counties.

#### Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

#### Section 3.

I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

#### Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

**Section 5.**

I further direct Secretary Perry or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

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) unless the circumstances of the state of emergency prevent or impede, 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 assure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

**Section 8.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

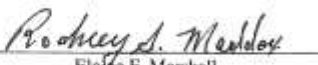
**Section 9.**

This declaration is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 22<sup>nd</sup> day of September in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State  
*Chief Deputy*





# State of North Carolina

**PAT McCrory**

GOVERNOR

September 22, 2016

## **EXECUTIVE ORDER NO. 104**

### **TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS FOR AGRICULTURAL RESPONSE OPERATIONS IN NORTHEASTERN NORTH CAROLINA**

**WHEREAS**, due to flooding in northeastern North Carolina, vehicles bearing equipment and supplies for utility restoration and debris removal, carrying essentials such as food and medicine, transporting livestock and poultry and feed for livestock and poultry need to be moved on the highways of North Carolina; and

**WHEREAS**, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists due to the flooding and its impact in this State. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina; and

**WHEREAS**, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, livestock and poultry feed, and medical supplies to residential and commercial establishments is essential before, during and after the flood and any interruption in the delivery of those commodities threatens the public welfare; and

**WHEREAS**, the prompt restoration of these items to citizens is essential to their safety and well-being; and

**WHEREAS**, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. §§ 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118 and 20-119. I have further found that citizens in this State may suffer losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic

loss of livestock or poultry, the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock and poultry; and

**WHEREAS**, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Parts 390-399 for up to 30 days if the Governor determines that an emergency condition exists; and

**WHEREAS**, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, transporting livestock and poultry and for vehicles used in the restoration of utility services.

**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.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

**Section 2.**

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118 and 20-119, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials and for equipment for any debris removal. The Department of Public Safety shall temporarily suspend weighing pursuant to N.C.G.S. § 20-118.1 vehicles used to transport livestock and poultry and livestock and poultry feed in the emergency area.

**Section 3.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

**Section 4.**

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 5.**

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

**Section 6.**

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

**Section 7.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

**Section 8.**

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, carrying feed for livestock and poultry, or transporting livestock and poultry in the State of North Carolina.

**Section 9.**

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

**Section 10.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.


Section 11.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 22<sup>nd</sup> day of September in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State  
*Chief Deputy*



**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 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Industrial Commission intends to amend the rule cited as 04 NCAC 10A .0108.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ic.nc.gov/proposedNCICAmend0108.html>

**Proposed Effective Date:** February 1, 2017

**Public Hearing:**

**Date:** November 18, 2016

**Time:** 10:00 a.m.

**Location:** Room 2149, 2<sup>nd</sup> Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27603

**Reason for Proposed Action:** *The Industrial Commission proposes for amendment the comprehensive electronic filing rule, 04 NCAC 10A .0108, for two primary reasons. First, the recently expanded capacity of the Commission's Electronic Document Filing Portal, which will allow for more document types to be submitted to the Industrial Commission in a safer, more cost-effective manner, can only be employed with a rule change. The amendment simplifies filing instructions by providing one method for electronic filing for most documents with specific, well-defined exceptions. Second, the amendment provides protections for the personal identifying information of injured workers that were absent from the original rule.*

**Comments may be submitted to:** Kendall M. Bourdon 4333 Mail Service Center, Raleigh, NC 27699-4333, phone (919) 807-2644, email [kendall.bourdon@ic.nc.gov](mailto:kendall.bourdon@ic.nc.gov)

**Comment period ends:** December 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 – INDUSTRIAL COMMISSION**

**SUBCHAPTER 10A - WORKERS' COMPENSATION RULES**

**SECTION .0100 - ADMINISTRATION**

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

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

(b) Except as set forth below in Paragraphs (d) and (e) of this Rule, All all documents listed in Table 1 below shall be transmitted to the Commission via the Commission's Electronic Document Filing Portal ("EDFP"). ~~EDFP. Information regarding how to register for and use EDPF is available at <http://www.ic.nc.gov/training.html>. In the event EDPF is inoperable, all documents listed in Table 1 below required to be filed via EDPF shall be sent-transmitted to the Commission via electronic mail to [edfp@ic.nc.gov](mailto:edfp@ic.nc.gov). Documents listed in Table 1 below required to be filed via EDPF which are sent to the Commission via electronic mail when EDPF is operable shall not be accepted for filing.~~



**Table 1: Documents to be filed via EDPF**

Appeal of Administrative Order to Full Commission
Appeal of Medical Motion Order to Full Commission
Appeal of Opinion and Award of Deputy Commissioner
Appeal of Order of Executive Secretary (Non-Medical)
Attorney Representation Letter
Brief to the Full Commission
Brief or Contentions
Compromise Settlement Agreement
Confirmation of Scheduling of Mediation
Court of Appeals – Notice of Appeal
Deposition
Form 18M
Form 21
Form 23 Application
Form 23 Response
Form 23 Additional Documentation
Form 24 Application
Form 24 Response
Form 24 Additional Documentation
Form 26
Form 26A
Form 33
Form 33R
Form 44
MSC2
MSC4
MSC5
Pre-trial Agreement
Notice of Scheduled Mediation

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

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers or in claims for lung disease, in which case the Form 19 shall be filed in accordance with Paragraph (e) of this Rule. Information regarding how to register for and use EDI is available at [www.ncicedi.info](http://www.ncicedi.info).

~~(e)(e)~~ The workers' compensation forms and documents listed in Table 2 Table 1 below ~~and all other documents to be filed with the Commission's Claims Administration Section shall be sent to the Commission via electronic mail to forms@ic.nc.gov. shall not be required to be transmitted via EDPF provided all applicable qualifying conditions are met.~~

**Table 2: Table 1: Forms and documents to be filed via electronic mail to forms@ic.nc.gov exempt from EDPF filing requirements and how to file them:**

Form 18		
Form 18B		
Form 26D		
Form 28		
Form 28B		
Form 28C		
Form 28T		
Form 29		
Form 30		
Form 30A		
Form 30D		
Form 31		
Form 60		
Form 61		
Form 62		
Form 63		
DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form 18	No IC file number has been assigned	Electronically to forms@ic.nc.gov, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always	Electronically to forms@ic.nc.gov, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 19	1. The claim involves a non-insured employer; or 2. The claim is for lung disease.	Electronically to forms@ic.nc.gov, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 51	Always	Electronically to forms@ic.nc.gov
Plaintiff's Attorney Representation Letter	No IC file number has been assigned	Electronically to forms@ic.nc.gov

<u>Medical motions, responses, and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter</u>	<u>Always</u>	<u>Electronically to medicalmotions@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Compliance &amp; Fraud Investigative Division</u>	<u>Always</u>	<u>Electronically to fraudcomplaints@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Medical Fees Section</u>	<u>Always</u>	<u>Electronically to medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Safety Education &amp; Training Section</u>	<u>Always</u>	<u>Electronically to safety@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section</u>	<u>No IC file number has been assigned</u>	<u>Electronically to 25n@ic.nc.gov</u>
<u>Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section</u>	<u>No IC file number has been assigned</u>	<u>Electronically to rehab.referrals@ic.nc.gov</u>

(d) ~~Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) (6) below:~~

- (1) ~~Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter shall be filed via electronic mail to medicalmotions@ic.nc.gov.~~

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

(e) ~~A one year waiver shall be granted to a self insured employer, carrier, third party administrator, or law firm that notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the entity is unable to comply with the rule and outline its plan for coming into compliance within the one year~~

period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S. Mail.

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

(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.

Authority G.S. 97-80.

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0327.*

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

**Proposed Effective Date:** April 1, 2017

**Public Hearing:**

**Date:** November 3, 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 NC Wildlife Resources Commission identified a need to establish a no wake zone in the vicinity of the Lilly's Bridge Boating Access Area in Montgomery County, shore to shore, to mitigate hazards to boater safety that include the boating access area, nearby fueling docks, a waterfront restaurant, and two bridge structures.*

**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:** December 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 .0327 MONTGOMERY COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Badin Lake:
  - (A) Lakeshore Drive Cove as delineated by appropriate markers.
  - (B) Entrance to fueling site and marina west of the main channel of Lake Forest Drive Cove.
  - (C) Gar Creek.
  - (D) Beyer's Island waterfront channel facing the mainland
- (2) Lake Tillery:
  - (A) Woodrun Cove as delineated by appropriate markers.
  - (B) Carolina Forest Cove as delineated by appropriate markers.
  - (C) The waters in the vicinity of the Lilly's Bridge Boating Access Area shore to shore, from a line north of the Route 1110 bridge at a point on the eastern shore at 35.23223 N, 80.06166 W, to a point on the western shore at 35.23289 N, 80.06318 W, to a line southwest of the Lilly's Bridge Boating Access Area, from a point on the eastern shore at 35.23067 N; 80.06262 W, to a point on the western shore at 35.23156 N; 80.06437 W.
- (3) Tuckertown Reservoir.

(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat

storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

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

(d) **Restricted Swimming Areas.** No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Wildlife Resources Commission on the waters of the regulated areas described in Paragraph (a) of this Rule.

(e) **Placement and Maintenance of Markers.** The Board of Commissioners of Montgomery County is hereby designated a suitable agency for placement and maintenance of the markers implementing Parts (a)(1)(A), (B), (C), (D), (2)(A) and (B), and Subparagraph (a)(3) of this Rule in accordance with the Uniform System. The North Carolina Wildlife Resources Commission is hereby designated a suitable agency for placement and maintenance of the markers implementing Part (a)(2)(C) of this Rule.

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

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

### **CHAPTER 16 – BOARD OF DENTAL EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Dental Examiners intends to amend the rule cited as 21 NCAC 16G .0101.*

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

**Proposed Effective Date:** *February 1, 2017*

**Public Hearing:**

**Date:** *November 17, 2016*

**Time:** *6:30 p.m.*

**Location:** *2000 Perimeter Park Dr., Suite 160, Morrisville, NC 27560*

**Reason for Proposed Action:** *21 NCAC 16G .0101 is proposed for amendment to allow dental hygienists to make adjustment to any restoration or appliance.*

**Comments may be submitted to:** *Bobby D. White, Esq., 2000 Perimeter Park, Dr., Suite 160 Morrisville, NC 27560*

**Comment period ends:** *December 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**

## **SUBCHAPTER 16G - DENTAL HYGIENISTS**

### **SECTION .0100 - FUNCTIONS THAT MAY BE DELEGATED**

#### **21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED**

A dental hygienist may be delegated functions to be performed under the control and supervision of a dentist who shall be responsible for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0203, functions that may be delegated to a dental hygienist provided that a dentist has examined the patient and prescribed the procedure include:

- (1) Taking impressions for study models and opposing casts that may be used for the construction of temporary or permanent dental appliances, adjustable orthodontic appliances, nightguards, and the repair of dentures or partials;
- (2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) Inserting matrix bands and wedges;
- (4) Placing cavity bases and liners;
- (5) Placing and removing rubber dams;
- (6) Cementing temporary restorations using temporary cement;
- (7) Applying acid etch materials and rinses;
- (8) Applying bonding agents;
- (9) Removing periodontal dressings;
- (10) Removing sutures;
- (11) Placing and removing gingival retraction cord;
- (12) Removing excess cement;
- (13) Flushing, drying, and temporarily closing root canals;
- (14) Placing and removing temporary restorations;
- (15) Placing and tying in or untying and removing orthodontic arch wires;

- (16) Inserting interdental spacers;
- (17) Fitting (sizing) orthodontic bands or brackets;
- (18) Applying dentin desensitizing solutions;
- (19) Performing periodontal screening;
- (20) Performing periodontal probing;
- (21) Performing subgingival exploration for or removal of hard or soft deposits;
- (22) Performing sulcular irrigation;
- (23) Applying resorbable sulcular antimicrobial or antibiotic agents;
- (24) Performing extra-oral adjustments that affect function, fit, or occlusion of any ~~temporary~~ restoration or appliance; and
- (25) Initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment and approval by the dentist.

Authority G.S. 90-41; 90-221; 90-223(b); 90-233.

\* \* \* \* \*

## CHAPTER 46 – BOARD OF PHARMACY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .2201.*

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

**Proposed Effective Date:** January 1, 2018

**Public Hearing:**

**Date:** January 17, 2017

**Time:** 9:00 a.m.

**Location:** North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

**Reason for Proposed Action:** *The Board has proposed the rule amendment in order to facilitate easier continuing education recordkeeping requirements for pharmacists, as well as to allow for more efficient reporting of continuing education hours to the Board and more efficient and accurate review and audit of those records by the Board. In addition, the Board has proposed to decrease the number of "contact" continuing education hours that must be received, as well as to formalize certain exemptions provided by the Board.*

**Comments may be submitted to:** Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email [jcampbell@ncbop.org](mailto:jcampbell@ncbop.org)

**Comment period ends:** January 17, 2017, 9:00 a.m.

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

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

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

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

## SECTION .2200 - CONTINUING EDUCATION

### 21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY

(a) As a condition of license renewal, a pharmacist shall accumulate 15 hours of continuing education annually.

(b) ~~Eight-Five~~ of these continuing education hours shall be obtained through contact programs. Contact programs are those in which there is an opportunity for live two-way communication between the presenter and attendee. An on-line continuing education course may satisfy this contact-hour requirement provided that the continuing education course includes live two-way communication between the presenter and attendee. ~~standard is met.~~

~~(c) A pharmacist who accumulates more than the required 15 hours of continuing education in a single year may carry forward up to five surplus hours to be applied to the following year's continuing education requirements.~~

~~(d)(c)~~ A pharmacist shall preserve all continuing education records for three years. If a continuing education provider approved in Paragraph (e) of this Rule maintains an electronic database of all pharmacists granted continuing education credits accredited by the provider, then the storage of that information in the provider's database shall be deemed to satisfy the pharmacist's recordkeeping requirement.

~~(e)(d)~~ Upon license renewal, the pharmacist shall report continuing education hours on a form approved and provided by the Board. The Board may require a pharmacist to submit records, reports of accredited hours and certificates of credit on a random basis pursuant to a continuing education audit.

~~(f)(e)~~ All continuing education shall be obtained through continuing education ~~courses.~~ courses accredited by the Accreditation Council for Pharmacy Education or the North Carolina Association of Pharmacists. Pharmacists may also acquire up to five hours continuing education credit for precepting, for at least 160 hours, a student enrolled in the University of North Carolina Eshelman School of Pharmacy, the Campbell University College of Pharmacy and Health Sciences,

~~the Wingate University School of Pharmacy, or the High Point University Fred Wilson School of Pharmacy as part of these schools' academic program. The Board shall approve continuing education courses as accredited if they provide education on matters that will maintain or increase the participant's professional competence and proficiency as a pharmacist.~~

(f) A pharmacist shall be exempt from the requirements of this Rule if:

- (1) The pharmacist is eligible for a waiver of continuing education requirements under 21 NCAC 46 .1613; or
- (2) For the entire year preceding license renewal, the pharmacist resided in another state, did not practice pharmacy in North Carolina, and satisfied the state of residence's continuing education requirements for pharmacist licensure.

(g) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the continuing education standards specified in (a), (b), (c), (d), (e) and (f) of this Rule within the first renewal period after licensure in this state.

Authority G.S. 90-85.6; 90-85.17; 90-85.18.

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## CHAPTER 66 – VETERINARY MEDICAL BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Veterinary Medical Board intends to amend the rule cited as 21 NCAC 66 .0108.*

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

**Proposed Effective Date:** April 1, 2017

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

**Reason for Proposed Action:** *Increase the renewal fee for veterinarians from \$150.00 per year to \$170.00.*

**Comments may be submitted to:** Thomas M. Mickey, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606, phone (919) 854-5601, fax (919) 854-5606

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

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2)

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

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

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

## SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

### 21 NCAC 66 .0108 FEES

The following fees established by the Board shall be paid in advance to the Executive Director of the Board:

- (1) Veterinary License
  - (a) Issuance or Renewal ~~\$150.00~~ \$170.00
  - (b) North Carolina License Examination \$250.00
  - (c) Late Renewal Fee \$50.00
  - (d) Reinstatement \$100.00
- (2) Veterinary Technician Registration
  - (a) Issuance or Renewal \$50.00
  - (b) North Carolina Veterinary Technician Examination \$50.00
  - (c) Late Renewal Fee \$50.00
  - (d) Reinstatement \$100.00
- (3) Professional Corporation Certificate of Registration
  - (a) Issuance or Renewal \$160.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (4) Limited Veterinary License
  - (a) Issuance or Renewal ~~\$150.00~~ \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (5) Veterinary Faculty Certificate
  - (a) Issuance or Renewal ~~\$150.00~~ \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (6) Zoo Veterinary Certificate
  - (a) Issuance or Renewal ~~\$150.00~~ \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (7) Temporary Permit: Issuance \$150.00
- (8) Veterinary Student Intern Registration: Issuance \$25.00

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***PROPOSED RULES***

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- |   |   |   |
|---|---|---|
| (9) Veterinary Student Preceptee Registration:<br>Issuance \$25.00  | (10) Veterinary Practice Facility Inspection \$125.00 | herein, "minimal cost" shall mean the actual<br>cost of reproducing the public record or public<br>information. |
| (11) Copies of Board publications, rosters, or other<br>materials available for distribution from the<br>Board shall be free or at a minimal cost unless<br>otherwise specifically provided by law. As used |   | <i>Authority 90-185(6); 90-186(6); 90-187(b); 90-187.5; 132-6.2.</i>  |

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

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

**Rule Citation:** 10A NCAC 09 .0604, .0608, .0705- .0707, .0801, .1701, .1702, .1705, .1719, .1721, .1726, .1730, .1731

**Effective Date:** September 23, 2016

**Date Approved by the Rules Review Commission:** September 15, 2016

**Reason for Action:** The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: The Child Care and Development Block Grant Act 42 U.S.C. 9858

The NC Child Care Commission has adopted temporary rules to come into compliance with the requirements of the Child Care and Development Block Grant (CCDBG) Act of 2014. Many changes have been made to the law to improve the health, safety, and quality of child care for children receiving care in family child care homes and centers. Adoptions and amendments to these rules are needed to maintain federal funding for families with children in child care. The Child Care and Development Fund (CCDF) is authorized by the CCDBG and provides federal funding for low-income families with children in child care who are working or continuing their education and training. These funds help families pay for child care services.

Although the CCDBG Act was enacted in 2014, the federal government is still in the process of promulgating rules pursuant to the CCDBG however, all states were notified by email in December of 2015 that all requirements related to certification by the states under the law must be in place by September 30, 2016. There was also a webinar given by Region IV in May 2016 to clarify the new CCDGB health and safety training requirements and the specified due date for implementing the training for all providers. The Division anticipated that the codified regulations would have more details about how the law would be implemented however, the regulations have not been finalized. The comment period for these regulations closed on February 22, 2016. If states fail to comply with the CCDBG requirements for certification, they risk losing federal funds. If NC cannot certify that it is compliant with the requirements of the CCDBG by the September 30 deadline, NC risks forfeiting millions of federal dollars it desperately needs to maintain funding for low income families with children in child care. At this time, federal funds make up approximately 80% of payments made by the State of North Carolina to assist needy children in attending quality child

care facilities. Loss of these federal funds would be disastrous for the State of North Carolina and the children and families it serves.

North Carolina already has some health and safety requirements in place related to the 11 training topic areas outlined in the CCDF; however, there are several topic areas that are not currently addressed in the child care requirements and require rulemaking. Temporary rules were adopted in these 11 areas:

- 1) prevention and control of infectious diseases, including immunization;
- 2) administration of medication, consistent with standards for parental consent;
- 3) prevention of and response to emergencies due to food and allergic reactions;
- 4) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- 5) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;
- 6) handling and storage of hazardous materials and the appropriate disposal of bio-contaminants;
- 7) precautions in transporting children, if applicable;
- 8) prevention of shaken baby syndrome and abusive head trauma;
- 9) CPR and First Aid training;
- 10) recognizing and responding to Suspicions of Child Maltreatment; and
- 11) prevention of sudden infant death syndrome and use of safe sleeping practices.

The federal register may be found at <http://www.federalregister.gov/articles/2015/12/24/2015-31883/child-care-and-development-fund-ccdf-program#h-4>

## **CHAPTER 09 - CHILD CARE RULES**

### **SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS**

#### **10A NCAC 09 .0604 SAFETY REQUIREMENTS**

- (a) In child care centers, potentially hazardous items, ~~such as including archery equipment, hand and power tools, nails, chemicals, propane stoves, lawn mowers, and gasoline or kerosene, whether or not intended for use by children, shall be stored in locked areas, or shall be removed from the premises~~, or otherwise inaccessible to children.
- (b) Firearms and ammunition are prohibited in a licensed child care facility unless carried by a law enforcement officer.
- (c) ~~Electrical outlets not in use which are~~ When not in use, electrical outlets and power strips located in space used by the



children shall ~~have safety outlets or~~ be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.

(d) Electric fans shall be mounted out of the reach of children or shall be fitted with a mesh guard to prevent access by children.

(e) All electrical appliances shall be used only in accordance with the manufacturer's instructions. For appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor ~~the any cord cord, if applicable,~~ shall be accessible to preschool-age children.

(f) Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.

(g) All materials used for starting fires, such as ~~matches, matches and lighters, and accelerants~~ shall be kept in locked storage. ~~storage or shall be stored out of the reach of children.~~

(h) ~~Smoking~~ Smoking, including use of e-Cigarettes, by staff is not permitted ~~in space used by children when children are present on the premises of the child care center.~~ All smoking materials shall be kept in locked storage. ~~storage or out of the reach of children.~~

(i) Fuel burning heaters, fireplaces, and floor ~~furnaces~~ furnaces, if applicable, shall be ~~provided~~ fitted with a protective screen attached securely to supports to prevent access by children and to prevent objects from being thrown into them.

(j) ~~Toxic plants~~ Plants shall be inaccessible to ~~children~~ children ~~that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.~~ A list of toxic plants may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/form16b\\_bb.pdf](http://ncchildcare.nc.gov/pdf_forms/form16b_bb.pdf).

(k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.

(l) Gas tanks ~~and gas or charcoal grills~~ shall be ~~located so they are not accessible~~ inaccessible to the children or shall be in a protective enclosure. ~~enclosure or surrounded by a protective guard.~~

(m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.

(n) Once a day, prior to initial use, the indoor and outdoor premises shall be checked for debris, vandalism, and broken equipment. Debris shall be removed and ~~disposed~~ disposed of.

(o) Plastic bags, toys, and toy parts small enough to be swallowed, and materials that can be ~~easily torn apart~~ apart, such as foam rubber and styrofoam, shall not be accessible to children under three years of ~~age, except that age.~~ age. However, styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. ~~Latex and rubber balloons, Jump ropes and rubber bands~~ shall not be accessible to children under five years of ~~age.~~ age without adult supervision. Balloons shall be prohibited for children of all ages.

(p) When non-ambulatory children are in care, a crib or other device shall be available for evacuation in case of fire or other emergency. The crib or other device shall be fitted with wheels in order to be ~~easily~~ moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do

not meet NC Building Code for institutional occupancy, ~~building code,~~ and ~~the exit is~~ have an exit more than eight inches above grade, the center shall develop a written plan to ensure a safe ~~and immediate~~ evacuation of the crib or other device. The North Carolina State Building Code is hereby incorporated by reference, inclusive of subsequent amendments. The current Code can be found online at

[http://www.ncdoi.com/OSFM/Engineering and Codes/Default.aspx?field1=Codes](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Codes) -

Current and Past ~~user=~~ State Building Codes. The operator shall physically demonstrate this written plan to the Division for review and approval. During the required fire, lockdown, or shelter-in-place drills, an evacuation crib or other device shall be used in the manner described in the Emergency Preparedness and Response Plan as defined in 10A NCAC 09 .0607(c).

(q) A ~~first aid~~ First Aid kit shall ~~always~~ be available on ~~site~~ site and accessible to staff. Each staff member shall be aware of the location of the First Aid kit.

(r) Fire drills shall be practiced monthly ~~in accordance with 10A NCAC 09 .0607(a)~~ and records shall be maintained as required by 10A NCAC 09 .0302(d)(5).

(s) A ~~"shelter in place drill"~~ "shelter-in-place" or "lockdown drill" as defined in 10A NCAC 09 .0102 shall be conducted at least every three months and records shall be maintained as required by 10A NCAC 09 .0302(8). ~~.0302(d)(8).~~

(t) Each center shall establish safe procedures for pick-up and delivery of children. These procedures shall be communicated to parents, and a copy shall be posted in the center where it can be seen by the parents.

(u) In child care centers, potential bio-contaminants shall be stored in locked areas, shall be removed from the premises, or otherwise inaccessible to children. For purposes of this Rule, a "bio-contaminant" includes bodily fluids, soiled diapers and wipes, and medical waste such as syringes.

*History Note:* Authority G.S. 110-88; 143B-168.3;

*Eff. January 1, 1991;*

*Amended Eff. January 1, 1996; November 1, 1991;*

*Temporary Amendment Eff. October 1, 1997;*

*Amended Eff. July 1, 2015; February 1, 2012; July 1, 2010;*

*December 1, 2007; April 1, 2001; July 1, 1998;*

*Temporary Amendment Eff. September 23, 2016.*

## **10A NCAC 09 .0608 PREVENTION OF SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA**

(a) Within three months of the effective date of this Rule each child care center licensed to care for children up to five years of age shall develop and adopt policies to prevent shaken baby syndrome and abusive head trauma. The policy shall include the following:

- (1) How to recognize, respond to, and report the signs and symptoms of shaken baby syndrome and abusive head trauma. Signs and symptoms include: irritability, difficulty staying awake, difficulty breathing, inability to lift the head, seizures, lack of appetite, vomiting, and bruises;
- (2) Strategies to assist staff members in coping with a crying, fussing, or distraught child;

- (3) Strategies to assist staff members understand how to care for infants;
- (4) Strategies to ensure staff members understand the brain development of children up to five years of age;
- (5) A list of prohibited behaviors that staff members shall follow in order to care for children in a developmentally appropriate manner. Prohibited behaviors shall include, but not be limited to, shaking a child, tossing a child into the air or into a crib, chair, or car seat, and pushing a child into walls, doors, and furniture; and
- (6) Resources to assist staff members and families in preventing shaken baby syndrome and abusive head trauma.

(b) Within 30 days of adopting the policy, the child care center shall review the policy with parents of currently enrolled children up to five years of age. A copy of the policy shall be given and explained to the parents of newly enrolled children up to five years of age on or before the first day the child receives care at the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain the following:

- (1) The child's name;
- (2) The date the child first attended the center;
- (3) The date the operator's policy was given and explained to the parent;
- (4) The parent's name;
- (5) The parent's signature; and
- (6) The date the parent signed the acknowledgment.

The child care center shall obtain the parent's signature and the acknowledgement shall be kept in the child's file.

(c) If a child care center changes the policy at any time, the child care center shall give written notice of the change to the child's parent 14 days prior to the implementation of the new policy and the parent shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. The center shall obtain the parent's signature and This this statement shall be kept in the child's file.

(d) For purposes of this Rule, "staff" includes the operator, additional caregivers, substitute providers, and uncompensated providers.

(e) Within 30 days of adopting the policy, the child care center shall review the policy with existing staff members who provide care for children up to five years of age. Each child care center shall review the policy with new staff members prior to the individual providing care to children. The acknowledgement of this review shall contain:

- (1) The individual's name;
- (2) The date the center's policy was given and explained to the individual;
- (3) The individual's signature; and
- (4) The date the individual signed the acknowledgment.

The child care center shall retain the acknowledgement in the staff member's file.

(e)(f) If a child care center changes the policy at any time, the child care center shall review the revised policy with staff members 14 days prior to the implementation of the new policy. The individual shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the staff member's file.

*History Note: Authority G.S. 143B-168.3;  
Temporary Adoption Eff. September 23, 2016.*

## **SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF**

### **10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS**

(a) ~~At least one staff member shall be knowledgeable of and able to recognize common symptoms of illness. A copy of "Caring for Our Children: Appendix A" shall be located in the child care facility for referral regarding common signs and symptoms of illness. The book is incorporated by reference and includes subsequent amendments and editions free of charge online at <http://cfoc.nrckids.org>.~~

(b) ~~Staff who have completed a course in basic first aid, shall be present at all times children are present. First aid training shall be renewed on or before expiration of the certification or every three years, whichever is less. The number of staff required to complete the course is based on the number of children present as shown in the following chart:~~

<del>Number of children present</del>	<del>Number of staff trained in first aid required</del>
<del>1-29</del>	<del>1-staff</del>
<del>30-79</del>	<del>2-staff</del>
<del>80 and above</del>	<del>3-staff</del>

~~All staff who provide direct care or accompany children when they are off premises shall successfully complete certification in basic First Aid appropriate for the ages of children in care. The training shall be completed within six weeks of employment. At all times when children are in care at least one staff member present must have successfully completed basic First Aid training, as evidenced by a certificate or card from an approved training organization. First Aid training shall be renewed on or before expiration of the certification. "Successfully completed" is defined as demonstrating competency, as evaluated by the instructor. Verification of each required staff person's member's completion of this course from an approved training organization shall be maintained in the person's individual staff member's personnel file in the center. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp). The basic first aid course shall address principles for responding to emergencies, and techniques for handling common childhood injuries, accidents and illnesses such as choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.~~

(c) ~~A first aid-First Aid information sheet shall be posted in a prominent place for quick referral-referral by staff members. A child care operator may request a First Aid information sheet An acceptable form may be requested free of charge from the North~~

Carolina Child Care Health and Safety Resource Center, Center at 1-800-367-2229.

(d) ~~Each child care center shall have at least one person on the premises at all times, and at least one person who accompanies the children whenever they are off the premises, who has successfully completed certification in a cardiopulmonary resuscitation (CPR) course provided by either the American Heart Association or the American Red Cross or other organizations approved by the Division. Other organizations shall be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. CPR training shall be renewed on or before the expiration of the certification or every two years, whichever is less. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. The course shall provide training in CPR appropriate for the ages of children in care. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the center. All staff who provide direct care or accompany children when they are off premises shall successfully complete certification in a cardiopulmonary resuscitation (CPR) course appropriate for the ages of children in care. At all times when children are in care at least one staff member present must have successfully completed CPR training. The training shall be completed within six weeks of employment. CPR training shall be renewed on or before the expiration of the certification. Verification of each staff member's completion of this course from an approved training organization shall be maintained in the staff member's file in the center. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp).~~

(e) Staff shall complete at least four clock hours of training in safety. This training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. The number of staff required to complete this training shall be as follows:

- (1) In centers with a licensed capacity of less than 30 children, at least one staff person shall complete this training.
- (2) In centers with a licensed capacity of 30 or more children, at least two staff, including the administrator, shall complete this training.

A certificate of each staff member's completion of this course shall be maintained in the staff member's file in the center.

(f) ~~In centers that are licensed to care for infants, infants ages 12 months and younger, the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training. ITS-SIDS training shall be completed within four months of the individual assuming responsibilities in the infant room or as an administrator, and shall be completed again every three years from the completion of previous ITS-SIDS training. the child care administrator and any child care provider scheduled to work in the infant room shall complete ITS-SIDS training. ITS-~~

SIDS training shall be completed within two months of an individual assuming responsibilities in the infant room and every three years thereafter. Child care administrators, as defined in G.S. 110-86(2a), shall complete ITS-SIDS training within two months of employment and every three years thereafter. Completion of ITS-SIDS training may shall be included once every three years in the number of hours needed to meet annual in-service ongoing training requirements in Section .0700 of this Chapter. At all times, at least one child care provider who has completed ITS-SIDS training shall be present in the infant room while children are in care. Prior to an individual assuming responsibility for the care of an infant, the center's safe sleep policy for infants shall be reviewed with the individual as required by Rule .0707(a) of this Section. A certificate of each staff member's completion of this course shall be maintained in the staff member's file in the center.

(g) The child care administrator and all staff members shall complete "Recognizing and Responding to Suspicions of Child Maltreatment" training within two months of employment and every three years thereafter. Completion of "Recognizing and Responding to Suspicions of Child Maltreatment" training shall be included once every three years in the number of hours needed to meet ongoing training requirements in Section .0700 of this Chapter. "Recognizing and Responding to Suspicions of Child Maltreatment" training is available at <https://www.preventchildabusenc.org/services/trainings-and-professional-development/rrcourse>. A certificate of each staff member's completion of this course shall be maintained in the staff member's file in the center.

*History Note: Authority G.S. 110-88; 110-91(1),(8); 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. January 1, 1996; January 1, 1992; January 1, 1991; January 1, 1987; Temporary Amendment Eff. October 1, 1997;*

*Amended Eff. July 1, 2008; November 1, 2005; May 1, 2004; July 1, 1998;*

*Temporary Amendment Eff. September 23, 2016.*

## **10A NCAC 09 .0706 HEALTH AND SAFETY TRAINING REQUIREMENTS**

(a) Child care administrators and staff members shall complete health and safety training offered by the Division no later than June 30, 2017.

(b) The training shall include the following topic areas:

- (1) Prevention and control of infectious diseases, including immunization;
- (2) Administration of medication, with standards for parental consent;
- (3) Prevention of and response to emergencies due to food and allergic reactions;
- (4) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (5) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;

- (6) Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants;
- (7) Precautions in transporting children, if applicable;
- (8) Prevention of shaken baby syndrome and abusive head trauma;
- (9) CPR and First Aid training as required in Subparagraphs .0705(b) and (d) of this Section;
- (10) "Recognizing and Responding to Suspicions of Child Maltreatment" as required in Rule .0705(g) of this Section; and
- (11) Prevention of sudden infant death syndrome and use of safe sleeping practices.

(c) Training hours accrued for the completion of this requirement shall count toward in-service training. However, child care administrators and staff members must complete the health and safety training even if the number of hours accrued exceeds required in-service training, as specified in Rule .0707 of this Section.

*History Note: Authority G.S. 110-88; 110-91(11); 143B-168.3;*

*Temporary Adoption Eff. September 23, 2016.*

#### **10A NCAC 09 .0707 IN-SERVICE AND ORIENTATION TRAINING REQUIREMENTS**

(a) Each center shall ~~assure~~ ensure that each new employee who is expected to have contact with children receives a minimum of 16 clock hours of on-site training and orientation within the first six weeks of employment. As part of this orientation, each new employee shall complete six clock hours of training within the first two weeks of employment. Training required pursuant to this Rule shall not be counted toward annual ongoing training requirements. This training and orientation shall include:

- (1) ~~training in the recognition of the signs and symptoms of child abuse or neglect and in the employee's duty to report suspected abuse and neglect pursuant to G.S. 7B-301;~~
- (2) ~~review of the center's operational policies, including the center's safe sleep policy for infants, the Emergency Preparedness and Response Plan, and the emergency medical care plan;~~
- (3) ~~adequate supervision of children in accordance with 10A NCAC 09 .0714(f);~~
- (4) ~~first hand observation of the center's daily operations;~~
- (5) ~~instruction in the employee's assigned duties;~~
- (6) ~~instruction in the maintenance of a safe and healthy environment;~~
- (7) ~~review of the center's purposes and goals;~~
- (8) ~~review of the center's personnel policies;~~
- (9) ~~review of the child care licensing law and rules;~~
- (10) ~~an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource; and~~

- (11) ~~an explanation of the employee's obligation to cooperate with representatives of State and local government agencies during visits and investigations.~~

(b) ~~As part of the training required in Paragraph (a) of this Rule, each new employee shall complete, within the first two weeks of employment, six clock hours of the training referenced in Subparagraphs (a)(1), (a)(2), and (a)(3) of this Rule. Training topics for orientation shall include:~~

<u>Within first two weeks of employment</u>	<u>Within first six weeks of employment</u>
<u>Recognizing, responding to, and reporting child abuse, neglect, or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301</u>	<u>Firsthand observation of the center's daily operations</u>
<u>Review of the center's operational policies, including the center's safe sleep policy for infants, the Emergency Preparedness and Response Plan, and the emergency medical care plan</u>	<u>Instruction in the employee's assigned duties</u>
<u>Adequate supervision of children in accordance with 10A NCAC 09 .0714 .1801</u>	<u>Instruction in the maintenance of a safe and healthy environment; building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic</u>
<u>Information regarding prevention of shaken baby syndrome and abusive head trauma</u>	<u>Instruction in the administration of medication to children in accordance with 10A NCAC 09 .0803</u>
<u>Prevention and control of infectious diseases, including immunization</u>	
	<u>Review of G.S. 110, Article 7 and 10A NCAC 09</u>
	<u>An explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource</u>
	<u>An explanation of the employee's obligation to cooperate with representatives of State and local government agencies during visits and investigations</u>

	<u>Successfully complete CPR and First Aid training as defined in Rule .0705(b) of this Section.</u>
	<u>Prevention of and response to emergencies due to food and allergic reactions</u>
	<u>Review of the center's handling and storage of hazardous materials and the appropriate disposal of bio-contaminants</u>

(c) The child care administrator and any staff who have responsibility for planning and supervising a child care facility, as well as staff who work directly with children, shall participate in in-service training activities annually, as follows:

- (1) persons with a four year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university shall complete five clock hours of training;
- (2) persons with a two year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential or its equivalent shall complete eight clock hours of training;
- (3) persons with a certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential or its equivalent shall complete 10 clock hours of training;
- (4) persons with at least 10 years documented, professional experience as a teacher, director, or caregiver in a licensed child care arrangement shall complete 15 clock hours of training; or
- (5) shall complete 20 clock hours of training.

~~(d) For staff listed in Subparagraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this Rule, basic cardiopulmonary resuscitation (CPR) training required in Rule .0705 of this Section shall not be counted toward meeting annual in-service training. First aid training may be counted once every three years.~~

~~(e) If a child care administrator or lead teacher is enrolled in coursework to meet the staff qualification requirements in G.S. 110-91(8), the individual may choose to apply for completed coursework toward meeting the annual in-service training requirement.~~

~~(f)(d)~~ Any staff working less than 40 hours per week may choose the option for complete 20 hours of in-service training, or the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15

31-40

20

(e) Coursework taken at an accredited college or university which addresses staff development topic areas specified in G.S. 110-91(11) shall be counted toward in-service training requirements.

*History Note: Authority G.S. 110-88; 110-91(11); 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. July 1, 2015; January 1, 2006; May 1, 2004; October 29, 1998; October 1, 1991; November 1, 1989; July 1, 1988; January 1, 1987;*

*Temporary Amendment Eff. September 23, 2016.*

## SECTION .0800 - HEALTH STANDARDS FOR CHILDREN

### 10A NCAC 09 .0801 APPLICATION FOR ENROLLMENT

(a) Each child in care shall have an individual application for enrollment completed and signed by the child's parent, as defined in 10A NCAC 09 .0102. The completed, signed application shall be on file in the center on the first day the child attends and shall include the following information:

- ~~(1) The completed, signed application shall be on file in the center on the first day the child attends and shall remain on file until the child is no longer attending.~~
- ~~(2) The completed application shall include emergency medical information as specified in Rule .0802(b) of this Section.~~
- ~~(3) The completed application shall give the child's full name and indicate the name the child is to be called. In addition, the application shall include the child's date of birth and any allergies, particular fears, or unique behavior characteristics that the child has.~~
- ~~(4) The application shall include the names of individuals to whom the center may release the child as authorized by the person who signs the application.~~
- (1) Emergency medical information as set forth in Rule .0802(b) of this Section;
- (2) The child's full name and the name the child is to be called;
- (3) The child's date of birth;
- (4) Any allergies and the symptoms and type of response required for allergic reactions;
- (5) Any health care needs or concerns, symptoms of and the type of response required for these health care needs or concerns;
- (6) Particular fears or unique behavior characteristics that the child has; and
- (7) The names of individuals to whom the center may release the child, as authorized by the person who signs the application.

(b) For any child A completed medical action plan shall be attached to the application for children with health care needs such as allergies, asthma, or other chronic conditions that require

specialized health services, a medical action plan shall be attached to the application. The medical action plan shall be completed by the child's parent or a health care professional and including the following:

- (1) a list of the child's diagnosis or diagnoses including dietary, environmental, and activity considerations that are applicable;
- (2) contact information for the health care professional(s);
- (3) medications to be administered on a scheduled basis; and
- (4) medications to be administered on an emergency basis with clearly stated signs, symptoms, and instructions.

The medical action plan shall be updated on an annual basis. Sample medical action plans may be found on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp).

~~(b)(c)~~ Each child's application shall be readily available and easily accessible to caregiving staff during the time the children are present. Center administrators and staff shall release a child only to an individual listed on the application.

(d) The information contained in Subparagraphs (a)(1) through (a)(7) of this Rule, shall be accessible to caregiving staff during the time the child is in care.

(e) Center administrators and staff shall use the information provided on the application to ensure that each individual child's needs are met during the time the child is in care.

*History Note: Authority G.S. 110-88; 143B-168.3;  
Eff. January 1, 1986;  
Amended Eff. November 1, 1989;  
Temporary Amendment Eff. September 23, 2016.*

## **SECTION .1700 – FAMILY CHILD CARE HOME REQUIREMENTS**

### **10A NCAC 09 .1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES**

(a) All family child care homes shall comply with the standards for licensure set forth in this Section. A one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91.

(b) An individual who provides care for five hours or more in a ~~week, week~~ during planned absences of the ~~operator, operator~~ shall be at least 21 years old, have a high school diploma or GED, have completed a ~~first aid~~ First Aid and cardiopulmonary resuscitation (CPR) course as described in Rule .1705, Subparagraphs (a)(3), and (a)(4) ~~(a)(4), (b)(2), and (b)(3))~~ of this Section, have completed a health questionnaire, have proof of negative results of a tuberculosis test completed within 12 months prior to the first day of providing care, submit criminal records check forms as required in 10A NCAC 09 .2702, .2703 and annual in-service training as described in Rule .1705(b)(5) of this Section. While the individual provides care at a family child care home, copies of required information shall be on file in the home available for review by the Division.

(c) An individual who provides care for less than five hours in a ~~week, week~~ during planned absences of the operator shall meet all requirements listed in Paragraph (b) of this Rule, except the requirements for annual in-service training and a high school diploma or GED. The individual shall be literate.

(d) The operator shall conduct 16 hours of orientation ~~review the appropriate requirements found in this Chapter, including the Emergency Preparedness and Response Plan, and in G.S. Chapter 110, Article 7 with any caregivers, including substitute providers, and volunteers, individuals who are providing care prior to the individual's assuming responsibility for individual being left alone with the children, children as follows:~~

- (1) recognizing, responding to, and reporting child abuse, neglect, or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301;
- (2) review of the home's operational policies, including the written plan of care, safe sleep policy, and the Emergency Preparedness and Response Plan;
- (3) adequate supervision of children in accordance with Rule .1718(a) of this Section;
- (4) information regarding prevention of shaken baby syndrome and abusive head trauma;
- (5) prevention and control of infectious diseases, including immunization;
- (6) firsthand observation of the home's daily operations;
- (7) instruction regarding assigned duties;
- (8) instruction in the maintenance of a safe and healthy environment;
- (9) instruction in the administration of medication to children in accordance with Rule .1720(c) of this Section;
- (10) review of the home's purposes and goals;
- (11) review of G.S. 110, Article 7 and this Chapter;
- (12) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource;
- (13) an explanation of the individual's obligation to cooperate with representatives of State and local government agencies during visits and investigations;
- (14) completion of CPR and First Aid training; and
- (15) prevention of and response to emergencies due to food and allergic reactions.

The operator and individual providing care shall sign and date a statement ~~which that~~ attests that this review was completed. This statement shall be kept on file in the home available for review by the Division.

(e) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be at least 18 years old and submit criminal records check forms as required in 10A NCAC 09 .2703(j). ~~.2702, Paragraph (j).~~ The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

(f) The provisions of G.S. 110-90.2 ~~which that~~ exclude persons with certain criminal records or personal habits or behavior which may be harmful to children from operating or being employed in

a family child care home ~~are hereby incorporated by reference and~~ shall also apply to any person on the premises with the operator's permission when the children are present. This exclusion shall not apply to parents or other persons who enter the home only for the purpose of performing parental responsibilities; nor does it include persons who enter the home for ~~brief periods for the~~ purpose of conducting business with the operator and who are not left alone with the children.

(g) The parent of a child enrolled in any family child care home subject to regulation under G.S. 110, Article 7 shall be allowed unlimited access to the home during its operating hours for the purposes of contacting the child or evaluating the home and the care provided by the operator. The parent shall notify the operator of his or her presence ~~immediately~~ upon entering the premises.

(h) An operator licensed to care for children overnight may sleep during the nighttime hours when all the children are asleep, provided:

- (1) the operator and the children in care, excluding the operator's own children, are on ground level;
- (2) the operator can hear and respond ~~quickly~~ to the ~~children; children if needed; and~~
- (3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.

(i) Each operator shall develop and adopt a written plan of care for completing routine tasks (including running errands, meeting family and personal demands, and attending classes) to ensure that ~~routine~~ the tasks shall not interfere with the care of children during hours of operation. The plan shall:

- (1) specify typical times for completing routine tasks and include those times on the written schedule, or specify that routine tasks will not occur during hours of operation;
- (2) specify the names of any individuals, such as additional caregivers or substitutes, who will be responsible for the care of children when the operator is attending to routine tasks;
- (3) specify how the operator shall maintain compliance with transportation requirements specified in 10A NCAC 09 .1723 if children are transported;
- (4) specify how parents will be notified when children accompany the operator off premises for routine tasks not specified on the written schedule;
- (5) specify any other steps the operator shall take to ensure routine tasks will not interfere with the care of children; and
- (6) be ~~given~~ provided and explained to parents of children in care on or before the first day the child attends the home. Parents shall sign a statement acknowledging the receipt and explanation of the plan. Parents shall also give written permission for their child to be transported by the operator for specific routine tasks that are included on the written schedule. The acknowledgment and written parental

permission shall be retained in the child's record as long as the child is enrolled at the home and a copy of each document shall be maintained on file for review by the Division.

(j) If the operator amends the written plan, the operator shall give written notice of the amendment to parents of all enrolled children at least 30 days before the amended plan is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's records as long as the child is enrolled in the home and a copy shall be maintained on file for review by the Division.

*History Note:* Authority G.S. 110-85(1); 110-88(1); 110-91; 110-105; 143B-168.3;

*Eff.* January 1, 1986;

*Amended Eff.* July 1, 2015; May 1, 2013; November 1, 2006; April 1, 2003; April 1, 1999; July 1, 1998; January 1, 1991; January 1, 1990; July 1, 1988; January 1, 1987;

*Temporary Amendment Eff.* September 23, 2016.

#### **10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME**

(a) Any person who plans to operate a family child care home (FCCH) shall apply for a license using a form provided by the Division. Only one licensed family child care home shall operate at the location address of any home. The form can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/FacilityProfileApp.pdf](http://ncchildcare.nc.gov/pdf_forms/FacilityProfileApp.pdf).

~~The applicant shall submit the completed application, to the Division that complies with the following:~~

- ~~(1) only one licensed family child care home shall operate at the location address of any home; and~~
- ~~(2) the applicant shall list each location address where a licensed family child care home will operate.~~

~~(b) If a family child care home operates at more than one location address by cooperative arrangement among two or more families, the following procedures apply:~~

- ~~(1) one parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant; and~~
- ~~(2) the coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.~~

~~(c)~~ (b) The applicant shall ensure that the family child care home complies with the following requirements:

- (1) ~~single wide~~ single-wide manufactured homes are limited to a maximum of three preschool-age children (~~not~~ no more than two may be two years of age or less) and two school-age children;
- (2) all children are kept on the ground level with an exit at grade;
- (3) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one

battery operated smoke detector located next to each other;

- (4) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (5) heating appliances shall be installed and maintained according to NC Building Code Chapter 603.5.3;
- (6) all indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees; and
- (7) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated.

~~(d)~~(c) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

- (1) a copy of a non-expired qualification letter in accordance with 10A NCAC 09 .2702;
- (2) a copy of documentation of completion of a ~~first aid~~First Aid and cardiopulmonary resuscitation (CPR) course;
- (3) a copy of documentation of completion of ITS-SIDS training;
- ~~(3)~~(4) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- ~~(4)~~(5) a completed health questionnaire; a copy of the health questions can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/emergency\\_information\\_health\\_questionnaire\\_i.pdf](http://ncchildcare.nc.gov/pdf_forms/emergency_information_health_questionnaire_i.pdf);
- ~~(5)~~(6) a copy of ~~current~~ non-expired pet vaccinations for any pet in the home;
- ~~(6)~~(7) if a home has a private well, a negative well water bacteriological analysis;~~analysis if the home has a private well;~~
- ~~(7)~~(8) copies of any inspections required by local ordinances; and
- ~~(8)~~(9) any other documentation required by the Division according to the rules in this Section to support the issuance of a license.

~~(e)~~(d) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home. An announced visit is not required by a Division representative if the applicant is subject to the circumstances in Paragraph (g) of this Rule. The issuance of a license applies as follows:

- (1) if all applicable requirements of G.S. 110, Article 7 and this Section are met, a license shall be issued;
- (2) if the applicable requirements of G.S. 110, Article 7 and this Section are not met, ~~but the applicant has the potential to comply,~~ the Division representative shall establish with the applicant a time period for the home to achieve compliance. If the Division representative determines that all applicable requirements of

G.S. 110, Article 7 and this Section are met within the established time period, a license shall be issued; or

- (3) if all applicable requirements of G.S. 110, Article 7 and this Section are not met or cannot be met within the established time, the Division shall deny the application.

~~(f)~~(e) The Division shall allow the applicant to operate prior to the Division representative's visit described in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to ~~relocate~~relocate, and notifies the Division of the relocation, and the Division representative is unable to visit before the relocation occurs. An applicant shall not operate until he or she has received from the Division either temporary permission to operate or a license.

~~(g)~~(f) The Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by the applicant has been denied, revoked, or summarily suspended by the Division;
- (2) if the Division initiated denial, revocation, or summary suspension proceedings against any child care facility license previously held by the applicant and the applicant voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation, or summary suspension of any other child care facility license held by the applicant;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraphs (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
  - (A) would participate in the administration or operation of the facility;
  - (B) has a financial interest in the operation of the facility;
  - (C) provides care to the children at the facility;
  - (D) resides in the facility; or
  - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the applicant's previous non-compliance as an operator with the requirements of G.S. 110, Article 7 or this Chapter;
- (6) if ~~abuse or neglect~~abuse, neglect, or child maltreatment has been substantiated against the applicant or a household member; or



(7) if the applicant is a disqualified child care provider or has a disqualified household member residing in the FCCH.

~~(h)(g)~~ In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider:

- (1) any documentation provided by the applicant ~~which that~~ describes the steps the applicant will take to prevent reoccurrence of noncompliance issues that led to any prior administrative action taken against a license previously held by the applicant;
- (2) training certificates or original transcripts for any coursework from a nationally recognized regionally accredited institution of higher learning related to providing ~~quality~~ child care, and that was taken subsequent to any prior administrative action against a license previously held by the applicant. "Nationally recognized" means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the accrediting bodies;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; and
- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

~~(i)(h)~~ The license shall not be bought, sold, or transferred from one individual to another.

~~(j)(i)~~ The license ~~is shall be~~ valid only for the location address listed on it.

~~(k)(j)~~ The license ~~must shall~~ be returned to the Division in the event of termination, revocation, suspension, or summary suspension.

~~(l)(k)~~ A licensee shall notify the Division if a change occurs that affects the information shown on the license.

*History Note: Authority G.S. 110-86; 110-88(5); 110-91; 110-93; 110-99; 110-105.3; 110-105.5; 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. March 1, 2014; December 1, 2012; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987;*

*Temporary Amendment Eff. September 23, 2016.*

## **10A NCAC 09 .1705 HEALTH AND TRAINING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS**

(a) Prior to receiving a license, each family child care home operator shall:

(1) Complete and keep on file a health questionnaire ~~which that~~ attests to the operator's physical and emotional ability to care for children. The Division may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the operator's health may adversely affect the care of the children based upon observations and complaints made to the Division.

(2) Obtain written proof that he or she is free of active tuberculosis. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for a license.

(3) ~~Successfully complete. Complete~~ a basic ~~first aid~~ First Aid course appropriate for the ages of children in care within 12 months prior to applying for a license. Successful completion shall be evidenced by a certificate or card from an approved training organization. First Aid training shall be renewed on or before expiration of the certification. Verification of completion of this course from an approved training organization shall be maintained in the operator's file. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp) that shall address principles for responding to emergencies, and techniques for handling common childhood injuries, accidents and illnesses such as choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(4) ~~Successfully complete within 12 months prior to applying for a license~~ a course by the American Heart Association or the American Red Cross or other organizations approved by the Division in cardiopulmonary resuscitation (CPR) appropriate for the ages of children in care. care within 12 months prior to applying for a license. Other organizations shall be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. ~~Successfully completed~~ "Successfully completed" is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. Documentation of successful completion of the course from an approved training organization ~~the American Heart Association, the American Red Cross, or other organization approved by the Division~~ shall be on file in the home. The Division shall post a list of approved training organizations on its website at

[http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp).

- (5) Complete a pre-licensing orientation that will be scheduled by a representative of the Division upon receipt of the application. Training required pursuant to this Rule shall not be counted toward annual on-going training requirements. Training topics for orientation shall include:

- (A) recognizing, responding to, and reporting child abuse, neglect, or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301;
- (B) review of the home's operational policies, including the written plan of care, safe sleep policy, and the Emergency Preparedness and Response Plan;
- (C) adequate supervision of children in accordance with Rule .1718(a) of this Section;
- (D) information regarding prevention of shaken baby syndrome and abusive head trauma;
- (E) prevention and control of infectious diseases, including immunization;
- (F) first hand observation of the home's daily operations;
- (G) instruction regarding assigned duties;
- (H) instruction in the maintenance of a safe and healthy environment;
- (I) instruction in the administration of medication to children in accordance with Rule .1720(c) of this Section;
- (J) review of the child care licensing law and rules set forth in G.S. 110, Article 7 and this Chapter;
- (K) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource;
- (L) an explanation of the operator's obligation to cooperate with representatives of State and local government agencies during visits and investigations; and
- (M) prevention of and response to emergencies due to food and allergic reactions. Documentation of the pre-licensing orientation shall be provided by the Division and kept on file in the home.

- (6) Complete ITS-SIDS training if planning to be licensed to care for infants ages 12 months and younger.

(b) After receiving a license, an operator shall:

- (1) Update the health questionnaire ~~referenced set forth in Paragraph (a) Subparagraph (a)(1) of~~

this Rule annually. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis.

- (2) Complete a ~~first aid~~ First Aid course as ~~referenced set forth in Paragraph (a) Subparagraph (a)(3) of this Rule.~~ First aid/Aid training shall be renewed on or before expiration of the ~~certification, certification or~~ certification, certification or every three years, whichever is less.

- (3) Successfully complete a CPR course as ~~referenced set forth in Paragraph (a) Subparagraph (a)(4) of this Rule.~~ CPR training shall be renewed on or before the expiration of the ~~certification, certification, or every two years, whichever is less.~~

- (4) If licensed to care for infants ages 12 months and younger, complete ITS-SIDS training ~~within four months of receiving the license, and complete it again~~ every three years from the completion of previous ITS-SIDS training. Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet the annual in-service training requirement in Paragraph (b)(5) of this Rule.

- (5) Complete 12 clock hours of annual in-service training in the topic areas required by G.S. 110-91(11), except that persons with at least 10 years work experience as a caregiver in a child care arrangement regulated by the Division of Child Development and Early Education shall complete eight clock hours of annual in-service training. Only training ~~which that~~ has been approved by the Division as referenced in Rule .0708 of this Chapter shall count toward the required hours of annual in-service training. The operator shall maintain a record of annual in-service training activities in which he or she has participated. The record shall include the subject matter, the topic area in G.S. 110-91(11) covered, the name of the training provider or organization, the date training was provided and the number of hours of training completed. First aid/Aid training may be counted no more than once every three years. Coursework applicable to job responsibilities taken at a regionally accredited college or university may be counted toward ongoing training requirements. The operator shall maintain a record of training activities, including copies of training certificates or official documentation provided by the trainer. That record shall include the subject matter, topic area, training provider, date provided, hours, and name of staff who completed the training. This documentation shall be on file.

- (6) Within one year of the effective date of the license, complete the Emergency Preparedness and Response in Child Care ~~training. Training.~~

For the purposes of this Rule, the Emergency Preparedness and Response in Child Care is a training approved by the Division on creating an Emergency Preparedness and Response Plan and practicing, responding to, and recovering from emergencies in child care facilities. Existing operators have two years as of the effective date of this Rule to complete the Emergency Preparedness and Response in Child Care training. Documentation of completion of the training shall be maintained in the operator's personnel file.

- (7) Upon completion of the Emergency Preparedness and Response in Child Care ~~training~~, Training, develop the Emergency Preparedness and Response Plan. The Emergency Preparedness and Response Plan means a written plan that addresses how a child care facility will respond to both natural and man-made disasters, such as fire, tornado, flood, power failures, chemical spills, bomb threats, earthquakes, blizzards, nuclear disaster, or a dangerous person in the vicinity, to ensure the safety and protection of the ~~children~~ children, and additional caregivers. This Plan must be on a template provided by the Division of Emergency Management and is available at <https://rmp.nc.gov/portal/#>, completed within four months of completion of the Emergency Preparedness and Response in Child Care ~~training~~, Training, and available for ~~review~~ review by the Division. The Plan shall include the following:

- (A) written procedures for accounting for all in attendance, including the location of the children, staff, volunteer and visitor attendance lists and the name of the person(s) responsible for bringing the lists in the event of an emergency;
- (B) a description for how and when children shall be transported;
- (C) methods for communicating with parents and emergency personnel or law enforcement;
- (D) a description of how children's nutritional and health needs will be met;
- (E) the relocation and reunification process;
- (F) emergency telephone numbers;
- (G) evacuation diagrams showing how the operator, family members, children and any other individuals who may be present will evacuate during an emergency;
- (H) the date of the last revision of the plan;

- (I) specific considerations for non-mobile children and children with special ~~needs~~ needs, if applicable; and
- (J) the location of the Ready to Go File. A ~~Ready to Go File~~ "Ready to Go File" means a collection of information on children, additional ~~caregivers~~ caregivers, and the facility, to utilize, if an evacuation occurs. The file shall include, ~~but is not limited to~~, a copy of the Emergency Preparedness and Response Plan, contact information for individuals to pick-up children, each child's ~~Application for Child Care~~ application for child care, medication authorizations and instructions, any action plans for children with special health care needs, a list of any known food allergies of children and additional ~~caregiver~~ caregivers, ~~additional caregiver~~ additional caregivers' contact information, Incident Report forms, an area map, and emergency telephone numbers.

- (8) Review the Emergency Preparedness and Response Plan annually or when information in the plan changes, to ensure all information is current.
- (9) Review the Family Child Care Home's Emergency Preparedness and Response Plan with additional caregivers during orientation and on an annual ~~basis~~ basis; and
- (10) The operator shall complete "Recognizing and Responding to Suspicions of Child Maltreatment" training within two months of licensure and every three years thereafter. Completion of "Recognizing and Responding to Suspicions of Child Maltreatment" training shall be included once every three years in the number of hours needed to meet ongoing training requirements in Subparagraph (b)(5) of this Rule. "Recognizing and Responding to Suspicions of Child Maltreatment" training is available at <https://www.preventchildabusenc.org/>.

*History Note: Authority G.S. 110-88; 110-91; 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2015; July 1, 2008; May 1, 2004; July 1, 1998; November 1, 1989; January 1, 1987; Temporary Amendment Eff. September 23, 2016.*

#### **10A NCAC 09 .1719 REQUIREMENTS FOR A SAFE INDOOR/OUTDOOR ENVIRONMENT**

(a) The operator of a family child care home shall provide a physically maintain a safe and healthy indoor and outdoor environment that meets the developmental needs of children in

care, including but not limited to the following: ~~for the children in care. In addition, the operator shall:~~

- (1) keep all areas used by the children, both indoors and outdoors, clean and orderly and free of items which that are potentially hazardous to children. Potentially hazardous items includes power tools, nails, chemicals, propane stoves, lawn mowers, and gasoline or kerosene, whether or not intended for use by children, shall be stored in locked areas, removed from the premises, or otherwise inaccessible to children. This includes the removal of items that a child can swallow. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment;
- (2) all corrosive agents, pesticides, bleaches, detergents, cleansers, polishes, any product that is under pressure in an aerosol dispenser, and any substance that may be hazardous to a child if ingested, inhaled, or handled shall be kept in its original container or in another labeled container, used according to the manufacturer's instructions, and stored in a locked area when not in use. Locked areas shall include those that are unlocked with a combination, electronic, or magnetic device, key, or equivalent locking device. Unlocking devices shall be kept out of the reach of a child and shall not be stored in the lock. Toxic substances shall be stored below or separate from medications and food. Any product not listed in this Paragraph of this Rule, that is labeled "keep out of reach of children" without any other warnings shall be kept inaccessible to children when not in use, but is not required to be kept in locked storage. The product shall be considered inaccessible to children when stored on a shelf or in an unlocked cabinet that is mounted a minimum vertical distance of five feet above the finished floor;
- (3) ensure potential bio-contaminants are stored in locked areas, or removed from the premises or otherwise inaccessible to children. For purposes of this Rule, a "bio-contaminant" includes bodily fluids, soiled diapers and wipes, and medical waste such as syringes;
- ~~(2)(4)~~ safely store equipment and supplies such as lawnmowers, lawn mowers, power tools, propane stoves, gasoline, kerosene, or nails, nails so they are inaccessible to children;
- ~~(3)(5)~~ ensure that all stationary outdoor equipment is firmly anchored and is not installed over concrete or asphalt. Footings which that anchor the equipment shall not be exposed;
- ~~(4)(6)~~ securely mount electric fans out of the reach of children or have a mesh guard on each fan;
- ~~(5)(7)~~ cover all electrical outlets not in use and remove old, cracked-cracked, or frayed cords in occupied outlets;

- ~~(6)(8)~~ ensure that, for appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor ~~the any~~ cord, ~~if applicable,~~ is accessible to preschool children;
- ~~(7)(9)~~ have solid and safe indoor and outdoor stairs and steps if these are used by the children. Indoor and outdoor stairs Stairs with more than two or more steps which that are used by the children shall be railed. Indoor stairs with more than two steps shall be made inaccessible to children in care who are two years old or younger; and
- ~~(8)~~ maintain any swimming pools or wading pools on the premises in a manner that will safeguard the lives and health of the children. All swimming or wading pools used by children in care shall meet the "Rules Governing Public Swimming Pools," in accordance with 15A NCAC 18A .2500 which are hereby incorporated by reference including subsequent amendments. A copy of these Rules is on file at the Division at the address given in Rule .0102 of this Chapter or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 26799 1630;
- ~~(9)~~ enclose any in-ground swimming pools by a fence at least four feet high to prevent chance access by children. The swimming pool shall be separate from the play area. Access to the water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children; and
- ~~(10)~~ safely store all combustible materials that may create a fire hazard.

(b) Prior to enrollment of children in a family child care home, and before new animals that will be in the home come into the family child care home, a parent of each child must sign a form acknowledging the type of animal and where the animal will be during operating hours. This documentation shall be maintained in each child's file.

*History Note: Authority G.S. 110-85; 110-88; 110-91(3),(4),(5),(6); Eff. July 1, 1998; Amended Eff. May 1, 2012; April 1, 2001; Temporary Amendment Eff. September 23, 2016.*

#### **10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS**

- (a) The operator shall maintain the following health records for each enrolled child, including his or her own preschool child(ren):
- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
  - (2) a copy of the child's immunization record;
  - (3) a health and emergency information form an application for enrollment that includes

information set forth in this Subparagraph of this Rule provided by the Division that is completed and signed by a child's ~~parent~~ parent, as defined in 10A NCAC 09 .0102. A copy of the form ~~can~~ may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/DCD-0377.pdf](http://ncchildcare.nc.gov/pdf_forms/DCD-0377.pdf). The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:

- ~~(A) the child's name, address, and date of birth;~~
- ~~(B) the names of individuals to whom the child may be released;~~
- ~~(C) the general status of the child's health;~~
- ~~(D) any allergies or restrictions on the child's participation in activities with instructions from the child's parent or physician;~~
- ~~(E) the names and phone numbers of persons to be contacted in an emergency situation;~~
- ~~(F) the name and phone number of the child's physician and preferred hospital;~~
- ~~(G) authorization for the operator to seek emergency medical care in the parent's absence; and~~
- (A) emergency medical information as set forth in Rule .1720(c) of this Section;
- (B) the child's full name and the name the child is to be called;
- (C) the child's date of birth;
- (D) any allergies and the symptoms and type of response required for allergic reactions;
- (E) any health care needs or concerns, symptoms of and the type of response required for these health care needs or concerns;
- (F) a completed medical action plan shall be attached to the application for children with health care needs such as allergies, asthma, or other chronic conditions that require specialized health services. The medical action plan shall be completed by the child's parent or a health care professional and include the following information:
  - (i) a list of the child's diagnosis or diagnoses including dietary, environmental, and activity considerations that are applicable;
  - (ii) contact information for the health care professional(s);

- (iii) medications to be administered on a scheduled basis; and
- (iv) medications to be administered on an emergency basis with

The medical action plan shall be updated on an annual basis. Sample medical action plans may be found on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp).

- (G) particular fears or unique behavior characteristics that the child has;
- (H) the names of individuals to whom the operator may release the child as authorized by the person who signs the application;
- (I) the names and phone numbers of persons to be contacted in an emergency situation;
- (J) the name and phone number of the child's physician; and
- (K) authorization for the operator to seek emergency medical care in the parent's absence.

(4) The operator shall:

- (A) only release a child only to an individual listed on the form;
- (B) have the information required by Parts (a)(3)(A) through (J) of this Rule available and accessible to additional caregivers and substitute providers during the time the child is in care; and
- (C) use the information provided on the form to ensure that each individual child's needs are met during the time the child is in care; and

~~(4)(5)~~ when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.

(b) The operator shall complete and maintain other records that include:

- (1) documentation of the operator's Emergency Preparedness and Response Plan on a template ~~which is provided by the Division of Emergency Management~~ at <http://rmp.nc.gov/portal/#>;
- (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
- (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health ~~department,~~ department as a result of an incident occurring

while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. The form shall contain the following information:

- (A) facility identifying information;
- (B) date and time of the incident;
- (C) witness to the incident;
- (D) time the parent is notified of the incident and by who;
- (E) Piece of equipment involved;
- (F) Cause of injury;
- (G) Type of injury;
- (H) Body part injured;
- (I) Where the child received medical treatment;
- (J) Description of how and where the incident occurred and first aid received;
- (K) Steps taken to prevent reoccurrence;
- (L) Signature of staff member and date form completed; and
- (M) Signature of parent and date.

A copy of the form can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/DCDEE-0058.pdf](http://ncchildcare.nc.gov/pdf_forms/DCDEE-0058.pdf). A copy shall be mailed to the Division within seven calendar days after the incident occurs;

- (4) an incident log ~~which that~~ is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by the Division. This log shall be completed on a form supplied by the Division. A copy of the form can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/incident\\_log\\_i.pdf](http://ncchildcare.nc.gov/pdf_forms/incident_log_i.pdf);

- (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by the Division. The form shall include the following information:

- (A) Name of facility, Time and date the form was completed;
- (B) Signature of individual completing form;
- (C) General inspection items;
- (D) Surfacing;
- (E) General hazard items; and
- (F) Deterioration of equipment

For items on the checklist the operator has to check if pass or fail, if fail identify the problem and solution. A copy of the form can be found of the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/fcch\\_outdoor\\_inspection\\_checklist.pdf](http://ncchildcare.nc.gov/pdf_forms/fcch_outdoor_inspection_checklist.pdf);

- (6) ~~Accurate~~ daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child; and

- (7) documentation of lockdown or shelter-in-place drills giving the date each drill is held, the time of day, the length of time taken to get into designated locations and the signature of the person who conducted the drill.

(c) Written records shall be maintained as follows:

- (1) All children's records as required in Section .1700 of this Chapter, except medication permission slips as required in Rule .1720(c)(13) of this Section, must be kept on file one year from the date the child is no longer enrolled.

- (2) Additional caregiver records as required in Section .1700 of this Chapter shall be maintained on file one year from the employee's last date of employment.

- (3) Current program records as required in this Chapter shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:

- (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(7)
Infant Feeding Schedule	.1706(f)
SIDS Sleep Chart/Visual Check	.1724(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721(b)(6)
Emergency Numbers	.1720(a)(8)
Emergency Preparedness and Response Plan	.1721(b)(1)
Field Trip/Transportation Permission	.1723(1)
Fire Drill Log	.1721(b)(2)
Lockdown or Shelter-in-Place Drill Log	.1721(b)(7)
Incident Log	.1721(b)(4)
Playground Inspection	.1721(b)(5)

Pet Vaccinations	.1720(d)(10)
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- (4) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1720(d)(1), ~~.1719(7), .1730(j),~~ and .1702(d) of this Section shall remain on file at the family child care home for as long as the license remains valid.
- (5) Records may be maintained in a paper format or ~~electronically, electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.~~
- (6) All records required in this Chapter shall be available for review by the Division.

*History Note: Authority G.S. 110-88; 110-91(1),(9); Eff. July 1, 1998;*  
*Amended Eff. July 1, 2015; July 1, 2010; July 1, 2008; April 1, 2003; April 1, 2001;*  
*Temporary Amendment Eff. September 23, 2016.*

**10A NCAC 09 .1726 PREVENTION OF SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA**

(a) The operator of a family child care home licensed to care for children up to five years of age shall develop and adopt policies to assist staff in preventing shaken baby syndrome and abusive head trauma. For purposes of this Rule, "staff" includes the operator, additional caregivers, substitute providers, and uncompensated providers. The policy shall include:

- (1) How to recognize, respond to, and report the signs and symptoms of shaken baby syndrome and abusive head trauma; trauma. Signs and symptoms include: irritability, difficulty staying awake, difficulty breathing, inability to lift the head, seizures, lack of appetite, vomiting, and bruises;
- (2) Strategies to assist staff in coping with a crying, fussing, or distraught child;
- (3) Strategies to ensure staff members understand how to care for infants;
- (4) Strategies to ensure staff understand the brain development of children up to five years of age;
- (5) A list of prohibited behaviors that staff shall follow in order to care for children in a developmentally appropriate manner. Prohibited behaviors shall include, but not be limited to, shaking a child, tossing a child into the air or into a crib, chair, or care seat, and pushing a child into walls, doors, and furniture; and
- (6) Resources to assist staff and families in preventing shaken baby syndrome and abusive head trauma.

(b) A copy of the policy shall be given and explained to the parents of children up to five years of age on or before the first day the child receives care at the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain the following:

- (1) The child's name;

- (2) The date the child first attended the home;
- (3) The date the operator's policy was given and explained to the parent;
- (4) The parent's name;
- (5) The parent's signature; and
- (6) The date the parent signed the acknowledgment.

The operator shall obtain the parent's signature and the acknowledgement shall be kept in the child's file.

(c) If an operator changes the policy at any time, the operator shall give written notice of the change to the child's parent 14 days prior to the implementation of the new policy and the parent shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. The center shall obtain the parent's signature and this statement shall be kept in the child's file.

(d) The operator shall review the policy with staff prior to the individual providing care to children. The acknowledgement of this review shall contain the following:

- (1) The individual's name;
- (2) The date the operator's policy was given and explained to the individual;
- (3) The individual's signature; and
- (4) The date the individual signed the acknowledgment.

The operator shall retain the acknowledgement in the ~~individual's~~ staff member's file.

(e) If an operator changes the policy at any time, the operator shall review the revised policy with staff 14 days prior to the implementation of the new policy. The individual shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the staff member's file.

*History Note: Authority G.S. 143B-168.3;*  
*Temporary Adoption Eff. September 23, 2016.*

**10A NCAC 09 .1730 ACTIVITIES INVOLVING WATER**

(a) The requirements in this Rule apply to "aquatic activities," which are defined as activities that take place in a body of water such as swimming, swimming instruction, wading, and visits to water parks. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.

(b) Aquatic activities involving the following are prohibited:

- (1) hot tubs;
- (2) spas;
- (3) saunas or steam rooms;
- (4) portable wading pools; and
- (5) natural bodies of water and other unfiltered, nondisinfected containments of water.

(c) When children enrolled in a family child care home participate in aquatic activities, there shall be at least one person who has a life guard training certificate issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activity. Verification of the operator's completion of this course from an approved training organization shall be

maintained in their personnel file in the family child care home. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp).

(d) Children under the age of three shall not participate in aquatic activities except to the extent necessary to implement any child's Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).

(e) The family child care home operator shall be responsible for adequately supervising the aquatic activity for the duration of the activity. "Adequate supervision" means that the operator shall be able to hear, see, and respond to the children whether in or out of the water.

(f) Prior to children participating in aquatic activities, the operator shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision, including restroom or changing room use;
- (3) how discipline will be handled during aquatic activities;
- (4) the operator's specific field trip and transportation policies; and
- (5) that children shall be directed to exit the water during an emergency.

(g) Parents must provide written permission for participation in aquatic activities. The written permission shall include a statement that parents are aware of the operator's aquatic policies specified in Paragraph (f) of this Rule. The operator shall maintain copies of written parental permission in each child's file.

(h) Any outdoor swimming pool located on the family child care home premises shall be enclosed by a fence that is at least four feet high, separated from the remaining outdoor play area by that fence, and locked and inaccessible to children when not in use.

(i) Swimming pool safety rules shall be posted and visible to children and staff for any swimming pool located on the child care facility premises. These rules shall state:

- (1) the location of a first-aid kit;
- (2) that only water toys are permitted;
- (3) that children are not allowed to run or push one another;
- (4) that swimming is allowed only when the operator is present; and
- (5) that glass objects are not allowed.

(j) All swimming pools used by children in care shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules can be found at <http://ehs.ncpublichealth.com/docs/rules/294306-9-2500.pdf> and is available at no charge.

(k) Educational activities, such as observing tadpoles, exploring mud, or learning about rocks and vegetation are permitted around bodies of water. However, if children will be in the water for any part of the activity, Paragraphs (a) through (g) of this Rule shall apply.

(l) Boating, rafting, and canoeing activities are permitted. Prior to participating in recreational activities conducted on the water, children shall wear an age or size appropriate personal flotation device approved by the United States Coast Guard. This personal flotation device shall be worn for the duration of the activity.

*History Note: Authority G.S. 110-88; 110-91(1),(3),(6); 143B-168.3;*

*Temporary Adoption Eff. September 23, 2016.*

## **10A NCAC 09 .1731      ADDITIONAL HEALTH AND SAFETY TRAINING REQUIREMENTS**

(a) Child care operators, additional caregivers, and substitute providers shall complete health and safety training offered by the Division no later than June 30, 2017.

(b) The training shall include the following topic areas:

- (1) Prevention and control of infectious diseases, including immunization;
- (2) Administration of medication, ~~consistent~~ with standards for parental consent;
- (3) Prevention of and response to emergencies due to food and allergic reactions;
- (4) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (5) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;
- (6) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (7) Precautions in transporting children if applicable;
- (8) Prevention of shaken baby syndrome and abusive head trauma;
- (9) CPR and First Aid training as required in Rule .1705 of this Section. Verification of the operator's completion of this course from an approved training organization shall be maintained in their personnel file in the family child care home. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp);
- (10) "Recognizing and Responding to Suspicions of Child Maltreatment" as required in Rule .1705(b)(10) of this Section; and
- (11) Prevention of sudden infant death syndrome and use of safe sleeping practices.

(c) Training hours accrued for the completion of this requirement shall count toward in-service training. However, child care operators, additional caregivers, and substitute providers must complete the health and safety training even if the number of hours accrued exceeds required in-service training, as specified in Rule .1705(b)(5) of this Section.

*History Note: Authority G.S. 110-88; 110-91(11); 143B-168.3;*

*Temporary Adoption Eff. September 23, 2016.*



*This Section contains information for the meeting of the Rules Review Commission September 15, 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)  
Paul Powell  
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**

October 20, 2016      November 17, 2016  
December 15, 2016      January 19, 2017

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**RULES REVIEW COMMISSION MEETING  
MINUTES**

**September 15, 2016**

The Rules Review Commission met on Thursday, September 15, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, Paul Powell, and Stephanie Simpson.

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

The meeting was called to order at 10:01 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 August 18, 2016 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS****Environmental Management Commission**

15A NCAC 02H .1019, .1042, .1043, .1044, .1045, .1050, .1051, .1052, .1053, .1054, .1055, .1056, .1059, .1060 – The Commission objected to the rewritten rules for lack of statutory authority. Specifically, the Commission found that the term “licensed professional” as defined in 15A NCAC 02H .1050(14) is outside the authority of the agency. The Commission found that the agency lacks the statutory authority to set requirements of who can design stormwater systems, with the exception of fast-track permitting rules authorized under G.S. 143-215.7B.

Jennie W. Hauser, with the Attorney General's Office representing the agency, addressed the Commission.

Annette Lucas, with the Department of Environmental Quality, addressed the Commission.

Craig Bromby, General Counsel with the Department of Environmental Quality, addressed the Commission.

**Board of Barber Examiners**

21 NCAC 06B .0105, .0503, .0505; 06C .0202, .0203; 06F .0116; 06G .0106; 06I .0101, .0105; 06J .0101; 06K .0104; 06L .0118, .0119; 06N .0103, .0104, .0106, .0108; 06Q .0101, .0103, and .0104 were unanimously approved.

21 NCAC 06O .0120 was withdrawn by the agency.

**LOG OF FILINGS (PERMANENT RULES)**

**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 the rules because the Medical Care Commission is a client.

**HHS - Division of Health Service Regulation**

All rules were unanimously approved.

**Commission for Public Health**

10A NCAC 41A .0101 was unanimously approved.

**Criminal Justice Education and Training Standards Commission**

All rules were unanimously approved with the following exception:

The Commission objected to 12 NCAC 09B .0203 because the agency failed to comply with the Administrative Procedure Act, as it adopted the Rule before the close of the comment period.

**Wildlife Resources Commission**

15A NCAC 10F .0366 was unanimously approved.

**Department of State Treasurer**

20 NCAC 01A .0101 was unanimously approved.

**Board of Chiropractic Examiners**

21 NCAC 10 .0503 was unanimously approved.

**Veterinary Medical Board**

21 NCAC 66 .0105 was unanimously approved.

**Office of Administrative Hearings**

All rules were unanimously approved contingent upon receiving technical changes to add "non-Medicaid cases" to Page 1 line 20 of Rule 26 NCAC 03 .0502. The technical changes were received following the meeting.

Commissioner Currin was not present and did not participate in any discussion or vote concerning the rules or any other matters after this point in the meeting.

**LOG OF RULES (TEMPORARY RULES)**

**Child Care Commission**

All rules were unanimously approved.

The agency requested a waiver pursuant to G.S. 150B-21.1(a2) waiving the 210-day limitation found in G.S. 150B-21.1(a1). The waiver request was unanimously approved.

Alexi Gruber with the Attorney General's Office representing the agency, addressed the Commission.

Pamela Shue with the agency, addressed the Commission.

**EXISTING RULES REVIEW**

**Department of Justice**

- 12 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.
- 12 NCAC 02 - The Commission unanimously approved the report as submitted by the agency.
- 12 NCAC 03 - The Commission unanimously approved the report as submitted by the agency.
- 12 NCAC 06 - The Commission unanimously approved the report as submitted by the agency.

**Department of Public Safety**

- 14B NCAC 18 - The Commission unanimously approved the report as submitted by the agency.

**Board of Dietetics/Nutrition**

- 21 NCAC 17 - The Commission unanimously approved the report as submitted by the agency.

**Board of Examiners for Speech and Language Pathologists and Audiologists**

- 21 NCAC 64 - The Commission unanimously approved the report as submitted by the agency.

**Office of State Human Resources**

- 25 NCAC 01E - The Commission unanimously approved the report as submitted by the agency.
- 25 NCAC 01K – The Commission unanimously approved the report as submitted by the agency.
- 25 NCAC 01L – The Commission unanimously approved the report as submitted by the agency.
- 25 NCAC 01M – The Commission unanimously approved the report as submitted by the agency.
- 25 NCAC 01N - The Commission unanimously approved the report as submitted by the agency.

**Department of Natural and Cultural Resources**

- 07 NCAC 11 – The agency requested for 07 NCAC 11 to be removed from the periodic review as set forth in 26 NCAC 05 .0211 because the agency is exempt from rulemaking under G.S. 150B.

The Commission unanimously approved the request and amended 26 NCAC 05 .0211.

**COMMISSION BUSINESS**

The meeting adjourned at 11:42 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 20<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

**September 15, 2016**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Jennie Hauser	AG/EMC
Dennis Seavers	BBE
Nadine Pfeiffer	DHSR
Carey Gault	DHSR
Melissa Triple	DOJ
Charmineque Branson	CJETS
Rich Szabo	CSSPS
Martha Frisone	DHHS, DHSR, HPCUN
Bethany Burgum	DOJ
Angel Green	NC SBI
Ted Smoller	NCUMB
DM BAYLOR	INSIDER
Alexi Gruber	DOJ
Lorie Pugh	DCDEE
Pamela Shae	DCDEE
Dean Ann	DCDEE
Tasha O. Green	DCDEE
Ashley Snyder	DNCR
Patrice Alexander	DST
Charla Burrill	NCBPN
Wahneema Lubiano/Kalkas	NCBOESLPA
Sandra Capps	" "

**31:08**

***OCTOBER 17, 2016***

**LIST OF APPROVED PERMANENT RULES**  
**September 15, 2016 Meeting**

**MEDICAL CARE COMMISSION**

<u>Required Spaces</u>	10A NCAC 13D .3201
<u>Administrative Penalty Determination Process</u>	10A NCAC 13F .0215
<u>Administrative Penalty Determination Process</u>	10A NCAC 13G .0216

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

<u>State Medical Facilities Plan</u>	10A NCAC 14C .0103
<u>Letter of Intent</u>	10A NCAC 14C .0201
<u>Petition for a Hearing</u>	10A NCAC 14C .0401
<u>Contested Case Hearings</u>	10A NCAC 14C .0403
<u>Definitions</u>	10A NCAC 14C .3201
<u>Performance Standards</u>	10A NCAC 14C .3203

**PUBLIC HEALTH, COMMISSION FOR**

<u>Reportable Diseases and Conditions</u>	10A NCAC 41A .0101
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**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Time Requirement for Completion of Training</u>	12 NCAC 09B .0401
<u>Evaluation for Training Waiver</u>	12 NCAC 09B .0403
<u>Minimum Training Specifications: Annual In-Service Training</u>	12 NCAC 09E .0105

**WILDLIFE RESOURCES COMMISSION**

<u>Macon County</u>	15A NCAC 10F .0366
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**STATE TREASURER, DEPARTMENT OF**

<u>General Information</u>	20 NCAC 01A .0101
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**BARBER EXAMINERS, BOARD OF**

<u>Granting or Denying Petitions</u>	21 NCAC 06B .0105
<u>Refusal to Issue Declaratory Ruling</u>	21 NCAC 06B .0503
<u>Procedure</u>	21 NCAC 06B .0505
<u>Informal Resolution Encouraged</u>	21 NCAC 06C .0202
<u>Request After Informal Efforts</u>	21 NCAC 06C .0203
<u>Students with Criminal Records</u>	21 NCAC 06F .0116
<u>Instructor Application</u>	21 NCAC 06G .0106
<u>Credit For Out-of-State Training</u>	21 NCAC 06I .0101
<u>Apprentice Barber</u>	21 NCAC 06I .0105
<u>Registered Apprentice</u>	21 NCAC 06J .0101
<u>Out-of-State Applicants</u>	21 NCAC 06K .0104
<u>Sanitary Ratings and Posting of Ratings</u>	21 NCAC 06L .0118
<u>Systems of Grading Barber Shops</u>	21 NCAC 06L .0119

<u>Form Bar-2</u>	21	NCAC 06N .0103
<u>Form Bar-3</u>	21	NCAC 06N .0104
<u>Form Bar-5</u>	21	NCAC 06N .0106
<u>Form Bar-7</u>	21	NCAC 06N .0108
<u>Additional Grounds for Denial or Discipline</u>	21	NCAC 06Q .0101
<u>Registered Sex Offenders</u>	21	NCAC 06Q .0103
<u>Effect of Notice of Violation on License or Certificate</u>	21	NCAC 06Q .0104

**CHIROPRACTIC EXAMINERS, BOARD OF**

<u>Determination of Probable Cause</u>	21	NCAC 10 .0503
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**VETERINARY MEDICAL BOARD**

<u>Applicability of Board Rules</u>	21	NCAC 66 .0105
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**ADMINISTRATIVE HEARINGS, OFFICE OF**

<u>Definitions</u>	26	NCAC 03 .0501
<u>General</u>	26	NCAC 03 .0502

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**LIST OF APPROVED TEMPORARY RULES**  
**September 15, 2016 Meeting**

**CHILD CARE COMMISSION**

<u>Safety Requirements</u>	10A	NCAC 09 .0604
<u>Prevention of Shaken Baby Syndrome and Abusive Head Trauma</u>	10A	NCAC 09 .0608
<u>Special Training Requirements</u>	10A	NCAC 09 .0705
<u>Health and Safety Training Requirements</u>	10A	NCAC 09 .0706
<u>In-Service and Orientation Training Requirements</u>	10A	NCAC 09 .0707
<u>Application for Enrollment</u>	10A	NCAC 09 .0801
<u>General Provisions Related to Licensure of Homes</u>	10A	NCAC 09 .1701
<u>Application for a License for a Family Child Care Home</u>	10A	NCAC 09 .1702
<u>Health and Training Requirements for Family Child Care Ho...</u>	10A	NCAC 09 .1705
<u>Requirements for a Safe Indoor/Outdoor Environment</u>	10A	NCAC 09 .1719
<u>Requirements for Records</u>	10A	NCAC 09 .1721
<u>Prevention of Shaken Baby Syndrome and Abusive Head Trauma</u>	10A	NCAC 09 .1726
<u>Activities Involving Water</u>	10A	NCAC 09 .1730
<u>Additional Health and Safety Training Requirements</u>	10A	NCAC 09 .1731

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**RRC DETERMINATION**  
**PERIODIC RULE REVIEW**  
**September 15, 2016**

**Necessary with Substantive Public Interest**

<b>Justice, Department of</b>	<b>Dietetics/Nutrition, Board of</b>	21 NCAC 17 .0107
12 NCAC 02I .0306	21 NCAC 17 .0101	21 NCAC 17 .0109
	21 NCAC 17 .0104	21 NCAC 17 .0303
	21 NCAC 17 .0105	

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
September 15, 2016  
Necessary without Substantive Public Interest**

**Justice, Department of**

12 NCAC 02H .0101  
12 NCAC 02H .0102  
12 NCAC 02H .0103  
12 NCAC 02H .0104  
12 NCAC 02H .0105  
12 NCAC 02H .0106  
12 NCAC 02H .0107  
12 NCAC 02H .0108  
12 NCAC 02H .0109  
12 NCAC 02H .0110  
12 NCAC 02H .0111  
12 NCAC 02H .0112  
12 NCAC 02H .0113  
12 NCAC 02H .0114  
12 NCAC 02H .0115  
12 NCAC 02H .0116  
12 NCAC 02H .0117  
12 NCAC 02H .0118  
12 NCAC 02H .0201  
12 NCAC 02I .0101  
12 NCAC 02I .0102  
12 NCAC 02I .0103  
12 NCAC 02I .0104  
12 NCAC 02I .0202  
12 NCAC 02I .0203  
12 NCAC 02I .0204  
12 NCAC 02I .0205  
12 NCAC 02I .0206  
12 NCAC 02I .0208  
12 NCAC 02I .0210  
12 NCAC 02I .0211  
12 NCAC 02I .0212  
12 NCAC 02I .0213  
12 NCAC 02I .0214  
12 NCAC 02I .0301  
12 NCAC 02I .0304  
12 NCAC 02I .0305  
12 NCAC 02I .0501  
12 NCAC 02J .0101  
12 NCAC 02J .0102  
12 NCAC 02J .0103  
12 NCAC 02J .0104  
12 NCAC 02J .0201  
12 NCAC 02J .0202  
12 NCAC 02J .0203  
12 NCAC 02J .0204  
12 NCAC 02J .0205  
12 NCAC 02J .0206  
12 NCAC 02J .0207  
12 NCAC 02J .0208  
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12 NCAC 02J .0210  
12 NCAC 02J .0211  
12 NCAC 02J .0301  
12 NCAC 02J .0302  
12 NCAC 02J .0303  
12 NCAC 02J .0304

**Justice Academy**

12 NCAC 06A .0102  
12 NCAC 06A .0201  
12 NCAC 06A .0202  
12 NCAC 06A .0302  
12 NCAC 06A .0502  
12 NCAC 06A .0602  
12 NCAC 06A .0603

**Public Safety - Criminal  
Information, Division Of**

14B NCAC 18A .0101  
14B NCAC 18A .0102  
14B NCAC 18A .0103  
14B NCAC 18A .0201  
14B NCAC 18A .0202  
14B NCAC 18A .0203  
14B NCAC 18A .0301  
14B NCAC 18A .0302  
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14B NCAC 18A .0403  
14B NCAC 18B .0101  
14B NCAC 18B .0102  
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14B NCAC 18B .0410

14B NCAC 18B .0501  
14B NCAC 18B .0601  
14B NCAC 18B .0602  
14B NCAC 18B .0603  
14B NCAC 18B .0701  
14B NCAC 18B .0801  
14B NCAC 18C .0101  
14B NCAC 18C .0102  
14B NCAC 18C .0103  
14B NCAC 18C .0201  
14B NCAC 18C .0301

**Dietetics/Nutrition, Board of**

21 NCAC 17 .0103  
21 NCAC 17 .0106  
21 NCAC 17 .0108  
21 NCAC 17 .0110  
21 NCAC 17 .0111  
21 NCAC 17 .0112  
21 NCAC 17 .0113  
21 NCAC 17 .0114  
21 NCAC 17 .0116  
21 NCAC 17 .0117  
21 NCAC 17 .0118  
21 NCAC 17 .0119  
21 NCAC 17 .0120  
21 NCAC 17 .0121  
21 NCAC 17 .0201  
21 NCAC 17 .0202  
21 NCAC 17 .0203  
21 NCAC 17 .0302  
21 NCAC 17 .0304  
21 NCAC 17 .0401  
21 NCAC 17 .0402  
21 NCAC 17 .0403

**Speech and Language  
Pathologists and Audiologists,  
Board of Examiners for**

21 NCAC 64 .0101  
21 NCAC 64 .0102  
21 NCAC 64 .0103  
21 NCAC 64 .0104  
21 NCAC 64 .0105  
21 NCAC 64 .0106  
21 NCAC 64 .0206  
21 NCAC 64 .0207  
21 NCAC 64 .0208  
21 NCAC 64 .0209  
21 NCAC 64 .0210  
21 NCAC 64 .0211  
21 NCAC 64 .0212



21 NCAC 64 .0213	25 NCAC 01E .0216	25 NCAC 01E .1602
21 NCAC 64 .0214	25 NCAC 01E .0301	25 NCAC 01E .1603
21 NCAC 64 .0215	25 NCAC 01E .0302	25 NCAC 01E .1604
21 NCAC 64 .0216	25 NCAC 01E .0303	25 NCAC 01E .1605
21 NCAC 64 .0217	25 NCAC 01E .0304	25 NCAC 01E .1607
21 NCAC 64 .0218	25 NCAC 01E .0305	25 NCAC 01E .1801
21 NCAC 64 .0219	25 NCAC 01E .0308	25 NCAC 01E .1802
21 NCAC 64 .0220	25 NCAC 01E .0309	25 NCAC 01E .1803
21 NCAC 64 .0301	25 NCAC 01E .0311	25 NCAC 01E .1804
21 NCAC 64 .0302	25 NCAC 01E .0312	25 NCAC 01E .1805
21 NCAC 64 .0303	25 NCAC 01E .0314	25 NCAC 01E .1806
21 NCAC 64 .0304	25 NCAC 01E .0315	25 NCAC 01E .1807
21 NCAC 64 .0305	25 NCAC 01E .0317	25 NCAC 01E .1808
21 NCAC 64 .0306	25 NCAC 01E .0704	25 NCAC 01E .1809
21 NCAC 64 .0307	25 NCAC 01E .0705	25 NCAC 01K .0104
21 NCAC 64 .0401	25 NCAC 01E .0707	25 NCAC 01K .0105
21 NCAC 64 .0402	25 NCAC 01E .0802	25 NCAC 01K .0106
21 NCAC 64 .0403	25 NCAC 01E .0804	25 NCAC 01K .0209
21 NCAC 64 .0501	25 NCAC 01E .0805	25 NCAC 01K .0210
21 NCAC 64 .0502	25 NCAC 01E .0809	25 NCAC 01K .0212
21 NCAC 64 .0601	25 NCAC 01E .0817	25 NCAC 01K .0311
21 NCAC 64 .0602	25 NCAC 01E .0818	25 NCAC 01K .0312
21 NCAC 64 .0603	25 NCAC 01E .0820	25 NCAC 01K .0313
21 NCAC 64 .0604	25 NCAC 01E .0821	25 NCAC 01K .0316
21 NCAC 64 .0605	25 NCAC 01E .0901	25 NCAC 01K .0317
21 NCAC 64 .0701	25 NCAC 01E .0902	25 NCAC 01K .0320
21 NCAC 64 .0702	25 NCAC 01E .0903	25 NCAC 01K .0321
21 NCAC 64 .0703	25 NCAC 01E .0904	25 NCAC 01K .0323
21 NCAC 64 .0704	25 NCAC 01E .0905	25 NCAC 01K .0324
21 NCAC 64 .0705	25 NCAC 01E .0907	25 NCAC 01K .0401
21 NCAC 64 .0801	25 NCAC 01E .0908	25 NCAC 01K .0402
21 NCAC 64 .0802	25 NCAC 01E .0909	25 NCAC 01K .0403
21 NCAC 64 .0803	25 NCAC 01E .1001	25 NCAC 01K .0404
21 NCAC 64 .0804	25 NCAC 01E .1002	25 NCAC 01K .0501
21 NCAC 64 .0805	25 NCAC 01E .1004	25 NCAC 01K .0502
21 NCAC 64 .0901	25 NCAC 01E .1005	25 NCAC 01K .0701
21 NCAC 64 .0902	25 NCAC 01E .1006	25 NCAC 01K .0702
21 NCAC 64 .0903	25 NCAC 01E .1009	25 NCAC 01K .0703
21 NCAC 64 .0904	25 NCAC 01E .1010	25 NCAC 01K .0705
21 NCAC 64 .0905	25 NCAC 01E .1011	25 NCAC 01K .0706
21 NCAC 64 .1001	25 NCAC 01E .1101	25 NCAC 01K .0708
21 NCAC 64 .1002	25 NCAC 01E .1102	25 NCAC 01K .0801
21 NCAC 64 .1003	25 NCAC 01E .1103	25 NCAC 01K .0802
21 NCAC 64 .1004	25 NCAC 01E .1104	25 NCAC 01K .0803
21 NCAC 64 .1005	25 NCAC 01E .1105	25 NCAC 01K .0804
	25 NCAC 01E .1110	25 NCAC 01K .0805
	25 NCAC 01E .1111	25 NCAC 01L .0101
	25 NCAC 01E .1302	25 NCAC 01L .0102
	25 NCAC 01E .1303	25 NCAC 01L .0103
	25 NCAC 01E .1304	25 NCAC 01L .0104
	25 NCAC 01E .1305	25 NCAC 01L .0302
	25 NCAC 01E .1306	25 NCAC 01L .0303
	25 NCAC 01E .1401	25 NCAC 01L .0304
	25 NCAC 01E .1402	25 NCAC 01L .0306
	25 NCAC 01E .1404	25 NCAC 01L .0401
	25 NCAC 01E .1406	25 NCAC 01M .0101
	25 NCAC 01E .1407	25 NCAC 01M .0103
	25 NCAC 01E .1412	25 NCAC 01M .0104
	25 NCAC 01E .1601	25 NCAC 01M .0106
<b>Office of State Human Resources</b>		
25 NCAC 01E .0101		
25 NCAC 01E .0103		
25 NCAC 01E .0203		
25 NCAC 01E .0204		
25 NCAC 01E .0205		
25 NCAC 01E .0206		
25 NCAC 01E .0207		
25 NCAC 01E .0208		
25 NCAC 01E .0210		
25 NCAC 01E .0211		
25 NCAC 01E .0212		

25 NCAC 01N .0104  
25 NCAC 01N .0105  
25 NCAC 01N .0106  
25 NCAC 01N .0107  
25 NCAC 01N .0304  
25 NCAC 01N .0305  
25 NCAC 01N .0306  
25 NCAC 01N .0307  
25 NCAC 01N .0401

25 NCAC 01N .0402  
25 NCAC 01N .0403  
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25 NCAC 01N .0407  
25 NCAC 01N .0408  
25 NCAC 01N .0409  
25 NCAC 01N .0410

25 NCAC 01N .0501  
25 NCAC 01N .0502  
25 NCAC 01N .0503  
25 NCAC 01N .0504  
25 NCAC 01N .0601  
25 NCAC 01N .0602  
25 NCAC 01N .0603  
25 NCAC 01N .0604  
25 NCAC 01N .0605

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**RRC DETERMINATION  
PERIODIC RULE REVIEW  
September 15, 2016  
Unnecessary**

**Justice, Department of**

12 NCAC 01 .0106  
12 NCAC 01 .0201  
12 NCAC 01 .0202  
12 NCAC 01 .0203  
12 NCAC 01 .0204  
12 NCAC 01 .0205  
12 NCAC 01 .0206  
12 NCAC 01 .0207  
12 NCAC 01 .0211  
12 NCAC 01 .0213  
12 NCAC 01 .0214  
12 NCAC 01 .0215  
12 NCAC 01 .0216  
12 NCAC 01 .0217  
12 NCAC 01 .0218  
12 NCAC 02A .0201  
12 NCAC 02A .0202  
12 NCAC 02A .0203  
12 NCAC 02A .0401  
12 NCAC 02A .0402  
12 NCAC 02A .0403

**State Bureau of Investigation**

12 NCAC 03B .0101  
12 NCAC 03B .0102  
12 NCAC 03B .0103  
12 NCAC 03B .0104  
12 NCAC 03B .0201  
12 NCAC 03B .0302  
12 NCAC 03B .0401  
12 NCAC 03B .0402  
12 NCAC 03B .0501  
12 NCAC 03B .0502  
12 NCAC 03B .0601  
12 NCAC 03B .0602

**Justice Academy**

12 NCAC 06A .0101  
12 NCAC 06A .0103  
12 NCAC 06A .0403  
12 NCAC 06A .0501  
12 NCAC 06A .0601  
12 NCAC 06A .0801  
12 NCAC 06A .0802

**Speech and Language  
Pathologists and Audiologists,  
Board of Examiners for**

21 NCAC 64 .0107  
21 NCAC 64 .0204  
21 NCAC 64 .0205  
21 NCAC 64 .0503

**Office of State Human  
Resources**

25 NCAC 01E .0709  
25 NCAC 01E .0710  
25 NCAC 01E .1112  
25 NCAC 01K .0314  
25 NCAC 01K .0322  
25 NCAC 01M .0105  
25 NCAC 01N .0202  
25 NCAC 01N .0204  
25 NCAC 01N .0205  
25 NCAC 01N .0206  
25 NCAC 01N .0301  
25 NCAC 01N .0302  
25 NCAC 01N .0303

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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
Stacey Bawtinheimer	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
NC Alcoholic Beverage Control Commission v. Osei Enterprises LLC T/A Osei Food and Beverage	15 ABC 08455	06/02/16	31:05 NCR 426
NC Alcoholic Beverage Control Commission v. Brewers LLC T/A Two Doors Down	16 ABC 0290	06/01/16	
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
NC Alcoholic Beverage Control Commission v. Aaway Inc. T/A Jacks Tap	16 ABC 02702	06/01/16	
NC Alcoholic Beverage Control Commission v. B2 Inc. T/A Cadillac Ranch the Other Side	16 ABC 02703	06/02/16	
NC Alcoholic Beverage Control Commission v. Los Amigos of Shelby Inc. T/A Los Amigos of Shelby	16 ABC 03354	06/21/16	
<b><u>DEPARTMENT OF PUBLIC SAFETY</u></b>			
Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
Otero Lee Ingram v. NC Crime Victims Comp Commission	16 CPS 01656	06/09/16	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	
WP-Beulaville Health Holdings LLC v. DHHS, Division of Health Service Regulation, Adult Care Licensure Section	15 DHR 02422	06/29/16	31:05 NCR 440
Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	
Ashley Cartwright Sr. v. Department of Health and Human Services	15 DHR 08222	06/15/16	
New Hope Adult Care, Frank N. Fisher v. Office of Health and Human Services	15 DHR 08262	06/22/16	
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16	
Jeannie Ann Kine v. Department of Health and Human Services	16 DHR 00795	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01857	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16	
HAL-097-014 Wilkes County Adult Care v. DHHS, Division of Health Service Regulation	16 DHR 02121	07/06/16	

## CONTESTED CASE DECISIONS

Sagia Grocery Inc d/b/a Red Sea Grocery III v. DHHS, Division of Public Health	16 DHR 02701	05/17/16
Susan H. Logan v. DHHS, Division of Medical Assistance	16 DHR 03011	06/02/16
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03014	05/13/16
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03015	05/13/16
Kaitlin Marie Skiba v. DHHS, Division of Health Service Regulation	16 DHR 03101	06/02/16
Monique Brown Miller v. DHHS, Division of Health Service Regulation	16 DHR 03131	06/22/16
HAL-082-018 Clinton Health Holdings LLC, Clinton House v. DHHS, Division of Health Service Regulation	16 DHR 03203	08/04/16
Robin Braswell Ingram v. Nurse Aide Registry	16 DHR 03214	06/10/16
Sholonda Randolph v. NCDHHS	16 DHR 03217	07/13/16
Trina C. Sherrill v. DHHS, Division of Health Service Regulation	16 DHR 03315	06/02/16
Dixon Social Interactive Services Inc. v. Trillium Health Resources	16 DHR 03398	07/07/16
Joanne Marie Cain v. Health Care Personnel Registry	16 DHR 03404	06/02/16
Crandell's Enterprises inc. v. DHHS, Division of Medical Assistance	16 DHR 03408	08/16/16
Darrin L Roach v. Medicaid Estate Recovery Unit	16 DHR 03411	07/22/16
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FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
07/22/2016 9:33 AM

STATE OF NORTH CAROLINA  
COUNTY OF SWAIN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 02027

Robert Walter Clark Petitioner,  v.  N C Criminal Justice Education And Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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This contested case was heard before the undersigned Chief Administrative Law Judge on November 3, 2015 and December 8, 2015 in the Haywood County Courthouse, Waynesville, North Carolina, pursuant to designation under N.C.G.S. § 150B-40(e) and procedurally under Article 3A, Chapter 150B of the North Carolina General Statutes. The record closed with the receipt of the transcript and counsels' submissions of draft proposed decisions.

**APPEARANCES**

Petitioner: David A. Sawyer  
Attorney for Petitioner  
Attorney at Law  
Post Office Box 1927  
Bryson City, North Carolina 08713

Respondent: Matthew L. Boyatt, Assistant Attorney General  
Attorney for Respondent  
Department of Justice  
Law Enforcement Liaison Section  
P.O. Box 629  
Raleigh, N.C. 27602-0629

**WITNESS LIST:**

Charles Ray Robinson  
Tony Sutton  
Brian Edgar Kirkland  
Carolyn Posey  
Robert Walter Clark, Petitioner  
Tina Sheppard

**ISSUE**

Whether Respondent should deny Petitioner's law enforcement officer certification for an indefinite period for failure to comply with the rules listed below in Chapter 10B of Title 12 of The North Carolina Administrative Code:

**RULES AT ISSUE**

12 NCAC 09A .0204(b)(2)  
12 NCAC 09A .0205(c)(2)  
12 NCAC 09B .0101(3)

**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 Chief Administrative Law Judge, by the preponderance of the evidence, makes the following FINDINGS OF FACTS.

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

**FINDINGS OF FACT**

1. Both parties in this contested case are properly before this Administrative Law Judge in that jurisdiction and venue are proper; both parties received notice of hearing; and 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 Respondent"), on February 24, 2015.
2. Respondent is a component of the North Carolina Department of Justice and was created in accordance with Chapter 17C of the North Carolina General Statutes.
3. Respondent has the authority pursuant to Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.
4. Petitioner is currently a resident of the County of Scotland, State of North Carolina. Petitioner previously served as a police officer with the Town of Carthage and a Deputy with the Swain County Sheriff's Office. Petitioner is a graduate of Scotland High School and completed basic law enforcement training at Sand Hills Community College. Petitioner is an applicant for certification as a North Carolina justice officer. (Robert Clark TR. at 38)

5. On February 24, 2015, Respondent mailed a letter to Petitioner, via Certified United States Mail, Return Receipt Requested, stating that Respondent had “found probable cause to believe your certification as a justice officer should be denied.” (Respondent’s Exhibit 1.)

6. Petitioner timely submitted a letter to Respondent (Petitioner’s Exhibit 21) requesting an administrative hearing with respect to the above-referenced Notification of Probable Cause to Deny Justice Officer Certification. This contested case was scheduled for hearing before Chief Administrative Law Judge Julian Mann III on November 3, 2015.

7. Both Petitioner and Respondent appeared on November 3, 2015 for the contested case hearing and presented evidence in support of their respective positions. (TR. at 1 - 290.)

8. A second day of evidence and closing argument was then taken on December 8, 2015. (TR. at 291 - 608.)

9. Petitioner served as a Police Officer with the Town of Carthage. Petitioner first began his employment at this agency on or about August 28, 2012. (Respondent’s Exhibit 5) On October 28, 2012, Petitioner was counseled by Chief of Police B.A. Davis for excessive use of force involving a handcuffed inmate.

10. Petitioner was given the option to resign from the Carthage Police Department (“Carthage PD”) in lieu of termination from that agency. The basis of Petitioner’s separation was that Petitioner engaged in law enforcement action outside of his jurisdiction and also that Petitioner used more force than necessary to effectuate an arrest. (See also Respondent’s Exhibit 5)

#### **“April 5, 2014 Incident”**

11. On April 5, 2014, Petitioner was travelling on Highway 501 North in Carthage, N.C. when he noticed a large group of people gathering at a restaurant parking lot. (Robert Clark, TR. at 410.)

12. Petitioner stopped, exited his vehicle, and began to hear profanity. (Robert Clark, TR. at 410.)

13. Petitioner saw Charles Bryant (hereinafter “assailant”), who appeared impaired. (Robert Clark, TR. at 410.)

14. Petitioner approached assailant and asked if he had any weapons. (Robert Clark, TR. at 410.) Assailant had previously communicated death threats to and/or concerning Petitioner. (Robert Clark, TR. at 412, 422.)

15. Petitioner attempted to grab assailant and, when he did, assailant tried to punch Petitioner in the face. (Robert Clark, TR. at 412.)



16. When assailant attempted to punch Petitioner in the face, Petitioner ducked, avoiding being struck. (Robert Clark, TR. at 411.)

17. Petitioner leaned back and attempted to protect his gun and gun holster. (Robert Clark, TR. at 412.)

18. There were approximately 12 people outside the restaurant, in the parking area. (Robert Clark, TR. at 412.) Petitioner was without backup at the time.

19. Assailant then attempted to avoid arrest and Petitioner advised Moore County Communications that he was in a foot chase. (Robert Clark, TR. at 412.)

20. As they were running, Petitioner observed assailant reaching in his waistband but could not determine what he was reaching for. (Robert Clark, TR. at 413.)

21. Petitioner lost sight of assailant but could hear him yelling back at Petitioner, using profanity and indicating that assailant was going to kill Petitioner. (Robert Clark, TR. at 414.)

22. Petitioner advised Moore County Communications that he had lost sight of assailant. (Robert Clark, TR. at 414.)

23. Petitioner was then joined by Officer John Wesley Coleman at the scene. (Robert Clark, TR. at 414.)

24. Officer Coleman was the senior officer at the scene. Upon his arrival, Petitioner advised Coleman that he lost assailant in the woods and that assailant had a firearm. (Robert Clark, TR. at 415)

26. Officer Coleman instructed Petitioner to go back to the parking lot and try to obtain statements while Coleman attempted to locate assailant. (Robert Clark, TR. at 415.)

27. Petitioner then returned to obtain the statements and, while doing so, he heard Officer Coleman advise that he was in a foot chase with assailant. (Robert Clark, TR. at 416.)

28. Officer Coleman continued to search for assailant. Officer Coleman heard and observed assailant lying in the grass and quickly approached the subject. Assailant then fled on foot again and Officer Coleman called on his radio advising there was another chase on foot. Assailant then began to reach for his leg, which caused Officer Coleman to draw his weapon. Assailant removed his shoe and continued to run. Petitioner was not present during this portion of the foot chase. Officer Coleman re-holstered his weapon and continued to chase assailant. According to Officer Coleman's testimony, assailant then placed his hands in the air and lay face down on the ground. According to Officer Coleman's testimony, it was obvious that assailant was "worn slap out," and assailant was compliant, not resisting, and assailant allowed Officer Coleman to place his right hand behind his back. Officer Coleman had assailant's left hand pinned

with his leg. There were approximately three (3) deputies present watching as Officer Coleman began to handcuff assailant.

29. According to Petitioner's testimony and observation, Officer Coleman had not secured assailant's hands with handcuffs and assailant's left hand was still under him. (Robert Clark, TR. at 418.) Assailant failed at first to withdraw his hand from under his body.

30. Petitioner ran towards the scene, carrying a small plastic Stingray flashlight in his hand. (Robert Clark, TR. at 419.) Officer Coleman observed Petitioner running into the scene "really hot."

31. Petitioner slid into both Officer Coleman and assailant, striking them with his shoe and, further, striking assailant in the head with his hand containing the flashlight. (Robert Clark, TR. at 419.) Petitioner intended to strike assailant at that time, but not in the head. (Robert Clark, TR. at 555.)

32. According to Petitioner's testimony, assailant then released his left arm and Officer Coleman was able to place both hands in handcuffs. (Robert Clark, TR. at 419.)

33. Assailant was searched, and it was determined that he did not have a weapon with him. (Robert Clark, TR. at 419.)

34. Petitioner was concerned that, if assailant fired a weapon, the bullet could harm Petitioner or Officer Coleman. (Robert Clark, TR. at 513)

35. Petitioner believed that assailant was armed with a weapon; that is, a handgun. (Robert Clark, TR. At 432-433) There were several deputies at the scene that perceived no such threat and had no cause to intervene in the arrest.

36. During the time that Officer Coleman was attempting to place assailant in custody, Petitioner believed that he or Officer Coleman were in danger. (Robert Clark, TR. at 432 - 433. Carthage PD Chief Bart Davis, Petitioner's Exhibit 15.)

37. When one side of the handcuffs are free, the handcuff can become a dangerous weapon and the officer could be struck by the loose handcuff if the subject's arm swings free. (Lt. Charles Robinson, TR. at 310 - 311, 313 - 314.)

38. Officers are trained that, if a suspect's arm cannot be secured, the officer should use a Taser, baton or firearm, to secure the suspect's free arm. (Lt. Charles Robinson, TR. at 315.)

39. After the incident, Petitioner was permitted to drive assailant to Moore Regional Hospital where he continued to be threatening and hostile. He was medically cleared by the hospital staff. (Robert Clark, TR. at 430.)

40. Officer Coleman had minimal supervisory experience and was impatient with Petitioner. (Carthage PD Chief Bart Davis, Petitioner's Exhibit 15)

**"Petitioner's Actions Outside His Jurisdiction"**

41. On March 15, 2014, Petitioner was alleged to have engaged in excessive force and in law enforcement functions outside of his jurisdiction and beyond the scope of his legal authority. Petitioner was working in an off-duty capacity for the Whispering Pines Police Department. Petitioner was handing out stickers at a public event in Whispering Pines. Petitioner was armed with his duty belt and dressed in his Carthage PD duty uniform. When Petitioner finished his Whispering Pines assignment, Petitioner drove to his girlfriend's residence located at Lee Branch Road in Whispering Pines. This residence is located approximately 10 miles outside of the city of Carthage.

42. Petitioner was not on duty when he arrived at his girlfriend's residence on March 15, 2014. Petitioner had removed his duty shirt. At that point, Petitioner heard a loud crash outside the residence. Petitioner then observed a vehicle being driven by Ricardo Zaldana (hereinafter "accused") at a high rate of speed and observed the accused hit the retaining wall on an adjoining property. Petitioner called dispatch and gave them his call sign of "364," and Petitioner then advised dispatch of the hit and run. (Robert Clark, TR at 435-437)

43. Petitioner entered his personal vehicle, a white Jeep Patriot, and began to pursue the hit and run vehicle. Petitioner observed the accused run another vehicle off the road and observed the accused's vehicle riding on one rim. (Robert Clark TR. At 438-439) Petitioner observed the accused's vehicle enter the City of Vass. Vass is outside Petitioner's jurisdiction. Petitioner followed the vehicle into the parking lot of a Kwik Stop in Vass and then confronted the accused. Petitioner handcuffed the accused and placed him face down on the ground behind his personal vehicle.

44. Officers Benjamin Haddock and Tim Blake of the Vass Police Department responded to the Kwik Stop incident. Petitioner was not in uniform at the time Haddock and Blake arrived at the Kwik Stop and Petitioner was not operating a police vehicle. Petitioner requested of the accused permission to detain him. (Robert Clark TR at 444) Petitioner was wearing a duty belt and a vest, but had no identification which would indicate he was a law enforcement officer. When they arrived, Haddock observed Petitioner with his weapon drawn and the male subject handcuffed on the ground.

45. Officers Haddock and Blake assisted the accused from the ground. The accused smelled of alcohol. The Vass officers observed that the accused had an object in his mouth, which he was moving around but would not spit out. Officer Haddock then placed his hand on the individual's chest in an attempt to get the accused to spit the object out. At this point, Petitioner placed his hand to the accused's face and throat area and continued to squeeze. (Robert Clark TR at 446-447) A quarter was dislodged from the accused's mouth.

46. The accused was charged with several crimes. (Robert Clark TR at 449) The Vass police officers were required to call EMS. Officer Blake was concerned because of Petitioner's prolonged grasp of the accused. According to Officer Blake's testimony, the accused's voice sounded like he was on helium. The accused received medical clearance as there was no injury. (Robert Clark TR at 451)

47. Petitioner was not within his Carthage jurisdiction when he first engaged the vehicle in Whispering Pines, North Carolina, or when Petitioner effectuated an arrest in Vass, North Carolina.

#### **"Gatorade Incident"**

48. According to the testimony of Chief Davis, officers are not allowed to leave their post or jurisdiction without prior approval from the chain of command. Petitioner left his post and jurisdiction on March 28, 2013, in order to visit his girlfriend's house in Whispering Pines. Petitioner did not obtain prior approval through his chain of command, although according to Petitioner's testimony, he called Sergeant Martin Key with the Moore County Sheriffs' Department and explained he was sick and to monitor his radio. (Robert Clark TR. at 451-454) Petitioner does not dispute that he left his post on March 28, 2013 to travel to his girlfriend's house. Petitioner testified that he was sick and needed Ibuprofen and Gatorade, which he acquired. There were at least two convenience stores open and available to Petitioner where he could have purchased aspirin and a drink. Petitioner was suspended for neglect of duty and abandoning his post. (Respondent's Exhibit 18)

#### **"The Mayor of Carthage"**

49. On January 11, 2014, Petitioner was dispatched and responded to a "shots fired" call in Carthage. At approximately 3:05 a.m., Petitioner arrived at the residence of Anthony Picerno (hereinafter "Resident") located at 507 E Saunders Street. Petitioner observed Resident as belligerent inside the dwelling when he knocked on the door. Resident was swearing at the officers. (Robert Clark TR. at 459) Petitioner observed a pistol sitting on the kitchen counter, and also an expended shotgun shell. (See Respondent's Exhibit 16) (Robert Clark, TR. at 459)

50. Petitioner explained to Resident that he was a police officer. Petitioner was accompanied by another Moore County deputy. Petitioner inquired if Resident had been firing a weapon. Resident was impaired. (Robert Clark, TR. at 459.)

51. Resident informed Petitioner that Petitioner could "go inside the house and look for guns." (Robert Clark, TR. at 459.)

52. Petitioner found a weapon, but Resident "would never admit to shooting the weapon." (Robert Clark, TR. at 459.)

53. According to Petitioner's testimony, Petitioner inquired of Moore County Sheriff's Deputy Cameron if the Resident could be charged under a city ordinance. (Robert Clark, TR. at 460.) Deputy Cameron responded: "Can you testify -- can you put your hand on the Bible and

testify that you saw this man shoot that gun?" Petitioner said, "Well, no, sir." Deputy Cameron replied: "Okay. Well, how can you charge it?" (Robert Clark, TR. at 460.) Resident was not charged. (Robert Clark, TR. at 460.)

54. Petitioner asserted that he had not been trained on whether a person could be charged under a city ordinance. (Robert Clark, TR. at 460.) Petitioner also asserted that he was unclear on how to deal with town ordinances at the time. Petitioner's incident report documented that he explained to the mayor that he could charge Resident with the offense of discharging a firearm within the city. (Respondent's Exhibit #15)

55. Resident asked Petitioner to call the mayor. Petitioner did so. (Robert Clark, TR. at 461.) Petitioner testified: "[I] felt the best and safest thing to do -- he's impaired with guns in the house, [was to] call the mayor and have the mayor come get him or come get the weapons." (Robert Clark, TR. at 462.)

56. The mayor arrived at the scene, and said "he would take care of it. He was going to take him and the gun -- and the weapons." (Robert Clark, TR. at 462.) The mayor thanked Petitioner for calling him "so he could secure the gentleman." (Robert Clark, TR. at 463.)

57. According to Petitioner's testimony, his concern was "about the safety of the individual [and] the community," feeling that the subject was "impaired and there's a weapon inside the residence." (Robert Clark, TR. at 462 - 463.)

58. The mayor had previously called Petitioner on several occasions regarding police matters. (Robert Clark, TR. at 463.)

59. According to the testimony of Corporal Steve Martin of Carthage PD, Petitioner was not authorized to bypass his chain of command in order to contact the mayor regarding a criminal investigation. Petitioner was counseled by Corporal Martin for 1) not seizing evidence of a crime; 2) breaking the chain of command; and 3) failing to charge Resident with the criminal offense of discharging a firearm within the City of Carthage.

#### **"September 13, 2013 Incident Involving A Magistrate"**

60. During his time as an officer with Carthage PD, Petitioner had several encounters with Magistrate Charlie Smoak while on duty. (Robert Clark, TR. at 472) (Sgt. Tina Sheppard (Ret.), TR. at 578)

61. Other officers from Carthage PD and other departments had similar issues from time to time involving this Magistrate. (Robert Clark, TR. at 473, Sgt. Tina Sheppard (Ret.), TR. at 578)

62. On September 16<sup>th</sup>, 2013, Petitioner had a verbal altercation with this Magistrate in his office. (Robert Clark, TR. at 476) (Respondent's Exhibit 17)

63. At issue was the service of certain warrants. (Robert Clark, TR. at 477) (Respondent's Exhibit 17)

64. Petitioner and this Magistrate became engaged in a verbal disagreement regarding the proper respect that Petitioner should demonstrate to the "bench" while in the Magistrate's Office. (Robert Clark, TR. at 478)

65. Petitioner and this Magistrate offered mutual apologies to each other regarding the incident. (Robert Clark, TR. at 481)

66. Petitioner pointed his finger at this Magistrate at least two times.

67. Petitioner conceded that he acted improperly and Petitioner received discipline and counselling as a result of the incident. (Respondent's Exhibit 17)

#### **"Kicking The Windows Out Incident"**

68. On September 3, 2013, Petitioner "stopped [a] subject on a moped for driving while impaired." (Robert Clark, TR. at 465 - 466.) The subject was placed under arrest. (Robert Clark, TR. at 451 - 454.)

69. Prior to stopping the subject, Moore County Communications had received several calls concerning fighting between the subject and his brother. (Robert Clark, TR. at 466.)

70. Petitioner, who was alone at the time, was able to talk the suspect into handcuffs without using force. (Robert Clark, TR. at 466.)

71. Petitioner suspected that the subject was on narcotics and, as a consequence, would have to be taken to the hospital. (Robert Clark, TR. at 466.)

72. The subject was in the back seat of a cage car. (Robert Clark, TR. at 467 - 468.)

73. On route to the hospital, the subject began to kick out the rear window. (Robert Clark, TR. at 468.)

74. Petitioner contacted Moore County Communications with a status report and requested assistance. Petitioner then drove at speeds between 100 to 112 mph in an attempt to quickly meet a Pinehurst police unit. (Robert Clark, TR. at 468.) (Respondent's #19)

75. Petitioner met the Pinehurst unit. Petitioner and Pinehurst PD Lt. McDonald got the subject out of the car. (Robert Clark, TR. at 469.)

76. The subject was breathing hard, sweating profusely, and had bloodshot eyes. (Robert Clark, TR. at 469.)

77. Petitioner and Lt. McDonald placed leg restraints on the subject, got him back in Petitioner's patrol car, and secured him in his seat belt. Subject was then taken to the hospital. (Robert Clark, TR. at 469.)

78. Lt. Mabe reprimanded Petitioner for driving at an excessive speed and said that Petitioner "should have pulled over and handled him." (Robert Clark, TR. at 469 - 470.)

79. On September 21, 2013, Petitioner was again operating his patrol vehicle at speeds exceeding 100 miles per hour for the purpose of making a simple traffic stop. All officers of Carthage PD are provided a copy of the standard operating procedures.

**"Petitioner's Relationship With Chain Of Command"**

80. According to the testimony of Sgt. Martin, there was "noticeable tension" between Petitioner and Corporal John Wessley Coleman of the Carthage Police Department, mainly the fault of Coleman "trying to start trouble" and "spreading rumors." (Sgt. Steven Martin, TR. at 157 - 158.)

81. According to the testimony of Sgt. Martin, there was "tension" between Petitioner and Lt. Robbie Mabe of the Carthage Police Department. (Sgt. Steven Martin, TR. at 162.) According to Petitioner's testimony, Sgt. Martin once told Petitioner: "You know that Lieutenant Mabe is out to get you and he's going to try to get you fired." (Robert Clark, TR. at 482.)

82. Lt. Robbie Mabe "failed Petitioner by not training him the way he should have been trained." (Pinchurst PD Sgt. Tina Sheppard (Ret.), TR. at 577.)

**"Petitioner's Performance as a Narcotics Officer"**

83. Petitioner has done a "phenomenal job" getting dope off the street. (Carthage PD Sgt. Steven Martin, TR. at 153.)

84. Petitioner has a "special ability, particularly ... in the narcotics area. He was very good at that." (Carthage PD Chief Bart Davis, TR. at 245.)

85. Petitioner is a "good young officer" ... "very diligent" ... "works real hard at whatever he does ... "has a passion for narcotics enforcement," that is, he would "catch more drugs than anybody ... I've ever encountered." (Swain County Captain Tony Sutton, TR at 338, 348.)

86. Petitioner "had a natural ability ... working ... narcotics". (Swain County Lt. Charles Robinson, TR at 304.)

87. Petitioner "would make more drug arrests than the Moore County Sheriff's Office narcotics team on a tour of duty. Every tour of duty he was making arrests. (Sgt. Tina Sheppard (Ret.), TR. at 576 - 577.)



88. Petitioner was the recipient of the Robbie Bishop Award, a national award presented by the National Criminal Enforcement Conference, based upon Petitioner's street level narcotics interdiction efforts. (Robert Clark, TR. at 556 - 557.)

**"Petitioner's Moral Character"**

89. Petitioner's assertions of good moral character was supported by Carthage Chief of Police Bart Davis (TR. at 248, Petitioner's Exhibit 15 - Clark was "very polite", "respectful", "honest" and had "good character"), Swain County Sheriff's Office Captain Brian Kirkland (TR. at 365 - "Clark is an outstanding individual"), Swain County Sheriff's Office Captain Tony Sutton (TR. at 340 - "He's a good, honest man."), Swain County Sheriff's Office Lt. Carolyn Posey (TR. at 374 - "sterling character"), Swain County Sheriff's Office Lt. Charles Robinson (TR. at 305, 308 - "character was ... outstanding"), and Sgt. Tina Sheppard, (Ret. - Pinehurst P.D. - TR. at 578 - Everyone liked Officer Clark.)

90. Petitioner received positive recommendations to the North Carolina Criminal Justice Education and Training Standards Bureau from Officer Buck Mimms (Petitioner's Exhibit 2), Detective Chris Strickland, (Petitioner's Exhibit 3), Sergeant Frank Rodriguez, (Petitioner's Exhibit 4), Trooper R.T. Correy (Petitioner's Exhibit 5), Trooper C.L. Pridgen, (Petitioner's Exhibit 6), Detective Captain Michael Scott Waters, (Petitioner's Exhibit 7), K9 Sergeant Chad Shoe, (Petitioner's Exhibit 8), Patrol Officer Joshua L. Gibson, (Petitioner's Exhibit 9), and Sgt Tina Shepherd (Ret.) , (Petitioner's Exhibit 10).

91. Petitioner was "honest to a fault", even to the point of getting himself in trouble with his honesty. (Carthage PD Chief Bart Davis, TR. at 256 - 257.)

92. Petitioner was not charged with any crime based upon any incidents found herein. (Carthage PD Chief Bart A. Davis, TR. at 289.)

93. Petitioner, at the time of the hearing in response to the undersigned's questions, disclosed he was the father of an eight-month old baby. Petitioner is not married to his former girlfriend who is the mother. Neither is Petitioner nor his former girlfriend in a familial relationship. This former girlfriend is the same person whom Petitioner visited, on at least two occasions, as found herein. (Robert Clark, TR. at 541-542)

**Petitioner as a Justice Officer in Swain County;  
Swain County Deputy Sheriff Robert Clark and Field Training**

94. After leaving Carthage PD, Petitioner was employed by the Swain County Sheriff's Office. (Swain County Lt. Charles Robinson, TR. at 305.)

95. Field training is very important to a young, inexperienced police officer. (Cpl. John Coleman, TR. at 37); (Vass PD Officer Timothy Blake, TR. at 112); (Lt. Robbie Mabe, TR. at 195 - 196).



96. There was a problem with Carthage PD providing training for its officers. (Pinehurst PD Sgt. Tina Sheppard (Ret.), TR. at 571 - 572.)

97. The field training program at Carthage PD was insufficient. (Sgt. Tina Sheppard, TR. at 574 - 575.)

98. Petitioner had not been trained well prior to arriving at the Swain County Sheriff's Office. (Swain County Captain Tony Sutton, TR. at 339.) Petitioner had been exposed to obsolete law enforcement practices. (Carthage PD Chief Bart Davis, Petitioner's Exhibit 15.)

99. Petitioner needed mentoring, that is, he needed field training. (Swain County Captain Tony Sutton, TR. at 338.)

100. Petitioner was receptive to field training in Swain County. (Swain County Captain Tony Sutton, TR. at 339.)

101. Field trainers in Swain County had "high regards" for Petitioner. (Swain County Captain Brian Kirkland, TR. at 364 - 365.)

102. Petitioner went through several months of training while in Swain County, (Swain County Captain Tony Sutton, TR. at 341), and when he finished the training, he was a good officer. (Swain County Captain Tony Sutton, TR. at 342.) Petitioner had a good performance record while in Swain County. (Swain County Captain Tony Sutton, TR. at 350.)

103. After receiving field training from, and working with, supervisors and officers in Swain County, Petitioner realized that "there's more -- more to law enforcement than -- than getting out ... and hunting narcotics.... it helps out to get out ... and talk to people, or if you see that car broke down on the side of the road, you ... stop and see if they need help." (Robert Clark, TR. at 499 - 500.)

Having considered the evidence, by its preponderance, and having heard the arguments of the parties, and having made the foregoing Findings of Fact, the undersigned makes the following:

#### **CONCLUSIONS OF LAW**

1. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper in this contested case. The parties received proper notice of the hearing in this contested case.

3. 12 NCAC 09B .0101 entitled "Minimum Standards for Criminal Justice Officers" states:

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[.]

4. 12 NCAC 09A .0204, entitled "Suspension: Revocation: or Denial of Certification" states:

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

....

(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[.]

5. 12 NCAC 09A .0205, entitled "Period of Suspension: Revocation: or Denial" states:

(c) When the Commission suspends or denies the certification of a criminal 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:

....

(2) failure to meet or maintain the minimum standards of employment[.]

6. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. *In Re Rogers*, 297 N.C. 48, 58 (1979) (whether a person is of good moral character is seldom subject to proof by reference to one or two incidents).

7. Under *In Re Rogers*, an instance of conduct amounting to poor judgment, especially where there is no malice or bad faith, would not ordinarily rise to the level required to reflect a lack of good moral character. Notwithstanding, there were several findings that Petitioner at times used excessive force while at Carthage PD. These incidents arising from a lapse in judgment do not alone establish lack of good moral character. Petitioner was never charged with or convicted of a crime. These incidents may well be indicative of a lack of training in the proper exercise of authority, or at least in part.

8. Petitioner has also acted at times beyond the scope of his legal authority granted to him by pursuing and arresting an individual outside of his jurisdiction on March 15, 2014. However, the officers in that jurisdiction subsequently participated in the arrest, which resulted from a sudden emergency, and apparently ratified and completed the arrest, taking the subject in

custody. In another incidence, Petitioner engaged in an unprofessional interaction in a legal setting by engaging in a verbal dispute with a Magistrate Judge while Petitioner was discharging his duties. In another incidence, Petitioner operated his patrol vehicle in a manner that could affect the safety of others, in violation of the posted speed limits. In another incidence, Petitioner left his post on at least one occasion for personal business.

9. Petitioner's untoward actions as found herein are based upon conflicting or incomplete testimony, shaded in many respects by the witness' perception or relationship with Petitioner as to these events. These events mostly involve the exercise of Petitioner's duties and judgment as job related performance. Although at times poorly performed, in the judgment of his superiors, these incidences inasmuch as job related performance, do not establish a lack of good moral character but can be evidence of such. This type of determination cannot be left unaided to the trier of fact without promulgated standards or expert testimony to assist the trier of fact in making these adverse and causal determinations.\* Evidence of poor job performance cannot be the exclusive evidence for lack of good moral character as it contains little evidence as to moral turpitude. If Petitioner's application is ultimately accepted and he is allowed to continue as a law enforcement officer, his superiors now and in the future, are clearly on notice of Petitioner's prior failures in job performance, and if not corrected, the potential for harm to the public.

10. The undersigned does find and conclude that Petitioner has engaged in immature and irresponsible conduct. Petitioner has exercised poor, and at times, dangerous judgment in the exercise of official duties. However, Petitioner was not properly trained before being "released" on the public and was the product, in some respects, of an "unhealthy" managerial environment. Petitioner lacked a mentor to advise him of the proper boundaries for the exercise of authority by a police officer. Petitioner largely trained himself under very poor standards and consistently rejected or ignored the advice, authority, and directives of his superiors, deferring rather often to his own judgment.

11. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." In Re Willis, 288, N.C. 1, 10 (1975). "Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents." State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983). The Court looks to "the slow spreading influence of opinion," In Re Willis, 299 N.C. 1, 215 S.E. 2d 771, appeal dismissed, 423 U.S. 976 (1975), or, as Benbow allowed, "[i]t is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should or does." Petitioner's motivations, almost always exercised with good intent, at times were questionable but were not conclusive on the issue of mal-intent. I conclude that Petitioner, although tarnished, maintained his good name and character.

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\*If poor job performance were to equate to the lack of good moral character, then the final decision maker as expert law officials would have the requisite expertise to make those determinations under the facts as found in applying those standards.

12. Petitioner is now the father of a child born out of wedlock, a fact Petitioner volunteered. In addition, Petitioner voluntarily established his own paternity when not compelled or required to do so. However, as much as this admission of paternity is a further indication of poor decision making, it does not establish a lack of good moral character; nevertheless, it draws attention to the findings of fact where Petitioner's girlfriend (and mother of his child) is involved. In one incident, Petitioner's questionable activities prompted an out of jurisdiction pursuit which originated at her residence on March 15, 2014. The other incident involved an intentional visit to her residence in the early morning hours of March 28, 2013. The admitted reason for the latter visit was to procure liquids and pain medication. Petitioner left his post and jurisdiction. The admitted reasons in light of Petitioner's paternity admission raises questions of credibility in addition to the lack of concern for the protection of the public, no matter how briefly

13. What more closely approaches a determination of lack of good moral character is the apparent misrepresentation as to his motives on March 28, 2013. I do not find that Petitioner intentionally misrepresented his motives or mixed motives, but I do conclude that Petitioner did not tell "the whole truth," however, Petitioner's omission as to motive is less material than leaving his post and jurisdiction. "Misrepresentations and evasive or misleading responses, which could obstruct full investigation into the ... applicant are inconsistent with truthfulness and candor ..." in *Re Willis*, 288 N.C. 1, 18 (1975).

14. Petitioner by all accounts is an excellent narcotics officer and has been recognized as such with a national award. Winning a national award for good policing in competition with other deserving officers is indicative of exemplary character traits of an outstanding narcotics officer. This is indicative of an impartial standard of care for the proper exercise of job performance, some evidence of good moral character, and a predictable measure of future performance as an asset to society. No one can deny the onerous burden placed on society with distribution, sale and consumption of illegal drugs. Having effective police officers, such as Petitioner, in containing this societal burden is a positive factor to support the admission of Petitioner's application.

15. Petitioner's cumulative pattern of immature and questionable conduct as found herein indicates poor judgment in exercising his police authority, both individually and collectively, but these patterns do not establish a lack of good moral character. Some of this pattern can be attributed to lack of judgment at a young age (the applicant's age at the time of the conduct – see ABA Bar Admission Comprehensive Guide, 2007)<sup>1</sup> and some to the absence of appropriate training. Most of his conduct in question was candidly admitted at the time of occurrence as well as in testimony. (the applicant's candor in the admissions process - see ABA Admission Comprehensive Guide, 2007)<sup>2</sup> Much of this previous misconduct has been rectified while under proper supervision and training in Swain County. (the evidence of rehabilitation – see ABA Bar

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<sup>1</sup> Larry Craddock, "Good Moral Character" as a Licensing Standard, 28 Journal of the Nat'l ALJ p. 448,458 (2008).

<sup>2</sup> Id.

<sup>3</sup> Id.

Admission Comprehensive Guide, 2007)<sup>8</sup> Petitioner is now older and by experience more understanding of the necessity of following directions, executing the proper role of police authority, and responsiveness to training as evidenced by his receptiveness to training in Swain County. Prior behavior such as to bring into question moral character is a tool used to predict later dishonest or reprehensible behavior before the admission to a profession. In this incidence, the behavior occurred on the job as a professional law enforcement officer and as previously concluded was less about the lack of good moral character as it was questionable job performance.

16. Poor judgment is not synonymous with lack of good moral character. What may be paramount to service as an effective member of the policing profession is rational behavior under stressful conditions. This may be one of Petitioner's more obvious failures, but impulsivity and immaturity do not automatically compel the conclusion that Petitioner lacks good moral character.

17. 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). The preponderance of the evidence, upon close analysis, indicates that the Petitioner in the incidents found herein demonstrated an ineptness in exercising good judgment and an ineptness in job performance. However, the preponderance of the evidence also demonstrates a lack of motivation or intent on Petitioner's part to do harm as would be indicative of malice, bad faith, or moral turpitude. It does not rise to the commonly accepted or legal understanding of good moral character. Petitioner is not immoral.

18. Petitioner carried his burden of proof by the preponderance of the evidence to permit his application for his law enforcement officer certification. There was conflicting evidence and a close case in law and fact. However, Petitioner has shown by a preponderance of the evidence that Respondent's proposed denial of Petitioner's law enforcement officer certification is not supported by the preponderance of the evidence on the grounds of lack of good moral character or otherwise, as one who has failed to meet the minimum standards as an applicant to be a law enforcement officer.

#### **PROPOSAL FOR DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes the Petitioner's application for certification as a law enforcement officer be placed in suspension for an additional period of six months from the date of the Respondent's (affirming) final decision, and require of Petitioner a supplemental or amended application to allow Petitioner to update all current warrants, citations, civil or criminal judgments. If there are none at that time, then Petitioner's application for certification should be granted.

Thereafter, if granted, Respondent should continually monitor Petitioner's law enforcement conduct in Swain County. If Petitioner transfers or managerial conditions change in Swain County, Respondent should monitor any changes in venue or management with vigilance.

#### **NOTICE**

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this contested case. The Commission 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 22nd day of July, 2016.



Julian Mann III

Chief Administrative Law Judge