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The **NORTH CAROLINA REGISTER**

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IN ADDITION

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PROPOSED RULES

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Practicing Psychologists
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ISSUE DATE: January 3, 1994

Volume 8 • Issue 19 • Pages 1850 - 1941



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the *North Carolina Administrative Code* (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The *North Carolina Administrative Code* (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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(July 1993 - May 1994)*

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/01/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/01/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
8:17	12/01/93	11/05/93	11/15/93	12/16/93	01/03/94	01/20/94	03/01/94
8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
8:21	02/01/94	01/10/94	01/18/94	02/16/94	03/03/94	03/21/94	05/01/94
8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
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9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

Note: Time is computed according to the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

**TITLE 15A
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

COMMISSION FOR HEALTH SERVICES

In the North Carolina Register of December 15, 1993 (8:18 NCR 1787-1788), notice was given that the EHNR-Commission for Health Services intended to adopt rules cited as 15A NCAC 16A .1301 - .1305 to enable the AIDS Care Branch to administer a Medicaid-reimbursed HIV Case Management Program. The proposed rules have been withdrawn, and it will not be considered at the public hearing to be conducted January 5, 1994, at the Highway Building in Raleigh. These rules will be resubmitted in the near future by the DHR - Division of Medical Assistance, and another public hearing on these rules will be scheduled at that time.

North Carolina Wildlife Resources Commission

512 N. Salisbury Street, Raleigh, North Carolina 27604-1188, 919-733-3391

Charles R. Fullwood, Executive Director

PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina General Statute §113-292 (c1) and authority duly delegated by the Wildlife Resources Commission, hereby declares that the season for harvesting striped bass by hook-and-line shall remain closed in all waters of the Roanoke River Striped Bass Management Area until 12:01 a.m. 18 February 1994.

Effective 18 February 1994 striped bass may be harvested from 12:01 a.m on Fridays through 12:00 midnight on Sundays. From 12:01 a.m. on Mondays through 12:00 midnight on Thursdays all striped bass regardless of condition shall be immediately returned to the waters where taken and no striped bass may be possessed.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River and its tributaries, extending from its mouth to Roanoke Rapids Dam, including the Cashie, Middle, and Eastmost rivers and their tributaries.

This proclamation shall be effective at 12:01 a.m. 1 January 1994 and shall remain in effect until a new proclamation closing described waters or portions thereof for striped bass fishing is issued.

NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§113-132; 113-134; 113-292; 113-304; and 113-305.
- b) All striped bass regardless of condition taken subsequent to the effective date and time of this Proclamation shall be immediately returned to the waters where taken and no striped bass may be possessed.
- c) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

by Charles R. Fullwood
Executive Director

12/09/93
Date

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 14K .0201; 14Q .0305; adopt 14O .0701, .0704, .0708, .0709; 18N .0601 and .0603, with changes from the proposed text noticed in the Register, Volume 8, Issue 13, pages 1217 - .1248.

The proposed effective date of this action is April 1, 1994.

Reason for Proposed Action: To provide public notice of substantive changes made at the November 9, 1993 public hearing regarding requirements contained in "Licensure Rules" and "Standards" for residential services.

Comment Procedures: Written comments may be submitted to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Albemarle Building, 325 N. Salisbury Street, Raleigh, N.C. 27603. These comments will be accepted from January 3, 1994 through February 7, 1994.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

**CHAPTER 14 - MENTAL HEALTH:
GENERAL**

**SUBCHAPTER 14K - CORE LICENSURE
RULES FOR MENTAL HEALTH: MENTAL
RETARDATION AND OTHER
DEVELOPMENTAL DISABILITIES:
AND SUBSTANCE ABUSE FACILITIES**

SECTION .0200 - LICENSURE

.0201 LICENSE REQUIRED

(a) No person shall establish, maintain or operate a licensable facility for the mentally ill, mentally retarded or otherwise developmentally disabled

or substance abusers without first obtaining a license from the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.

(b) In accordance with G.S. 122C-3(14) a facility shall be licensed if the primary purpose of the facility is to provide services for the care, treatment, habilitation or rehabilitation for one or more minors, or for two or more adults who are mentally ill, developmentally disabled or are substance abusers as follows:

- (1) When the primary purpose of a 24-hour facility is to provide treatment, the facility shall be licensed in accordance with rules specific to the type of treatment provided or the population served;
or
- (2) When the primary purpose of a 24-hour facility is to provide habilitation, rehabilitation, or care in a home environment; thereby necessitating the presence of an employee who will provide client supervision, the facility shall be licensed under the provisions of 10 NCAC 14O .0700 - Supervised Living.

(c) Living arrangements that may be coordinated, organized or provided for or in conjunction with adult clients by the provision of case management or personal assistance shall not be considered residential facilities that require licensing under G.S. 122C.

Material adopted by reference shall include subsequent amendments and editions.

Statutory Authority G.S. 122C-3; 122C-23; 122C-26; 143B-174.

**SUBCHAPTER 14O - LICENSURE RULES
FOR FACILITIES SERVING MORE
THAN ONE DISABILITY**

SECTION .0700 - SUPERVISED LIVING

.0701 SCOPE

(a) Supervised living is the designation of a 24-hour facility which provides residential services to individuals in a home environment where the primary purpose of these services is the care, habilitation or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or who have a substance abuse problem, and who require supervision when in the residence.

(b) A supervised living facility shall be licensed if the facility serves:

- (1) one or more clients under the age of

- 18; or
 (2) two or more adult clients.

Statutory Authority G.S. 143B-147.

.0704 STAFF REQUIREMENTS

(a) Staff-client ratios shall be designed to provide staff to respond to individualized client needs.

(b) A minimum of one staff member shall be present at all times when any adult client is on the premises, except when approval has been given for the client to remain unsupervised in the home, and provided that:

- (1) the client has been deemed capable of remaining in the home without supervision for a specified period time by a qualified professional of the operating agency or area program; and
- (2) the approval is documented in the client's record.

(c) Staff shall be present in a facility in the following client-staff ratios when more than one child or adolescent client is present:

- (1) children or adolescents with mental illness or emotional disturbance shall be served with one staff present for each four or fewer clients present;
- (2) children or adolescents with substance abuse shall be served with a minimum of one staff present for each five or fewer minor clients present during waking hours; or
- (3) children or adolescents with developmental disabilities shall be served with one staff present for each one to three clients present and two staff for each four or more clients present. However, only one staff member need be present during sleeping hours if emergency back-up procedures are sufficient to allow only one staff member on duty.

Statutory Authority G.S. 143B-147.

.0708 PROGRAM ACTIVITIES

(a) Each client shall have the opportunity to participate in normal independent living activities.

(b) Each client shall be involved in treatment, rehabilitation, vocational, educational, employment, social and community activities on a regular basis in accordance with the needs of the client.

(c) For each client with a developmental disability, staff shall provide daily training activities in accordance with the client's needs.

Statutory Authority G.S. 143B-147.

.0709 CLIENT TRAINING IN HEALTH AND SAFETY

(a) Each adolescent and adult client shall receive training and be given opportunities to obtain independent living skills.

(b) Each client shall receive instructions in obtaining services in emergency situations.

Statutory Authority G.S. 143B-147.

SUBCHAPTER 14Q - GENERAL RIGHTS

SECTION .0300 - GENERAL CIVIL, LEGAL AND HUMAN RIGHTS

.0305 PROTECTION FROM HARM, ABUSE, NEGLECT OR EXPLOITATION

(a) Employees shall protect clients from harm, abuse, neglect and exploitation in accordance with G.S. 122C-66.

(b) Employees shall not subject a client to any sort of neglect or indignity, or inflict abuse upon any client.

(c) Goods or services shall not be sold to or purchased from a client except through established governing body policy.

(d) Employees shall use only that degree of force necessary to repel or secure a violent and aggressive client and which is permitted by governing body policy. The degree of force that is necessary depends upon the individual characteristics of the client (such as age, size and physical and mental health) and the degree of aggressiveness displayed by the client. Use of intervention procedures shall be compliance with Subchapter 10 NCAC 14R of this Chapter.

(e) Any violation by an employee of Paragraphs (a) through (d) of this Rule shall be grounds for dismissal of the employee.

Statutory Authority G.S. 122C-59; 122C-65; 122C-66; 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18N - OPTIONAL SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

SECTION .0600 - PERSONAL ASSISTANCE

.0601 SCOPE

(a) Personal assistance is a service which provides aid to a client who has mental illness, developmental disabilities or substance abuse so that the client can engage in activities and interactions from which the client would otherwise be limited or excluded because of his disability or disabilities. The assistance includes:

- (1) assistance in personal or regular living activities in the client's home;
- (2) support in skill development; or
- (3) support and accompaniment of the client in regular community activities or in specialized treatment, habilitation or rehabilitation service programs.

(b) If these Rules are in conflict with Medicaid rules or Medicare regarding Personal Care, and Medicaid or Medicare is to be billed, then the Medicaid or Medicare rules shall prevail.

Statutory Authority G.S. 143B-147.

.0603 STAFF TRAINING

Individuals who are employed to provide personal assistance shall have:

- (1) at least a high-school diploma or its equivalent; and
- (2) special training regarding the needs of the specific client for whom assistance will be provided.

Statutory Authority G.S. 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt rules cited as 10 NCAC 16A .0401 - .0403; amend 18L .1512; 18M .0802 and .0818.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 1:30 p.m. on February 8, 1994 at the Sheraton Inn-Kinston, 1403 Richland Rd., Salon C & D (Meeting Room), Kinston, N. C. 28501.

Reason for Proposed Action:

10 NCAC 16A .0401 - .0403 - These Rules are proposed for adoption to implement the 1993 legislation, and to clarify roles and scope of responsibilities of area programs in carrying out House Bill 513.

10 NCAC 18L .1515 - The Rule is proposed for amendment for clarification to remove the expectation that the State Interagency Coordinating Council actually carries out the mediation.

10 NCAC 18M .0802 - Recently, the CARF standards were expanded and additional ADAP standards covered. This change updates the deeming to include those additional standards.

10 NCAC 18M .0818 - The proposed amendments are to clarify language by substituting "developmental disabilities" for "mental retardation."

Comment Procedures: *Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N. C. 27603, 919-733-4774. Comments submitted as a written statement must be sent to the above address no later than February 7, 1994, and must state the Rules to which the comments are addressed. Time limits for oral remarks may be imposed. Fiscal information regarding these Rules is available from the Division upon request.*

**CHAPTER 16 - MENTAL HEALTH:
MR CENTERS**

**SUBCHAPTER 16A - GENERAL
RULES FOR MR CENTERS**

**SECTION .0400 - SINGLE PORTAL OF
ENTRY AND EXIT DESIGNATION**

.0401 SCOPE

(a) The rules in this Section apply to single portal of entry and exit policy for public and private services for individuals with developmental disabilities as set forth in G.S. 122C-132.1.

(b) Services provided under the following authorities shall be subject to the rules of this Section:

- (1) G.S. 122C and 131D-2;
- (2) Part A of Article 6 of Chapter 131E;
- (3) Article 7 of Chapter 110;
- (4) Rules of the Division of Vocational Rehabilitation Services; and

(5) Rules of the Social Services Commission.

(c) The criteria and procedures shall be followed by:

- (1) staff of the local area mental health authority; and
- (2) public and private providers of day/night and residential services for persons with mental retardation and developmental disabilities.

Statutory Authority G.S. 143B-147.

.0402 EXPLANATION OF TERMS

For the purposes of the rules in this Section, the following terms shall have the meanings indicated:

- (1) "Community Interagency Council" means a group of human service professionals from various agencies and organizations who:
 - (a) function under the guidance of the area mental health, developmental disabilities and substance abuse authority;
 - (b) assist in planning for the needs of individuals with developmental disabilities; and
 - (c) provide general information and education to the community in:
 - (i) identifying client needs;
 - (ii) identifying available resources and alternatives; and
 - (iii) determining a client's appropriateness for services within various agencies in the community.
- (2) "Coordinator of developmental disabilities" means the designated staff employed by the area authority who coordinates services, at the local level, to individuals with mental retardation and developmental disabilities.
- (3) "Day/night and 24-hour service" means the same as defined in G.S. 122C-3.
- (4) "Developmental disabilities" means the same as defined in G.S. 122C-3.
- (5) "Funded jointly" means funding from two or more sources/agencies.
- (6) "Individual" means the same as "client" as defined in G.S. 122C-3.
- (7) "Notification procedures for provision of services" means services provided by one area program in another area program's catchment area, as specified in 10 NCAC 18A .0605.
- (8) "Review" means an organized protocol to

access the needs of individuals for day/night and 24-hour services to ensure appropriate referrals.

- (9) "Single portal of entry and exit policy" means the same as defined in G.S. 122C-3, with the following exception: "may be adopted by an area authority and shall be approved by the Secretary before it is in force" should read "shall be adopted by an area authority and shall be approved by the Secretary before it is in force."
- (10) "Waiting list" means a functional listing of persons who are in need of day/night and 24-hour services.

Statutory Authority G.S. 143B-147.

.0403 DESIGNATION PROCEDURES

(a) Each area authority shall develop a single portal of entry and exit plan that shall include, but not be limited to:

- (1) a specific listing of services to be covered by the plan;
- (2) procedures for:
 - (A) review of individuals to be admitted to or discharged from services;
 - (B) shared responsibility when individuals are admitted directly to a State facility;
 - (C) review of facility and citizen complaints; and
 - (D) specific grievance process;
- (3) provisions for:
 - (A) services funded jointly by area authorities and local education agencies;
 - (B) services funded jointly by area authorities and the Division of Vocational Rehabilitation;
 - (C) decision-making within the Community Interagency Council with details regarding the authority of the area program for input and final decision;
 - (D) residential facilities located in an area mental health program serving statewide/regional clients; and
 - (E) placement of clients outside their county of residence;
- (4) a process for maintaining a functional waiting list which shall contain, but not be limited to, the following documentation for each potential client:
 - (A) name and identifying information;
 - (B) referral date;

- (C) eligibility status;
- (D) identified disability;
- (E) requested type of service which shall include, but not be limited to:
 - (i) name and location of service referred to;
 - (ii) date of need for service;
 - (iii) service availability; and
- (F) status of referral which includes the following:
 - (i) slot availability;
 - (ii) acceptance of referral;
 - (iii) date of enrollment;
 - (iv) rejection of referral; and
- (5) documentation of:
 - (A) the effort to integrate independent facilities into a unified and coordinated system;
 - (B) the promotion of quality care; and
 - (C) the participation of the client and family in the service placement process.
- (b) The area authority shall ensure:
 - (1) adherence to notification procedures as set forth in 10 NCAC 18A .0605 NOTIFICATION PROCEDURES FOR PROVISION OF SERVICES;
 - (2) compliance with P.L. 99-457 regarding 45-day waiting list;
 - (3) that annual summary reports for waiting lists are submitted to the Division by January 30 of each year which shall include, but need not be limited to:
 - (A) the information as specified in Subparagraph (a)(4) of this Rule;
 - (B) types of services (all clients referred to each service including date, status, and number of days waiting by service type code);
 - (C) providers of services (providers in provider code order);
 - (D) provider statistics on referrals (providers with number of referrals and length of waiting period);
 - (E) service type statistics (service types with number of referrals and length of waiting period); and
 - (F) frequency report (providers, service types and age groups with the number of referrals for each and the percent of the total it represents;
 - (4) review of the plan by the Community Interagency Council for approval by the Area Board;
 - (5) that the plan is forwarded to the

Division to be approved by the Secretary;

- (6) that any changes in the plan are approved by the Secretary, once the area is designated as single portal; and
- (7) that the approved plan is made available to local providers.

Statutory Authority G.S. 143B-147.

**CHAPTER 18 - MENTAL HEALTH:
OTHER PROGRAMS**

**SUBCHAPTER 18L - PROGRAM
COMPONENT OPERATIONAL
STANDARDS**

**SECTION .1500 - EARLY INTERVENTION
SERVICES PROCEDURE SAFEGUARDS**

.1512 MEDIATION

(a) Parents of an eligible child may request mediation to resolve a complaint as an intervening step prior to the administrative proceeding. If mediation is requested, the mediation shall take place prior to the administrative proceeding. ~~Mediation shall be conducted by the Governor's Interagency Advisory Council which was established in response to P.L. 99-457. Mediation may not be used to deny or delay a parent's right to speedy complaint resolution. The mediative, administrative proceeding and written decision must be completed within the 30 day timeline set forth in Rule .1517 of this Section.~~

(b) An impartial person shall be:

- (1) appointed by the area director to serve as a mediator;
- (2) selected from a list of mediators approved by the Chief of the Developmental Disabilities Section of the Division; and
- (3) subject to qualifications of an impartial person as specified in Section 303.421 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations. This adoption by reference shall include any subsequent amendment and editions of the referenced material.

(c) The Division shall provide a training program for the mediators.

(d) Mediation may not be used to deny or delay a parent's right to speedy complaint resolution. The mediative, administrative proceeding and written decision must be completed within the 30-day timeline set forth in Rule .1517 of this

Section.

Statutory Authority G.S. 143B-147; 150B-1(d); 20 U.S.C. Sections 1401 et. seq., 1471 et. seq..

SUBCHAPTER 18M - REQUIRED SERVICES

SECTION .0800 - ADULT DEVELOPMENTAL ACTIVITY PROGRAMS (ADAP) FOR INDIVIDUALS WITH SUBSTANTIAL MENTAL RETARDATION, SEVERE PHYSICAL DISABILITIES OR OTHER SUBSTANTIAL DEVELOPMENTAL DISABILITIES

.0802 COMPLIANCE REVIEW

(a) An ADAP that is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) in the Activity Service track or an ADAP which also incorporates work activity training in its program and which is accredited by CARF in the Activity Service and Work Adjustment or Work Service tracks shall be reviewed for compliance with 10 NCAC 18K (Contract Agency Management Standards) and 10 NCAC 18L (Program Component Operational Standards) ~~and with~~ according to the provisions of this Section as follows:

- (1) Each ADAP which is operated by the area program shall comply with 10 NCAC 18L .0434; .0703; .0705; .0806; and .1307, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1; ~~all of the standards delineated in 10 NCAC 18L; and each ADAP which is under contract with an area program shall comply with the standards delineated in 10 NCAC 18K and 10 NCAC 18L; and~~
- (2) Each ADAP which is under contract with an area program:
 - (A) shall comply with:
 - (i) 10 NCAC 18D .0124, contained in Division publication, Confidentiality Rules, APSM 45-1; and 10 NCAC 18I .0120; 18K .0111; 18L .0434; .0703; .0705; .0806; and .1307, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1;
 - (ii) 10 NCAC 18L .0224 and .0511,

if these are not addressed in the contract with the area program;

- (B) shall maintain client record documentation, as required by the Division; and
- (C) may, at the discretion of the area program, be deemed in compliance with the rules in this Section.
- (23) Each ADAP, whether operated by the area program, or under contract with an area program, shall be reviewed for compliance with ~~the following Rules .0817 in this Section; .0817, .0818 and .0824.~~

(b) The ADAP shall submit to the funding agency a copy of its most recent CARF Facilities Survey Report, and, if applicable, the Plan of Compliance and subsequent notice of CARF's acceptance of the correction(s) made in accordance with the plan.

Statutory Authority G.S. 143B-147.

.0818 ADMISSION CRITERIA AND PROCEDURES

- (a) Each ADAP shall have an admissions committee.
- (b) A pre-admission staffing shall be held for each client considered for admission to the ADAP. During the staffing, the committee shall consider information available regarding the client's medical, psychological and social histories.
- (c) Results of the pre-admission staffing shall be documented and forwarded to the referral agency. A representative of the ADAP admissions committee shall notify the client.
- (d) Each ADAP shall have written admission policies and procedures. ~~These policies and procedures shall~~ which shall include at least the following:

- (1) Each client shall be referred to the Division of Vocational Rehabilitation Services with written documentation of this referral.
- (2) A qualified ~~mental-retardation developmental disabilities~~ professional of the area program shall; ~~obtain a written recommendation from the vocational rehabilitation counselor recommending consideration for a placement in the ADAP.~~
 - (A) obtain a recommendation from the vocational rehabilitation counselor for placement in the ADAP; and
 - (3B) ~~A qualified developmental disabilities~~

~~professional of the area program shall~~ certify the eligibility of each client for the ADAP service, taking into consideration at least the provision of (b); and (d)(1) and (2) of this Rule.

Statutory Authority G.S. 122C-51; 143B-147.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNREnvironmental Management Commission intends to amend rules cited as 15A NCAC 2B .0306, .0309 and .0311.

The proposed effective date of this action is July 1, 1994.

The public hearings will be conducted at:

7:00 p.m.
March 14, 1994
Parkland High School Auditorium
1600 Brewer Road
Winston-Salem, NC

7:00 p.m.
March 15, 1994
Catawba Valley Community College Auditorium
2550 Highway 70 SE
Hickory, NC

7:00 p.m.
March 17, 1994
Lee County Courthouse
Courtroom 1
1408 South Horner Boulevard
Sanford, NC

Reason for Proposed Action: *To appropriately classify surface waters in the Broad, Yadkin and Cape Fear River Basins. Reclassifications are associated with surface water supplies that were not classified correctly during the major effort undertaken in 1991 and 1992 to reclassify surface water supply watersheds according to the requirements of the Water Supply Watershed Protection Act (NCGS 143-214.5).*

Comment Procedures: *All persons interested in*

these matters are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing or may be presented verbally at the hearing. Verbal statements may be limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged. Comments or questions may be addressed to Steve Zoufaly, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083.

These Rules affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on 11/22/93, OSBM on 11/22/93, N.C. League of Municipalities on 11/22/93, and N.C. Association of County Commissioners on 11/22/93.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0306 BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
 - Buncombe County
 - Cleveland County
 - Gaston County
 - Henderson County
 - Lincoln County
 - McDowell County
 - Polk County
 - Rutherford County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
 - (B) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering South Carolina are classified "C".

(c) The Broad River Basin Schedule of Classifications and Water Quality Standards was amended

effective:

- (1) March 1, 1977;
- (2) February 12, 1979;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) February 1, 1986;
- (6) August 3, 1992;
- (7) July 1, 1994.

(d) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(e) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective July 1, 1994 with the reclassification of the Second Broad River [Index No. 9-41-(0.5)] from its source to Roberson Creek including associated tributaries was reclassified from Class WS-V to Classes WS-V, WS-IV and WS-IV CA.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

.0309 YADKIN-PEE DEE RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Alexander County
Anson County
Cabarrus County
Caldwell County
Davidson County
Davie County
Forsyth County
Guilford County
Iredell County
Mecklenburg County
Montgomery County
Randolph County
Richmond County
Rowan County
Stanly County

- Stokes County
- Surry County
- Union County
- Watauga County
- Wilkes County
- Yadkin County

- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
 - (B) Winston-Salem Regional Office
8025 North Point Boulevard, Suite 100
Winston-Salem, North Carolina
 - (C) Fayetteville Regional Office
Wachovia Building
Suite 714
Fayetteville, North Carolina
 - (D) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Virginia are classified "C," and such streams entering South Carolina are classified "C".

(c) The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) October 1, 1988;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) August 1, 1990;
- (9) January 1, 1992;
- (10) April 1, 1992;
- (11) August 3, 1992;
- (12) December 1, 1992;
- (13) April 1, 1993;
- (14) July 1, 1994.

(d) The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin has been amended effective October 1, 1988 as follows:

- (1) Mitchell River [Index No. 12-62-(1)] from source to mouth of Christian Creek (North Fork Mitchell River) including all tributaries has been reclassified from Class B Tr to Class B Tr ORW.
- (2) Mitchell River [Index No. 12-62-(7)] from mouth of Christian Creek (North

Fork Mitchell River) to Surry County SR 1315 including all tributaries has been classified from Class C Tr to C Tr ORW, except Christian Creek and Robertson Creek which will be reclassified from Class B Tr to Class B Tr ORW.

- (3) Mitchell River [Index No. 12-62-(12)] from Surry County SR 1315 to mouth of South Fork Mitchell River including all tributaries from Class C to Class C ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective March 1, 1989 as follows:

- (1) Elk Creek [Index Nos. 12-24-(1) and 12-24-(10)] and all tributary waters were reclassified from Class B-trout, Class C-trout and Class B to Class B-trout ORW, Class C-trout ORW and Class B ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective January 1, 1990 as follows: Barnes Creek (Index No. 13-2-18) was reclassified from Class C to Class C ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective January 1, 1992 as follows:

- (1) Little River [Index Nos. 13-25-(10) and 13-25-(19)] from Suggs Creek to Densons Creek has been reclassified from Classes WS-III and C to Classes WS-III HQW and C HQW.
- (2) Densons Creek [Index No. 13-25-20-(1)] from its source to Troy's Water Supply Intake including all tributaries has been reclassified from Class WS-III to Class WS-III HQW.
- (3) Bridgers Creek (Index No. 13-25-24) from its source to the Little River has been reclassified from Class C to Class C HQW.

(h) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective April 1, 1992 with the reclassification of the North Prong South Fork Mitchell River from Class C to Class C Trout.

(i) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or

WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(j) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective December 1, 1992 as follows:

- (1) Pike Creek (Index No. 12-46-1-2) was reclassified from Class C Tr to Class C Tr HQW;
- (2) Basin Creek (Index No. 12-46-2-2) was reclassified from Class C Tr to Class C Tr ORW;
- (3) Bullhead Creek (Index No. 12-46-4-2) was reclassified from Class C Tr to Class C Tr ORW;
- (4) Rich Mountain Creek (Index No. 12-46-4-2-2) was reclassified from Class Tr to Class C Tr ORW; and
- (5) Widows Creek (Index No. 12-46-4-4) was reclassified from Class C Tr HQW to Class C Tr ORW.

(k) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective July 1, 1994 as follows:

- (1) Lanes Creek [Index Nos. 13-17-40-(1) and 13-17-40-(10.5)] from its source to the Marshville water supply dam including tributaries was reclassified from Classes WS-II and WS-II CA to Class WS-V.
- (2) The South Yadkin River [Index Nos. 12-108-(9.7) and 12-108-(15.5)] from Iredell County SR 1892 to a point 0.7 mile upstream of the mouth of Hunting Creek including associated tributaries was reclassified from Classes WS-V, C and WS-IV to Classes WS-V, WS-IV, C and WS-IV CA.
- (3) The Yadkin River [Index Nos. 12-(53) and 12-(71)] from a point 0.3 mile upstream of the mouth of Elkin Creek (River) to the Town of King water supply intake including associated

tributaries was reclassified from Classes C and WS-IV to Classes WS-IV and WS-IV CA.

- (4) The Yadkin River [Index Nos. 12-(80.5), 12-(81.5) and 12-(84.5)] from the Town of King water supply intake to the Davie County water supply intake reclassified from Classes C, B, WS-IV and WS-V to Classes WS-IV, WS-IV&B and WS-IV CA.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

.0311 CAPE FEAR RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
 - Alamance County
 - Bladen County
 - Brunswick County
 - Caswell County
 - Chatham County
 - Columbus County
 - Cumberland County
 - Duplin County
 - Durham County
 - Forsyth County
 - Guilford County
 - Harnett County
 - Hoke County
 - Lee County
 - Montgomery County
 - Moore County
 - New Hanover County
 - Onslow County
 - Orange County
 - Pender County
 - Randolph County
 - Rockingham County
 - Sampson County
 - Wake County
 - Wayne County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Winston-Salem Regional Office
8025 North Point Boulevard, Suite 100
Winston-Salem, North Carolina
 - (B) Fayetteville Regional Office
Wachovia Building
Suite 714
Fayetteville, North Carolina
 - (C) Raleigh Regional Office

- 3800 Barrett Drive
Raleigh, North Carolina
- (D) Washington Regional Office
1424 Carolina Avenue
Washington, North Carolina
- (E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina

(b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) June 1, 1988;
- (15) July 1, 1988;
- (16) January 1, 1990;
- (17) August 1, 1990;
- (18) August 3, 1992;
- (19) July 1, 1994.

(c) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective June 1, 1988 as follows:

- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.
- (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

(e) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as

follows:

- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
- (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.
- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became

effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective July 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to adopt rules cited as 15A NCAC 7H .2101 - .2105; amend rules 7H .0104, .0304, .1104, .1204, .1304, .1404, .1504, .1604, .1704, .1804 and .1904.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 4:00 p.m. on January 27, 1994 at the Sheraton Resort Hotel, Salter Path Road, Atlantic Beach, North Carolina.

Reason for Proposed Action:

15A NCAC 7H .0104 - To make exceptions to the new Erosion Rates for development that has been planned on existing lots.

15A NCAC 7H .0304 - To incorporate recent updated rates of shoreline change into CAMA for use in delineating the Ocean Hazard Area of Environmental Concern and for determining setbacks for oceanfront development.

15A NCAC 7H .1104, .1204, .1304, .1404, .1504, .1604, .1704, .1804 and .1904 - To clarify and create a consistent use of terminology within the stated management objectives for general conditions of various general permits.

15A NCAC 7H .2101 - .2105 - The adoption of these Rules would create a new CAMA General Permit which would authorize free-standing, wooden breakwaters in conjunction with existing or created coastal wetlands within estuarine waters and public trust areas of environmental concern.

Comment Procedures: All persons interested these matters are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than February 2, 1994. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearings. Additional information concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREA OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

.0104 DEVELOPMENT INITIATED PRIOR TO EFFECTIVE DATE OF REVISIONS

Development on lots created after the date of adoption of the current erosion rates (January 28, 1994) must comply fully with those rates. Development on lots created, or, within projects which have received all required final or preliminary local approvals or a CAMA major development permit between June 1, 1979 and January 28, 1994 must comply with the current rates to the maximum extent feasible and have a minimum setback equal to the rates in effect at the time the lots were created, or, those rates in effect at the time of issuance of any active CAMA permit for development on those lots. Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 7H .0309 (b) and (c).

(a) ~~The following Rules shall be used to determine whether the revisions to guidelines for development in areas of environmental concern (hereinafter referred to as revisions), with an effective date of June 1, 1979, shall apply to a~~

~~proposed development.~~

- (1) ~~In the case of a development for which a CAMA permit was required prior to June 1, 1979, the revisions shall not be applicable if a complete and sufficient application for a CAMA permit was filed and accepted before June 1, 1979. However if the application should lapse or be denied, thereby requiring a new application after June 1, 1979, or if the application is modified or renewed after June 1, 1979, the revisions shall be made applicable.~~
- (2) ~~In the case of a development for which no CAMA permit was required prior to July 15, 1979, the revisions shall not be applicable if all legally required permits have been applied for and accepted in accordance with the applicable rules of the agency responsible for the permit. However, if the application should lapse or be denied, thereby requiring a new application after July 15, 1979, or if the application is modified or renewed after July 15, 1979, the revisions shall be applicable.~~
- (3) ~~In those cases where a CAMA major permit was issued before June 1, 1979, for a major development which included platted lots, the new standards shall apply to such platted lots only to the maximum extent possible without effectively prohibiting the intended use of those lots. In order for this Rule to apply, the following conditions must be met:~~
 - (A) ~~the lot on which the proposed development is to be located shall have been accurately shown on the major development permit application and the boundaries must not have been significantly altered.~~
 - (B) ~~the lot on which the proposed development is to be located shall have been suitable for the intended use according to the AEC guidelines in effect at the time the major permit was issued.~~
 - (C) ~~a minor development permit must be applied for and received according to the normal minor permit process before development can begin.~~
 - (D) ~~this Rule shall apply only to development for which a permit application is submitted prior to~~

~~expiration of the major development permit issued before June 1, 1979.~~

~~(4) In those cases where any necessary local approval was issued for a proposed subdivision development prior to July 15, 1979, the Division of Coastal Management advised the developer in writing where to locate the ocean setback line for the proposed subdivision, and the proposed subdivision development was recorded in the county registry prior to July 15, 1979, with the ocean setback determined by the Division of Coastal Management, any new standards regarding oceanfront setbacks shall apply to the platted lots within the proposed subdivision only to the maximum extent possible without effectively prohibiting the intended use of those lots. In order for this Rule to apply, the following conditions must be met:~~

- ~~(A) the lot(s) on which the proposed development is to be located shall have been accurately shown on an approved local plat and the boundaries must not have been significantly altered;~~
- ~~(B) the lot(s) on which the proposed development is to be located shall have been suitable for the intended use according to the AEC guidelines in effect at the time the plat was approved; and~~
- ~~(C) a minor development permit(s) must be applied for and received according to the normal minor permit process before development can begin.~~

~~(b) The oceanfront setback provisions specifically applicable to large structures, as set forth by Rule .0306(a)(4) of this Subchapter, shall apply only to development applications received on or after November 1, 1983. Further, Rule .0306(a)(4) of this Subchapter shall only apply to the maximum extent possible without effectively prohibiting the intended use of the property in the following situations:~~

- ~~(1) the completion of projects that had received valid CAMA permits prior to November 1, 1983, provided that permit renewals, modification and transfer requests for these projects made pursuant to 15A NCAC 7J .0404, .0405 and .0406 and 15A NCAC 7E~~

~~.0105 shall be considered under the setback rules applicable at the time of original permit issuance, and no renewals or extensions of pre-existing permits shall be made beyond the expiration period unless either there has been substantial progress on construction or no material change in the physical conditions at the project site (as is provided by 15A NCAC 7J .0403); and~~

- ~~(2) the completion of projects that were outside of CAMA permit jurisdiction prior to November 1, 1983, provided that all other required state and local permits had been applied for in accordance with the rules of the agencies responsible for such permits and that the developer has materially changed his or her position in good faith reliance on such development approvals. In all instances, such development must be consistent with all other provisions of this Subchapter.~~

~~(e) In the case of subdivisions or projects which have received either all required final or preliminary local approvals or a CAMA major development permit prior to May 27, 1988, and have therein met all applicable CAMA setback requirements as of May 27, 1988, the updated oceanfront erosion rates approved by the Commission on July 29, 1988, and effective on November 1, 1988, shall only apply to the maximum extent feasible. For these previously approved lots and projects, the erosion rate existing as of May 27, 1988, shall be applied in determining minimum oceanfront setbacks for purposes of subsequent approved construction or development prior to the next erosion rate update.~~

Statutory Authority G.S. 113A-107; 113A-113; 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

NOTE TO RULE .0304: The Coastal Resources Commission will consider the text shown in Bold type for adoption at the January meeting. Public hearings were held during the months of November and December in the eight coastal counties where the proposed rate changes will occur. The proposed effective date is April 1, 1994. Notice on these changes was published in the Register on November 1, 1993, (8:15 NCR

1405-1409).

.0304 AECs WITHIN OCEAN HAZARD AREAS

The ocean hazard system of AECs contains all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates shall be those set forth in ~~tables maps~~ entitled "Long Term Annual ~~Erosion~~ Shoreline Change Rates updated through ~~1986 1992~~" and approved by the Coastal Resources Commission on ~~July 29, 1988~~ January 28, 1994 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The ~~tables maps~~ are available without cost from any local permit officer or the Division of Coastal Management; and
 - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equalled or exceeded in any given year.
 - (c) Development other than single family residential on lots existing as of June 1, 1979 shall meet setback requirements current at the time of permit decision.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including, but not limited to, hurricane wave wash) in a storm having a one percent chance of being equalled or exceeded in any given year, as identified as zone VI-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of

Housing and Urban Development. In the absence of these rate maps, other available base flood elevation data prepared by a federal, state, or other source may be used, provided said data source is approved by the CRC.

- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area shall extend landward from the mean low water line a distance sufficient to encompass that area within which the inlet will, based on statistical analysis, migrate, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet (such as an unusually narrow barrier island, an unusually long channel feeding the inlet, or an overwash area), and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, by Loie J. Priddy and Rick Carraway are hereby designated as Inlet Hazard Areas except that the Cape Fear Inlet Hazard as shown on said map shall not extend northeast of the Baldhead Island marina entrance channel. In all cases, this area shall be an extension of the adjacent ocean erodible area and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area.
- (4) Unvegetated Beach Area. This is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following detailed studies by the Coastal Resources Commission. These areas shall be designated on maps approved by the Commission and available without cost from any local permit officer or the Division of Coastal Management.

Statutory Authority G.S. 113A-107; 113A-113; 113A-124.

**SECTION .1100 - GENERAL PERMIT
FOR CONSTRUCTION OF BULKHEADS
AND THE PLACEMENT OF RIPRAP FOR
SHORELINE PROTECTION IN
ESTUARINE AND PUBLIC
TRUST WATERS**

.1104 GENERAL CONDITIONS

(a) This permit authorizes only the construction of bulkheads and the placement of riprap conforming to the standards herein.

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

(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of the bulkhead or the riprap authorized herein.

~~(d) This general permit may be either modified, suspended or revoked in whole or in part if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department determines that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.~~

~~(e)~~(d) This general permit will not be applicable to proposed construction when the Department determines after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation, or recreational values.

~~(f)~~(e) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. This general permit will not be applicable to proposed construction where the Department determines that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

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

~~(h)~~(g) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current

at the time of authorization.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

**SECTION .1200 - GENERAL PERMIT FOR
CONSTRUCTION OF PIERS: DOCKS:
AND BOAT HOUSES IN ESTUARINE
AND PUBLIC TRUST WATERS**

.1204 GENERAL CONDITIONS

(a) Structures authorized by this permit shall be non-commercial structures conforming to the standards herein.

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

(c) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of piers, docks and boat houses.

~~(d) This general permit may be either modified, suspended or revoked in whole or in part according to the provisions of G.S. 113A-107 if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department believes that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.~~

~~(e)~~(d) This general permit will not be applicable to proposed construction when the Department determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values.

~~(f)~~(e) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. This general permit will not be applicable to proposed construction where the Department believes that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

~~(g)~~(f) This permit does not eliminate the need to obtain any other required state, local, or federal

authorization.

(h)(g) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

**SECTION .1300 - GENERAL PERMIT
TO MAINTAIN; REPAIR AND
CONSTRUCT BOAT RAMPS ALONG
ESTUARINE SHORELINES AND
INTO ESTUARINE AND PUBLIC
TRUST WATERS**

.1304 GENERAL CONDITIONS

(a) Structures authorized by this permit shall be non-commercial boat ramps constructed of acceptable material and conforming to the standards herein.

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

(c) There shall be no unreasonable interference with navigation or public use of the waters during or after construction.

~~(d) This general permit may be either modified, suspended or revoked in whole or in part according to the provisions of G.S. 113A-107 if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department believes that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.~~

(e)(d) This general permit will not be applicable to proposed construction when the Department determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values.

(f)(e) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. This general permit will not be applicable to proposed construction where the Department believes that the proposed activity might significantly affect the quality of the human

environment, or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

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

(h)(g) Development carried out under this permit must be consistent with all local requirements, AEC guidelines, and local land use plans current at the time of authorization.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

**SECTION .1400 - GENERAL PERMIT FOR
CONSTRUCTION OF WOODEN GROINS
IN ESTUARINE AND PUBLIC
TRUST WATERS**

.1404 GENERAL CONDITIONS

(a) Structures authorized by this permit shall be simple, wooden groins conforming to the standards herein.

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

(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of wooden groins authorized herein.

~~(d) This general permit may be either modified, suspended or revoked in whole or in part according to the provisions of G.S. 113A-107 if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department believes that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.~~

(e)(d) This general permit will not be applicable to proposed construction when the Department determines, after any necessary investigation, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values.

(f)(e) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal.

This general permit will not be applicable to proposed construction where the Department believes that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to Subchapter 7J.

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

~~(h)(g)~~ Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING CANALS: CHANNELS: BASINS: OR DITCHES IN ESTUARINE WATERS: PUBLIC TRUST WATERS: AND ESTUARINE SHORELINE AEC"S

.1504 GENERAL CONDITIONS

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

~~(b) This general permit may either be modified, suspended, or revoked in whole or in part according to the provisions of G.S. 113A-107 if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed excavation where the Department determines that the proposed activity may significantly affect the quality of the environment or unnecessarily endanger adjoining properties.~~

~~(c)(b)~~ This general permit will not be applicable to proposed excavation when the Department determines that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values.

~~(d)(c)~~ This general permit will not be applicable to proposed maintenance excavation when the Department determines that the proposed activity will adversely affect adjacent property.

~~(e)(d)~~ The Department may determine in some

cases that this general permit is not applicable to a specific excavation proposal. This general permit will not be applicable to proposed excavation where the Department determines that the proposed activity might significantly affect the quality of the environment or unnecessarily endanger adjoining properties. In such cases an individual permit application and review of the proposed project may be initiated using the applications forms, fees and procedures required by 15A NCAC 7J.

~~(f)(e)~~ This general permit authorizes maintenance excavation in canals, channels, basins and ditches within primary nursery areas as designated by the Division of Marine Fisheries except as proscribed by other provisions of this permit. Individual project requests will be evaluated on a case-by-case basis and coordinated with appropriate Division of Marine Fisheries personnel. Individual projects will not be allowed during periods of highest biological productivity.

~~(g)(f)~~ New basins within or with connections to primary nursery areas are not allowed.

~~(h)(g)~~ No new basins will be allowed that result in closure of shellfish waters according to the closure policy of the Division of Environmental Health.

~~(i)(h)~~ This permit does not eliminate the need to obtain any other required state, local, or federal authorization, nor, to abide by regulations adopted by any federal or other state agency.

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

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

SECTION .1600 - GENERAL PERMIT FOR THE INSTALLATION OF AERIAL AND SUBAQUEOUS UTILITY LINES WITH ATTENDANT STRUCTURES IN COASTAL WETLANDS: ESTUARINE WATERS: PUBLIC TRUST WATERS AND ESTUARINE SHORELINES

.1604 GENERAL CONDITIONS

(a) Utility lines for the purpose of this general permit or any pipes or pipelines for the transportation of potable water, and any cable, line, or wire for the transmission, for any purpose, of electrical energy, telephone and telegraph messages, and radio and television communication.

(b) There must be no resultant change in precon-

struction bottom contours. Authorized fill includes only that necessary to backfill or bed the utility line. Any excess material must be removed to an upland disposal area. (c) The utility line crossing will not adversely affect a public water supply intake.

(d) The utility line route or construction method will not disrupt the movement of those species of aquatic life indigenous to the waterbody.

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

~~(f) This general permit may either be amended or repealed in whole or in part according to the provisions of G.S. 113A-107 if the Commission determines that such action would be in the best public interest.~~

~~(g) This general permit will not be applicable to proposed excavation where the Department determines that the proposed activity may significantly affect the quality of the environment or unnecessarily endanger adjoining properties.~~

~~(h)(f)~~ This general permit will not be applicable to proposed excavation when the Department determines that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values.

~~(i)(g)~~ The Department may determine in some cases that this general permit is not applicable to a specific installation proposal. This general permit will not be applicable to proposed installation where the Department determines that the proposed activity might significantly affect the quality of the environment or unnecessarily endanger adjoining properties. In such cases an individual permit application and review of the proposed project may be initiated using the application forms, fees and procedures required by 15A NCAC 7J.

~~(j)(h)~~ This permit does not eliminate the need to obtain any other required state, local, or federal authorization, nor, to abide by regulations adopted by any federal or other state agency.

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

Statutory Authority: G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

.1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency permit shall be subject to the following limitations:

- (1) No work shall begin until an onsite meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed emergency work can be appropriately marked. Written authorization to proceed with the proposed development can be issued during this visit.
- (2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
- (3) Any permitted erosion control projects shall be located no more than 20 feet waterward of the endangered structure.
- (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (5) Structural work shall meet sound engineering practices.
- (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

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

(c) There shall be no unreasonable interference with navigation or public use of the waters during or after construction.

~~(d) This general permit may be either modified, suspended, or revoked in whole or in part accord-~~

~~ing to the provisions of G.S. 113A-107 if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department believes that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.~~

~~(e)(d)~~ This general permit will not be applicable to proposed construction when the Department determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation, or recreational values.

~~(f)(e)~~ The Department may, in a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. This general permit will not be applicable to proposed construction where the Department believes that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

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

~~(h)(g)~~ Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

Statutory Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-118.1.

SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING LANDWARD OF THE MEAN HIGH WATER MARK IN THE OCEAN HAZARD AEC

.1804 GENERAL CONDITIONS

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

(b) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural Resources to make periodic inspections at any time deemed necessary to ensure that the activity being performed under authority of this general permit is in accordance with the

terms and conditions prescribed herein.

~~(e)~~ This general permit may be either modified, suspended, or revoked in whole or in part if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department believes that authorization may be warranted but that the proposed activity might significantly affect the quality of the human environment or unnecessarily endanger adjoining properties.

~~(f)(c)~~ This general permit will not be applicable to proposed construction when the Department determines after any necessary investigation that the proposed activity would adversely affect areas which possess historical, cultural, scenic, conservation or recreational values. If a shipwreck is unearthed, all work shall stop and both the Division of Archives and history and Coastal Management shall be contacted immediately.

~~(e)(d)~~ The Department may on a case by case basis determine that the general permit shall not be applicable to a specific construction proposal. This general permit will not be applicable to proposed construction where the Department believes that the proposed activity might significantly affect the quality of the human environment or unnecessarily endanger adjoining properties. In those cases, individual permit application and review of the proposed project will be required according to 15A NCAC 7HJ.

~~(f)(e)~~ This general permit does not convey any rights, either in real estate or material and does not authorize any injury to property or invasion of rights of others.

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

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

Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.

SECTION .1900 - GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN ESTUARINE AND OCEAN HAZARD AECS

.1904 GENERAL CONDITIONS

(a) Temporary structures for the purpose of this general permit are those which are constructed within the ocean hazard or estuarine system AECS

and because of dimensions or functions do not meet the criteria of the existing general permits (i.e. are not a bulkhead, pier, rip-rap, groin, etc.).

(b) There shall be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC except for the placement of auxiliary structures such as signs, fences, posts, pilings, etc.

(c) There shall be no fill activity below the plane of mean high water associated with the structure.

(d) The structure shall not be located in such a manner that will directly or indirectly adversely impact coastal wetlands.

(e) The structure shall not disrupt the movement of those species of aquatic life indigenous to the waterbody.

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

~~(g) This general permit may either be amended or repealed in whole or in part according to the provisions of G.S. 113A-107 if the Commission determines that such action would be in the best public interest.~~

~~(h) This general permit will not be applicable to proposed structures when the Department determines that the proposed activity may significantly affect the quality of the environment or unnecessarily endanger adjoining properties.~~

~~(g)~~ This general permit will not be applicable to proposed structures when the Department determines that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conversation or recreational values.

~~(h)~~ The Department may determine in some cases that this general permit is not applicable to a specific structural proposal. This general permit will not be applicable when the Department determines that the proposed activity might significantly affect the quality of the environment or unnecessarily endanger adjoining properties. In such cases an individual permit application and review of the proposed project may be initiated using the application forms, fees, and procedures required by 15A NCAC 7J.

~~(i)~~ This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by regulations adopted by any federal, state, or local agency.

~~(j)~~ Development carried out under this permit

must be consistent with all local requirements, and local land use plans current at the time of authorization.

Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.

SECTION .2100 - GENERAL PERMIT FOR CONSTRUCTION OF MARSH ENHANCEMENT BREAKWATERS FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS

.2101 PURPOSE

This permit will allow the construction of offshore parallel breakwaters, made from wood, plastic lumber, or metal sheet piling for shoreline protection in conjunction with existing or created coastal wetlands. This permit will only be applicable where a shoreline is experiencing erosion in public trust areas and estuarine waters according to authority provided in 15A NCAC 7J .1100 and according to the following guidelines. This permit will not apply within the ocean hazard AEC, the inlet hazard AEC, or waters adjacent to these AEC's.

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

.2102 APPROVAL PROCEDURES

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

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all

comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed breakwater alignment can be appropriately marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the breakwater must begin within 90 days of this visit or the general authorization expires and it will be necessary to re-examine the alignment to determine if the general authorization can be reissued.

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

.2103 PERMIT FEE

The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.

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

.2104 GENERAL CONDITIONS

(a) This permit authorizes only the construction of breakwaters conforming to the standards herein.

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

(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of the breakwater authorized herein.

(d) This general permit will not be applicable to proposed construction when the Department determines after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation, or recreational values.

(e) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. In those cases, individual permit applications and review of the proposed project will be required

according to 15A NCAC 7J. This general permit will not be applicable to proposed construction where the Department determines that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.

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

(g) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

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

.2105 SPECIFIC CONDITIONS

(a) The breakwater shall be positioned no more than 20 feet waterward of the mean high water or normal water level contour (whichever is applicable) or 20 feet waterward of the waterward edge of existing emergent wetlands at any point along its alignment. For narrow waterbodies (canals, creeks, etc.) the breakwater alignment shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

(b) Breakwaters authorized under this General Permit shall be allowed only in waters that average less than three feet in depth along the proposed alignment as measured from the mean high water or normal water level contour.

(c) Where Department Staff determine that insufficient coastal marsh exists along the permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate coastal marsh landward of the breakwater structure as directed by Department Staff.

(d) Construction authorized by this general permit will be limited to a maximum length of 500 feet.

(e) The breakwater shall be constructed with an equal gap between each sheathing board totaling at least one inch of open area every linear foot of breakwater. The breakwater shall have at least one five foot opening at every 100 feet. The breakwater sections shall be staggered and overlap as long as the five foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.

(f) The height of the breakwater shall not exceed six inches above mean high water or the normal water level.

(g) Offshore breakwater sections shall be set

back 15 feet from the adjoining property lines and the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The set back may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the breakwater begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the breakwater.

(h) Breakwaters shall be marked at 50 foot intervals with yellow reflectors extending at least three feet above mean high water.

(i) No backfill of the breakwater or any other fill of wetlands, estuarine waters, public trust areas, or highground is authorized by this general permit.

(j) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

(k) The breakwater must be constructed of treated wood, plastic lumber, metal sheet piles or other suitable materials approved by Department personnel.

(l) Perpendicular sections, return walls, or sections which would enclose estuarine waters or public trust areas shall not be allowed under this permit.

(m) The permittee will maintain the breakwater in good condition and in conformance with the terms and conditions of this permit or the remaining breakwater structure shall be removed within 90 days of notification from the Division of Coastal Management.

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

TITLE 16 - DEPARTMENT OF
PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0307 and 6E .0202.

The proposed effective date of this action is July

1, 1994.

The public hearing will be conducted at (16 NCAC 6C .0307) 9:30 a.m. and (16 NCAC 6E .0202) 10:00 a.m. on February 4, 1994 at the State Board Room, Education Building, 301 N. Wilmington Street, Raleigh, NC 27601-2825.

Reason for Proposed Action:

16 NCAC 6C .0307 - Amendment allows school systems greater flexibility in handling certificate renewal credits.

16 NCAC 6E .0202 - Amendment provides consistent policy to be applied in grades 7 - 12 regarding persons who are ejected from interscholastic athletic events.

Comment Procedures: Any interested person may make comments in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND
SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0300 - CERTIFICATION

.0307 CERTIFICATE RENEWAL

(a) Certificates are valid for a period of five years from the effective date of issuance. Holders must renew their certificates within each five-year period. The Department applies renewal credit to the person's certificate field(s) and/or professional duties.

(b) The Department bases renewal or reinstatement of a certificate on 15 units of renewal credit. A unit of credit is equal to one quarter hour or two-thirds of a semester hour of IHE credit, or one school year of teaching experience. The Department will not record less than one credit on a certificate. For their own employees, LEAs can approve staff development activities that carry less than one unit of credit.

(c) Currently employed personnel shall maintain a professional growth plan in accordance with department guidelines. These persons may obtain renewal credit for the following activities:

- (1) college or university credit activities;
- (2) teaching experience (one unit for every year);
- (3) local in-service courses or workshops which carry at least one unit of renewal

credit and which meet the following criteria:

- (A) ten clock hours of direct training by the instructor will equal one unit of renewal credit;
 - (B) content and instructional activities designed in a sequential manner to develop specified competencies of a specific population;
 - (C) led by qualified instructional personnel and directly supervised by the sponsoring school unit;
 - (D) credit is granted on the basis of program completion and achievement of specified individual performance, which is determined by individual evaluation for specified competencies;
 - (E) enrollment limited to assure accountability of credit granted;
- (4) independent study of no more than five units of renewal credit per five-year renewal period which meets the following criteria:
- (A) teachers and other certified personnel help to develop local independent study procedures which the superintendent keeps on file and periodically sends to each certified employee;
 - (B) the employee and the superintendent or his or her designee plan the experience in advance, including identification of competencies to be acquired and an evaluation to determine satisfactory achievement of those competencies; and
 - (C) the amount of credit awarded is related to the complexity of the competencies to be achieved;
- (5) activities approved by the Department.
- (d) Each LEA and approved governing boards of schools are responsible for assuring that all local courses and workshops and independent study activities which do not carry IHE credit meet the standards contained in this Rule.
- (e) Agencies which the Department authorizes to administer renewal requirements locally shall adopt a procedure to determine the appropriateness of credit in advance of the renewal activity. In determining appropriateness the agency must consider direct relationship to critical job responsibilities, suitability of the content level and properly established credit for the activity. Each agency must report on participation in and effectiveness of renewal activities as the Department requests.
- (f) Persons who hold a North Carolina certi-

cate but who are not currently employed in the public schools or by approved boards may earn renewal credit in college or university credit activities, or local courses and workshops or activities approved by the Department if they are admitted on a space available basis. The Department will determine the appropriateness of the credits on the basis of the direct relationship to the certificate field, the suitability of the content level and properly established credits for the activity.

(g) The Department will approve in advance activities which are not established for certificate renewal by LEAs or which do not carry regular IHE credit, but which are offered for renewal credit.

Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, Sec. 5.

SUBCHAPTER 6E - STUDENTS

SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE

.0202 INTERSCHOLASTIC ATHLETICS

(a) Only students in grades 7-12 may participate in interscholastic athletic competition. In order to qualify for public school participation, a student must meet the following requirements:

- (1) The student must meet the residence criteria of G.S. 115C-366(a). The student may participate only at the school to which the student is assigned by the LEA.
- (2) The principal must have evidence of the legal birth date of the student. The age limits for students as of October 16 of each year are:
 - (A) no older than age 18 for high school;
 - (B) no older than age 16 for ninth grade or junior high; and
 - (C) no older than age 15 for seventh or eighth grade.
- (3) In grades 9-12, the student must pass at least five courses each semester and meet promotion standards established by the LEA. In grades 7 and 8, the student must meet state and local promotion standards and maintain passing grades each semester. Regardless of the school organization pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade.

- (4) The student must receive a medical examination by a licensed medical doctor each year (365 days).
- (5) The student may not participate after any of the following:
 - (A) graduation;
 - (B) becoming eligible to graduate;
 - (C) signing a professional athletic contract;
 - (D) receiving remuneration as a participant in an athletic contest; or
 - (E) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.
- (6) A high school student may participate only during the eight consecutive semesters beginning with the student's first entry into grade nine.

(b) The SBE recognizes that the North Carolina High School Athletic Association (NCHSAA) has been organized and operates to enforce the SBE interscholastic athletic rules. The SBE supports the exercise of this function by the NCHSAA within the framework of SBE rules.

(c) The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose or it works an undue hardship when applied to a particular student.

(d) Each principal of a school which participates in interscholastic athletics must certify a list of eligible students for each sport.

(e) The NCHSAA may adopt and impose penalties appropriate for the violation of this Rule at the high school level. The LEA which has jurisdiction over the school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior school levels. Any student-athlete, coach or school official in grades 7-12 who is ejected from any athletic contest shall be penalized as follows:

- (1) for the first offense, the person shall be reprimanded and suspended for the next game at that level of play (varsity or junior varsity) and for any intervening games at either level;
- (2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level;
- (3) for a third offense, the person shall be

- suspended for one calendar year;
- (4) a coach who is suspended at any level of grades 7-12 (middle school, junior high or high school) may not coach in any other grade level in grades 7-12 during the period of suspension;
- (5) penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(f) The NCHSAA must receive approval from the SBE or its designee for any new, additional or revised rule which it proposes for the governance of athletics.

Statutory Authority G.S. 115C-47(4).

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rules cited as 19A NCAC 02E .0216 - .0219 and .0221.

The proposed effective date of this action is April 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.

Reason for Proposed Action:

19A NCAC 02E .0216, .0218, .0219, .0221 - will allow for Logo signing at all freeway interchanges. 19A NCAC 02E .0217 - deletes definitions which are no longer applicable to the Logo Sign program.

Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rules are published or until the date of any public hearing held on the proposed rules, whichever is longer.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

.0216 SPECIFIC INFORMATION SIGNING PROGRAM

The Specific Information Signing Program, hereinafter "Program", provides certain eligible businesses with the opportunity to be listed on official signs within the right-of-way of interstate highways and fully controlled access highways. The Traffic Engineering Branch is responsible for receiving requests for information concerning the Program. Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, P.O. Box 25201, Raleigh, N. C. 27611. Division Engineers for the division in which the interchange is located are responsible for receiving and distributing applications and copies of policies and procedures, executing agreements and administering the agreements.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

.0217 SPECIFIC INFORMATION PROGRAM DEFINITIONS

The following definitions apply to 19A NCAC 2E .0216 through .0223:

- (1) "Specific Information Panel", or "panel" means a panel, rectangular in shape, located within the highway right of way and consisting of:
 - (a) the words "GAS", "FOOD", "LODGING", or "CAMPING" and directional information;
 - (b) space for one or more individual business (logo) signs to be mounted on the panel.
- (2) "Business Sign" or "Logo Sign" means a separately attached sign, furnished and owned by a participating business, mounted on the rectangular panel or mounted separately for trailblazing to show the brand, symbol, trademark, or name, or combination of these, for the motorist service available on the crossroad at or near the interchange.
- (3) "Public Telephone" means a coin operated

telephone or a business telephone which is available for public use during all business hours. If there is an outside coin-operated telephone in the immediate vicinity of the business (within the intersection area, at an adjacent business or across the road), the business is in compliance. A business phone at an adjacent business is not a public telephone for a particular applicant business.

- ~~(4) "Interstate Highway" means any section of the highway that is a part of the "National System of Interstate and Defense Highways". A highway listed as "Interstate Business Loop (or Spur)" or "Temporary Interstate" is not considered a part of the Interstate Highway System.~~
- ~~(5) "Rural Interchange" means an interchange on an Interstate or other fully controlled access highway, any portion of which is outside the corporate limits of any municipality.~~
- (4) ~~(6)~~ "Supplemental Service Sign" means a panel, rectangular in shape, white legend and border on a blue background, with the words "GAS", "FOOD", "LODGING", "CAMPING" or any combination thereof.
- (5) ~~(7)~~ "Tire Repair (by an employee)" means on premise tire repair by an employee or a contract between the subject business and another business to do tire repair for them.
- (6) ~~(8)~~ "Fully Controlled Access Highway" means a highway on which the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.
- (7) ~~(9)~~ "Mainline" means fully controlled access highway.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 24 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

.0218 LOCATION OF PANELS

The department shall control the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with following criteria:

- (1) The department may erect panels at rural

interchanges. The department may also erect panels at an interchange within a municipal corporate limit with a population of 25,000 or less, at the time application for business signs is made. If an interchange is taken into a municipal corporate limit after the initial business signs are erected, business signs may be added to the original panels until the panels have the full complement of business signs. No additional panels will be erected at an interchange that has been taken into a municipal corporate limit with 25,000 population or greater.

- (2) Panels shall be fabricated and located as detailed on the signing plans for the interchanges and shall be located in a manner to take advantage of natural terrain and to have the least impact on the scenic environment.
- (3) A separate mainline panel shall be provided on the interchange approach for each qualified type of motorist service except as provided in Item (4) of this Rule. No more than one panel shall be erected for a type of service in each direction approaching an interchange. Where a qualified type of motorist service is not available at an interchange, the panel may not be erected. A maximum number of six specific business (logo) signs may be installed on any logo panel for each service type at an interchange.
- (4) The mainline panels shall be erected between the previous interchange and 800 feet in advance of the exit direction sign for the interchange from which the services are available. There shall be at least 800 feet spacing between the panels and other signs. In the direction of traffic, the successive panels shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order. A combination type panel may be used in remote rural areas of the ~~Interstate System, or other~~ fully controlled access highway and when space does not permit all signs and only two of each type of service is available at the location. A maximum of three business signs may appear below each respective service on a combination type panel. If all four services are available, "GAS" and "FOOD" shall be combined on one sign,

and "LODGING" and "CAMPING" shall be combined on one sign. When the number of business facilities at ~~a rural an~~ interchange are increased to more than three for one or more services, existing combination service business signing must be removed and replaced with sign panels, dedicated to each service. If the spacing limitations prohibit the erection of Specific Information Panels for all of the types of services available, preference shall be given to "GAS", "FOOD", "LODGING" or "CAMPING" services in that order. No panels shall be erected where minimum spacing limitations cannot be met.

If a panel(s) cannot be erected due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected below existing sign(s). Not more than three services may be erected below an existing sign.

- (5) On each exit ramp, a ramp panel for the qualified type of motorist service may be erected.

If all of the qualified services are visible from the exit ramp terminal, ramp panels are not required.

- (6) The ramp panel shall be erected as detailed on the signing plans for the interchange. If conditions permit, the successive panels along the ramp in the direction of traffic shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order.
- (7) If there is insufficient space on the ramp or the mainline for all the panels, priority shall be given to "GAS", "FOOD", "LODGING", then "CAMPING" services in that order. If panel(s) cannot be erected on a ramp due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected.
- (8) Panels shall not be erected at an interchange where the motorist cannot conveniently re-enter the freeway and continue in the same direction of travel. Panels shall not be erected at any interchange with another controlled access facility.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

.0219 ELIGIBILITY FOR PROGRAM

Business signs may be permitted, provided said businesses comply with the following criteria and have a public telephone:

- (1) The individual business installation whose name, symbol or trademark appears on a business sign shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin. An individual business may apply for additional sign positions on a sign panel provided no qualified applicant is denied space on the sign panel. An individual business, under construction, may participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application.
- (2) The maximum distance that a "GAS" "FOOD", or "LODGING" service can be located from the ~~Interstate, or other~~ fully controlled access highway shall not exceed three miles in either direction via an all-weather road. Where no qualifying services exist within three miles, the maximum distance may be increased to six miles, provided the total travel distance to the business and return to the interchange does not exceed twelve miles. The maximum distance for a "CAMPING" service shall not exceed ten miles in either direction via an all-weather road. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the ~~Interstate or other~~ fully controlled access highway route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than .2 mile from a public road on

a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

- (3) "GAS" and associated services. Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law;
 - (b) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
 - (c) restroom facilities and drinking water suitable for public use;
 - (d) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs;
 - (e) year-round operation at least 16 continuous hours per day, seven days a week.
- (4) "FOOD". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week;
 - (c) indoor seating for at least 20 persons;
 - (d) public restroom facilities.
- (5) "LODGING". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) adequate sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast" establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall be identified on the Logo signs by a standard message specified by the Department. "Bed and Breakfast" businesses shall only be allowed to participate in the program if the maximum number of qualified Lodging businesses do not request participation in the program and occupy spaces on the Logo sign panels;

- (c) off-street vehicle parking for each lodging room for rent;
- (d) year-round operation.
- (6) "CAMPING". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (b) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
 - (c) adequate parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business sign by the department during off seasons, if operated on a seasonal basis.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

.0221 FEES

(a) The fee for an initial installation is two hundred fifty dollars (\$250.00) per business sign. Contracts are renewed annually every November 1. The annual fee is two hundred fifty dollars (\$250.00) per business sign. The initial fee shall cover a one-year period beginning with placement and acceptance of the "business sign" or "logo sign" by the department. The fee for that period of time between the first anniversary of placement and acceptance and the first annual renewal date shall be the prorated portion of the annual fee. Any business which meets the criteria to participate in the program may pay the cost of initial installation of a complete logo sign panel subject to a credit to be determined by the department at the time it receives any fee from a business which later qualifies and elects to participate in the program on the subject panel. The aforesaid payment of the cost of initial installation of a complete logo sign panel in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

(b) Fees are payable by check or money order and due in advance of the period or service

covered by said fee. Failure to pay a charge when due is ground for removal of the sign and termination of the contract.

(c) When requested by a business, the department may perform additional requested services in connection with changes of the business sign, upon payment of a twenty-five dollar (\$25.00) service charge per business sign, and any new or renovated business sign required for such purpose shall be provided by the applicant. If the department removes or masks a business sign because of seasonal operation, there will be no additional charge to the business.

(d) The department shall not be responsible for damages to business signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), requiring repair or replacement of business sign(s). Applicants in such event shall provide a new or renovated business sign together with payment of a twenty-five dollar (\$25.00) service charge per business sign to the department to replace such damaged business sign(s).

(e) Any participating business, other than "GAS", "FOOD", or "LODGING" service located more than three miles from the ~~Interstate, or other~~ fully controlled access highway, which did not previously participate in the initial cost of the installation of logo sign panels, may by making application to the department and paying the balance of construction costs not previously paid, avoid being removed from this program by applications of other businesses deemed closer to the interchange. Any participating applicant may pay the balance of construction costs for only one logo sign on any sign panel. This payment of the balance of construction costs in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

(f) Any business, other than "GAS", "FOOD", or "LODGING" service located more than three miles from the ~~Interstate, or other~~ fully controlled access highway, which meets the criteria to participate in the program, by making application to the department and prepaying all construction cost fees for addition to existing logo signs, may avoid being removed from this program by applications of other businesses deemed to be closer to the interchange. Any business applicant may prepay the balance of construction costs for only one logo sign on any sign panel. This prepayment of all construction cost fees in no way relieves the participating business from the obligation of its payment of the annual

maintenance fee per business sign.

(g) Any participating business located more than three miles from the ~~Interstate, or other~~ fully controlled access highway, that prepaid all construction costs for the initial installation of the logo background sign panels, shall be allowed a reimbursement if dislocated by another qualifying, participating business. This reimbursement amount will be determined by the Department, based on the life-cycle costs of the logo signs and the in-service time the business logo was displayed.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

**TITLE 21 - OCCUPATIONAL
LICENSING BOARD**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to amend rule cited as 21 NCAC 54 .1605.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 3:00 p.m. on January 26, 1994 at the Board Room, Sheraton Crabtree Hotel, Raleigh, NC.

Reason for Proposed Action: To set fees not specified by statute.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to February 3, 1994 to Martha Storie, Executive Director, N.C. Psychology Board, University Hall, Appalachian State University, Boone, N.C. 28608.

**CHAPTER 54 - BOARD OF
PRACTICING PSYCHOLOGISTS**

**SECTION .1600 - GENERAL
PROVISIONS**

.1605 FEES

In addition to fees specified in Article 18A, Chapter 90 of the North Carolina General Statutes, the following charges will be assessed for the

indicated services:

- (1) eight dollars (\$8.00) - copy of annual directory of licensed psychologists;
- (2) five dollars (\$5.00) - copy of 21 NCAC 54;
- (3) ~~fifty dollars (\$50.00)~~ two hundred dollars (\$200.00) - renewal of license;
- (4) ~~ten dollars (\$10.00) - late renewal of license;~~
- (5) the cost of the examination to the Board plus twenty-five dollars (\$25.00) ~~for the~~ national written examination;
- (6) ~~ten dollars (\$10.00)~~ one hundred dollars (\$100.00) - state examination; ~~and~~
- (7) twenty five cents (\$0.25) per page - copy of minutes of board meetings or transcript of hearing;
- (8) one hundred dollars (\$100.00) - application fee;
- (9) one hundred dollars (\$100.00) - reinstatement fee; and
- (10) twenty dollars (\$20.00) - returned check.

Statutory Authority G.S. 12-3.1(c); 90-270.9; 90-270.18(b)(c)

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

- Citation = Title, Chapter, Subchapter and Rule(s)
- AD = Adopt
- AM = Amend
- RP = Repeal
- With Chgs = Final text differs from proposed text
- Corr = Typographical errors or changes that requires no rulemaking
- Eff. Date = Date rule becomes effective
- Temp. Expires = Rule was filed as a temporary rule and expires on this date or 180 days

NORTH CAROLINA ADMINISTRATIVE CODE

Editor's Note: Due to the volume of rules filed in September, October and November by the Departments of Revenue and Transportation for codification into the North Carolina Administrative Code, the Rules Division is publishing a separate List of Rules Codified for these rules and will be mailing these rule changes as a separate update to NCAC subscribers.

SEPTEMBER, OCTOBER & NOVEMBER 93

TITLE 17 - DEPARTMENT OF REVENUE

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17 NCAC 1C .0501 - .0513	✓					10/01/93	
4A .0001 - .0008			✓			01/01/94	
4B .0104		✓				01/01/94	
.0106		✓				01/01/94	
.0109		✓				01/01/94	
.0304		✓				01/01/94	
.0308 - .0311		✓				01/01/94	
.0313			✓			01/01/94	
.0602			✓			01/01/94	
.1305 - .1306		✓				01/01/94	
.1402		✓				01/01/94	
.1701			✓			01/01/94	
.1811			✓			01/01/94	
.2001			✓			01/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	4B	.3006		✓				01/01/94	
			.3301		✓				01/01/94	
			.3402		✓				01/01/94	
			.3406 - .3407		✓				01/01/94	
			.3501					✓		
			.3701			✓			01/01/94	
			.3704		✓				01/01/94	
			.4005		✓				01/01/94	
			.4013		✓				01/01/94	
			.4103			✓			01/01/94	
			.4402		✓				01/01/94	
			.4503 - .4504		✓				01/01/94	
			.4506		✓				01/01/94	
			.4509		✓				01/01/94	
			.4511		✓				01/01/94	
			.4516		✓				01/01/94	
	4C		.0101		✓				01/01/94	
			.0201		✓				01/01/94	
			.0205		✓				01/01/94	
			.0301 - .0302			✓			01/01/94	
			.0401 - .0405			✓			01/01/94	
			.0501 - .0503			✓			01/01/94	
			.0504		✓				01/01/94	
			.0505			✓			01/01/94	
			.0603		✓				01/01/94	
			.0604			✓			01/01/94	
			.0701 - .0702		✓				01/01/94	
			.0801 - .0802		✓				01/01/94	
			.0901		✓				01/01/94	
			.0903		✓				01/01/94	
			.1002		✓				01/01/94	
			.1003 - .1004			✓			01/01/94	
			.1101 - .1102		✓				01/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	4C	.1201		✓				01/01/94	
			.1202					✓		
			.1204			✓			01/01/94	
			.1301		✓				01/01/94	
			.1402		✓				01/01/94	
			.1501		✓				01/01/94	
			.1705		✓				01/01/94	
			.1707		✓				01/01/94	
		4D	.0303		✓				01/01/94	
			.0305		✓				01/01/94	
			.0401 - .0402		✓				01/01/94	
			.0505		✓				01/01/94	
			.0508 - .0509		✓				01/01/94	
			.0610		✓				01/01/94	
			.0909			✓			01/01/94	
			.1001		✓				01/01/94	
			.1002			✓			01/01/94	
		4E	.0102		✓				01/01/94	
			.0201					✓		
			.0203		✓				01/01/94	
			.0209 - .0210			✓			01/01/94	
			.0402			✓			01/01/94	
			.0501			✓			01/01/94	
			.0601 - .0602		✓				01/01/94	
		4F	.0001		✓				01/01/94	
		5A	.0001 - .0002			✓			10/01/93	
		5B	.0106			✓			10/01/93	
			.0203			✓			10/01/93	
			.1111			✓			10/01/93	
			.1310			✓			10/01/93	
			.1405			✓			10/01/93	
		5C	.0603			✓			10/01/93	
			.0901			✓			11/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	5C	.0904			✓			11/01/93	
			.2601			✓			10/01/93	
	7A		.0001 - .0003			✓			10/01/93	
	7B		.0101			✓			10/01/93	
			.0104 - .0106		✓				10/01/93	
			.0109		✓				10/01/93	
			.0111		✓				10/01/93	
			.0113		✓				10/01/93	
			.0115		✓				10/01/93	
			.0116			✓			10/01/93	
			.0117		✓				10/01/93	
			.0119			✓			10/01/93	
			.0121		✓				10/01/93	
			.0122 - .0125		✓				10/01/93	
			.0126			✓			10/01/93	
			.0201 - .0202		✓				10/01/93	
			.0206		✓				10/01/93	
			.0301 - .0302		✓				10/01/93	
			.0401		✓				10/01/93	
			.0403 - .0407		✓				10/01/93	
			.0501			✓			10/01/93	
			.0502		✓				10/01/93	
			.0602 - .0604		✓				10/01/93	
			.0606		✓				10/01/93	
			.0610		✓				10/01/93	
			.0615		✓				10/01/93	
			.0617 - .0618		✓				10/01/93	
			.0621 - .0622		✓				10/01/93	
			.0624 - .0633		✓				10/01/93	
			.0702		✓				10/01/93	
			.0704 - .0708		✓				10/01/93	
			.0710 - .0714		✓				10/01/93	
			.0716		✓				10/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	7B	.0801		✓				10/01/93	
			.0803		✓				10/01/93	
			.0805 - .0806		✓				10/01/93	
			.0811		✓				10/01/93	
			.0901 - .0902		✓				10/01/93	
			.0904	✓					10/01/93	
			.1001 - .1003		✓				10/01/93	
			.1101		✓				10/01/93	
			.1105		✓				10/01/93	
			.1107		✓				10/01/93	
			.1111		✓				10/01/93	
			.1113			✓			10/01/93	
			.1115		✓				10/01/93	
			.1118		✓				10/01/93	
			.1122 - .1123		✓				10/01/93	
			.1201 - .1202		✓				10/01/93	
			.1301 - .1303		✓				10/01/93	
			.1305	✓					10/01/93	
			.1401 - .1402		✓				10/01/93	
			.1403			✓			10/01/93	
			.1404		✓				10/01/93	
			.1405			✓			10/01/93	
			.1601 - .1602		✓				10/01/93	
			.1701 - .1702		✓				10/01/93	
			.1703 - .1705		✓				10/01/93	
			.1706			✓			10/01/93	
			.1801 - .1802		✓				10/01/93	
			.1804 - .1805		✓				10/01/93	
			.1903 - .1905		✓				10/01/93	
			.1906			✓			10/01/93	
			.1907		✓				10/01/93	
			.2001 - .2002		✓				10/01/93	
			.2101		✓				10/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	7B	.2103		✓				10/01/93	
			.2105		✓				10/01/93	
			.2201 - .2205		✓				10/01/93	
			.2207 - .2213		✓				10/01/93	
			.2401		✓				10/01/93	
			.2502 - .2503		✓				10/01/93	
			.2601 - .2608		✓				10/01/93	
			.2611		✓				10/01/93	
			.2701 - .2702		✓				10/01/93	
			.2801 - .2802		✓				10/01/93	
			.2901 - .2902		✓				10/01/93	
			.3001 - .3002		✓				10/01/93	
			.3004		✓				10/01/93	
			.3009 - .3012		✓				10/01/93	
			.3101 - .3103		✓				10/01/93	
			.3105 - .3107		✓				10/01/93	
			.3201 - .3202		✓				10/01/93	
			.3203			✓			10/01/93	
			.3204		✓				10/01/93	
			.3301 - .3302		✓				10/01/93	
			.3401 - .3403		✓				10/01/93	
			.3501		✓				10/01/93	
			.3502			✓			10/01/93	
			.3504 - .3505		✓				10/01/93	
			.3601		✓				10/01/93	
			.3602			✓			10/01/93	
			.3701 - .3703		✓				10/01/93	
			.3801 - .3804		✓				10/01/93	
			.3901 - .3905		✓				10/01/93	
			.3911		✓				10/01/93	
			.4003		✓				10/01/93	
			.4005			✓			10/01/93	
			.4006		✓				10/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	7B	.4101 - .4107		✓				10/01/93	
			.4109		✓				10/01/93	
			.4202 - .4203		✓				10/01/93	
			.4206 - .4207		✓				10/01/93	
			.4301 - .4303		✓				10/01/93	
			.4402 - .4403		✓				10/01/93	
			.4406 - .4408		✓				10/01/93	
			.4410		✓				10/01/93	
			.4413 - .4415		✓				10/01/93	
			.4416			✓			10/01/93	
			.4501		✓				10/01/93	
			.4502			✓			10/01/93	
			.4503 - .4504		✓				10/01/93	
			.4506		✓				10/01/93	
			.4508 - .4511		✓				10/01/93	
			.4514		✓				10/01/93	
			.4601			✓			10/01/93	
			.4602 - .4604		✓				10/01/93	
			.4606			✓			10/01/93	
			.4609		✓				10/01/93	
			.4611		✓				10/01/93	
			.4612 - .4613			✓			10/01/93	
			.4614 - .4615		✓				10/01/93	
			.4617			✓			10/01/93	
			.4619			✓			10/01/93	
			.4701		✓				10/01/93	
			.4706 - .4708		✓				10/01/93	
			.4710 - .4711		✓				10/01/93	
			.4713		✓				10/01/93	
			.4715 - .4716		✓				10/01/93	
			.4801		✓				10/01/93	
			.4902		✓				10/01/93	
			.5003 - .5004		✓				10/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	7B	.5102		✓				10/01/93	
			.5201 - .5202		✓				10/01/93	
			.5301		✓				10/01/93	
			.5406		✓				10/01/93	
			.5410 - .5412		✓				10/01/93	
			.5414		✓				10/01/93	
			.5419 - .5421		✓				10/01/93	
			.5424		✓				10/01/93	
			.5429 - .5431		✓				10/01/93	
			.5435		✓				10/01/93	
			.5439			✓			10/01/93	
			.5442		✓				10/01/93	
			.5444 - .5445		✓				10/01/93	
			.5446			✓			10/01/93	
			.5448		✓				10/01/93	
			.5450 - .5452		✓				10/01/93	
			.5454 - .5456		✓				10/01/93	
			.5461	✓					10/01/93	
	7C		.0103		✓				10/01/93	
			.0104 - .0105			✓			10/01/93	
8			.0403 - .0404		✓				10/01/93	
			.0406		✓				10/01/93	
			.0503 - .0504		✓				10/01/93	
			.0506		✓				10/01/93	
			.0508		✓				10/01/93	
			.0603		✓				10/01/93	
			.0605 - .0606		✓				10/01/93	
			.0608 - .0610		✓				10/01/93	
			.0702 - .0704		✓				10/01/93	
			.0706		✓				10/01/93	
			.0901 - .0904		✓				10/01/93	
			.1002		✓				10/01/93	
			.1102 - .1103		✓				10/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	8	.1201		✓				10/01/93	
			.1301 - .1302		✓				10/01/93	
			.1501		✓				10/01/93	
			.1505		✓				10/01/93	
			.1601 - .1604		✓				10/01/93	
	9G		.0102		✓				01/01/94	
			.0104		✓				01/01/94	
			.0201 - .0203		✓				01/01/94	
			.0301 - .0303		✓				01/01/94	
			.0306		✓				01/01/94	
			.0402 - .0404		✓				01/01/94	
			.0502 - .0503		✓				01/01/94	
			.0507		✓				01/01/94	
			.0509		✓				01/01/94	
			.0512		✓				01/01/94	
			.0514		✓				01/01/94	
			.0516	✓					01/01/94	
	9H		.0102		✓				01/01/94	
			.0202		✓				01/01/94	
			.0208		✓				01/01/94	
			.0210	✓					01/01/94	
			.0302 - .0303		✓				01/01/94	
			.0305		✓				01/01/94	
			.0409		✓				01/01/94	
	9I		.0102		✓				01/01/94	
			.0301 - .0303		✓				01/01/94	
			.0402		✓				01/01/94	
			.0506		✓				01/01/94	
	9J		.0204		✓				01/01/94	
	10		.0503			✓			10/01/93	
	11		.0201 - .0202			✓			10/01/93	
			.0205			✓			10/01/93	
19A	NCAC	1A	.0101		✓				11/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	1A	.0102			✓			11/01/93	
			.0103			✓			11/01/93	
			.0201		✓				11/01/93	
			.0202 - .0203			✓			11/01/93	
			.0301		✓				11/01/93	
			.0302 - .0303			✓			11/01/93	
			.0401		✓				11/01/93	
			.0402 - .0403			✓			11/01/93	
			.0701 - .0711			✓			12/01/93	
			.0901 - .0902			✓			11/01/93	
			.1001 - .1002			✓			11/01/93	
		1B	.0101			✓			11/01/93	
			.0102					✓		
			.0103		✓				11/01/93	
			.0201 - .0203		✓				11/01/93	
			.0206					✓		
			.0301 - .0302		✓				11/01/93	
			.0401		✓				11/01/93	
			.0402					✓		
			.0403		✓				11/01/93	
			.0501 - .0502		✓				11/01/93	
			.0501 - .0502					✓		
		1C	.0101			✓			11/01/93	
			.0102		✓				11/01/93	
			.0201		✓				11/01/93	
			.0202 - .0208			✓			11/01/93	
			.0209		✓				11/01/93	
		2A	.0101			✓			12/01/93	
			.0102		✓				12/01/93	
		2B	.0101 - .0108			✓			10/01/93	
			.0110			✓			10/01/93	
			.0112 - .0113			✓			10/01/93	
			.0114		✓				10/01/93	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A NCAC 2B .0115 - .0118			✓			10/01/93	
.0119		✓				12/01/93	
.0120 - .0121			✓			10/01/93	
.0123			✓			10/01/93	
.0125 - .0128			✓			10/01/93	
.0129		✓				10/01/93	
.0130			✓			10/01/93	
.0131 - .0133		✓				10/01/93	
.0134 - .0137			✓			10/01/93	
.0138 - .0139		✓				10/01/93	
.0140			✓			10/01/93	
.0142		✓				10/01/93	
.0143		✓				11/01/93	
.0151			✓			12/01/93	
.0152 - .0153		✓				12/01/93	
.0155 - .0158		✓				10/01/93	
.0159 - .0160			✓			10/01/93	
.0161 - .0162		✓				10/01/93	
.0162			✓			12/01/93	
.0164		✓				10/01/93	
.0165					✓		
.0201		✓				10/01/93	
.0201			✓			12/01/93	
.0203		✓				10/01/93	
.0208		✓				10/01/93	
.0209 - .0211			✓			10/01/93	
.0212 - .0213		✓				10/01/93	
.0215 - .0216		✓				10/01/93	
.0217		✓				11/01/93	
.0218		✓				10/01/93	
.0219			✓			10/01/93	
.0220		✓				10/01/93	
.0221		✓				12/01/93	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A NCAC 2B .0222 - .0223			✓			10/01/93	
.0224 - .0225		✓				10/01/93	
.0226			✓			10/01/93	
.0227		✓				10/01/93	
.0228			✓			10/01/93	
.0230			✓			10/01/93	
.0234			✓			10/01/93	
.0236 - .0237			✓			10/01/93	
.0432 - .0433	✓					10/01/93	
.0441 - .0466			✓			10/01/93	
.0501		✓				10/01/93	
.0503 - .0504		✓				10/01/93	
.0507 - .0510		✓				10/01/93	
.0513		✓				10/01/93	
.0515		✓				10/01/93	
.0601		✓				10/01/93	
.0604 - .0605		✓				10/01/93	
2D .0104		✓				12/01/93	
.0201 - .0203					✓		
.0202 - .0203		✓				12/01/93	
.0402 - .0405		✓				11/01/93	
.0410		✓				11/01/93	
.0414 - .0415		✓				11/01/93	
.0417 - .0420			✓			11/01/93	
.0421		✓				11/01/93	
.0423 - .0425		✓				11/01/93	
.0426 - .0429			✓			11/01/93	
.0501 - .0503		✓				12/01/93	
.0505		✓				12/01/93	
.0517 - .0521		✓				12/01/93	
.0523 - .0524		✓				12/01/93	
.0530		✓				12/01/93	
.0533 - .0534		✓				12/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	2D	.0537		✓				12/01/93	
			.0539		✓				12/01/93	
			.0601		✓				11/01/93	
			.0612		✓				11/01/93	
			.0618			✓			11/01/93	
			.0633		✓				11/01/93	
			.0701			✓			10/01/93	
			.0702		✓				10/01/93	
			.0703			✓			10/01/93	
			.0704		✓				10/01/93	
			.0706			✓			10/01/93	
			.0708 - .0709		✓				10/01/93	
			.0801 - .0803		✓				12/01/93	
			.0807		✓				10/01/93	
			.0809		✓				10/01/93	
			.0811		✓				10/01/93	
			.0813 - .0820		✓				10/01/93	
			.0821		✓				12/01/93	
			.0825		✓				10/01/93	
			.0827 - .0828		✓				10/01/93	
			.0829			✓			10/01/93	
			.0830	✓					10/01/93	
			.0901			✓			12/01/93	
			.1001 - .1007					✓		
			.1002 - .1007		✓				11/01/93	
			.1008			✓			11/01/93	
	2E		.0101 - .0102		✓				11/01/93	
			.0201		✓				12/01/93	
			.0202 - .0204		✓				11/01/93	
			.0205			✓			11/01/93	
			.0206 - .0215		✓				11/01/93	
			.0216 - .0223		✓				10/01/93	
			.0301		✓				12/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	2E	.0302			✓			12/01/93	
			.0303		✓				12/01/93	
			.0401			✓			11/01/93	
			.0403 - .0404		✓				11/01/93	
			.0417		✓				11/01/93	
			.0421		✓				11/01/93	
			.0423		✓				11/01/93	
			.0426		✓				11/01/93	
			.0501 - .0502			✓			12/01/93	
			.0606			✓			12/29/93	
			.0701		✓				12/01/93	
			.0801		✓				12/01/93	
			.0803 - .0804		✓				12/01/93	
			.0905		✓				12/01/93	
	3A		.0101			✓			12/01/93	
			.0104			✓			12/01/93	
	3B		.0201		✓				12/01/93	
			.0403		✓				12/01/93	
			.0601		✓				12/01/93	
			.0603 - .0604		✓				12/01/93	
			.0605 - .0607			✓			12/01/93	
			.0608 - .0609		✓				12/01/93	
			.0610 - .0611			✓			12/01/93	
			.0612 - .0613		✓				12/01/93	
			.0615 - .0617		✓				12/01/93	
			.0619		✓				12/01/93	
			.0701		✓				12/01/93	
			.0703 - .0704		✓				12/01/93	
			.0706		✓				12/01/93	
			.0709		✓				12/01/93	
			.0716		✓				12/01/93	
	3C		.0101		✓				12/01/93	
			.0201 - .0202		✓				12/01/93	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A NCAC 3C .0220 - .0222		✓				12/01/93	
.0226		✓				12/01/93	
.0228 - .0229		✓				12/01/93	
.0231			✓			12/01/93	
.0233 - .0234		✓				12/01/93	
.0236 - .0237		✓				12/01/93	
.0301		✓				12/01/93	
.0303 - .0305		✓				12/01/93	
.0401			✓			12/01/93	
.0415 - .0416			✓			12/01/93	
.0420		✓				12/01/93	
.0424		✓				12/01/93	
.0427		✓				12/01/93	
.0429		✓				12/01/93	
.0520 - .0521		✓				12/01/93	
3D .0224		✓		✓		12/01/93	
3E .0302 - .0304		✓				12/01/93	
.0401		✓				12/01/93	
.0403		✓				12/01/93	
3F .0601 - .0602		✓				12/01/93	
3G .0101 - .0102		✓				12/01/93	
.0203 - .0204		✓				12/01/93	
.0209		✓				12/01/93	
.0212		✓				12/01/93	
.0301		✓				12/01/93	
.0401		✓				12/01/93	
3H .0201		✓				12/01/93	
.0204 - .0205		✓				12/01/93	
.0301		✓				12/01/93	
3I .0101 - .0102		✓				12/01/93	
.0104		✓				12/01/93	
.0201 - .0202		✓				12/01/93	
.0209		✓				12/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	31	.0210			✓			12/01/93	
			.0302 - .0303		✓				12/01/93	
			.0306 - .0307		✓				12/01/93	
			.0401		✓				12/01/93	
			.0501		✓				12/01/93	
			.0506			✓			12/01/93	
			.0508			✓			12/01/93	
			.0601		✓				12/01/93	
			.0702		✓				12/01/93	
			.0801 - .0803		✓				12/01/93	
	4A		.0001			✓			12/01/93	
			.0003			✓			12/01/93	
			.0004 - .0009		✓				12/01/93	
	4B		.0102 - .0105			✓			12/01/93	
			.0201 - .0203			✓			12/01/93	
			.0301 - .0305			✓			12/01/93	
			.0401 - .0406			✓			12/01/93	
			.0501 - .0504			✓			12/01/93	
	5B		.0101 - .0104		✓				12/01/93	
			.0105			✓			12/01/93	
			.0201 - .0204		✓				12/01/93	
			.0207 - .0208			✓			12/01/93	
			.0301		✓				12/01/93	
			.0401 - .0402			✓			12/01/93	
			.0501			✓			12/01/93	
			.0504			✓			12/01/93	
	6A		.0001 - .0002			✓			12/01/93	
	6C		.0101			✓			12/01/93	
			.0108 - .0110		✓				12/01/93	
			.0112		✓				12/01/93	
			.0123 - .0127		✓				12/01/93	
			.0128			✓			12/01/93	
			.0129		✓				12/01/93	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A NCAC 6C .0130 - .0132			✓			12/01/93	
.0133		✓				12/01/93	
.0301		✓				12/01/93	
.0304		✓				12/01/93	
.0403		✓				12/01/93	
.0408		✓				12/01/93	
.0409			✓			12/01/93	
.0501			✓			12/01/93	
.0502 - .0503		✓				12/01/93	
.0507			✓			12/01/93	
.0601			✓			12/01/93	
.0703 - .0704		✓				12/01/93	
6D .0101 - .0105			✓			12/01/93	
.0201			✓			12/01/93	
.0202 - .0206		✓				12/01/93	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

State Employees Combined Campaign

<i>1 NCAC 35 .0103 - Organization of the Campaign</i>	<i>RRC Objection 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/18/93</i>

AGRICULTURE

North Carolina State Fair

<i>2 NCAC 20B .0106 - General</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

COMMERCE

Banking Commission

<i>4 NCAC 31 .0305 - Issuance of Certificate of Registration</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

<i>15A NCAC 7H .2002 - Approval Procedures</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>
<i>15A NCAC 7H .2004 - General Conditions</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>

Environmental Management

<i>15A NCAC 2D .0518 - Msc Volatile Organic Compound Emissions</i>	<i>RRC Objection 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/18/93</i>
<i>15A NCAC 2D .0948 - VOC Emissions from Transfer Operations</i>	<i>RRC Objection 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/18/93</i>
<i>15A NCAC 2L .0103 - Policy</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection 09/17/93</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd 10/21/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 11/04/93</i>

HUMAN RESOURCES

Aging

10 NCAC 22G .0505 - Staffing Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93
10 NCAC 22G .0506 - Congregate Site Requirements Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93
10 NCAC 22G .0509 - Home-Delivered Meals Standards Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93
10 NCAC 22G .0510 - Congregate Food Requirements Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93
10 NCAC 22G .0514 - Administration Requirements Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93
10 NCAC 22S .0102 - Withdrawal of Area on Aging Designation Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93

Children's Services

10 NCAC 41R .0002 - Administration and Organization Agency Responded Rule Returned to Agency Agency Filed Rule for Codification Over RRC Objection	RRC Objection 07/15/93 Obj. Cont'd 08/20/93 Obj. Cont'd 09/17/93 Eff. 10/01/93
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Facility Services

10 NCAC 3H .0108 - Definitions Agency Revised Rule	RRC Objection 10/21/93 Obj. Removed 10/21/93
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Mental Health: General

10 NCAC 14A .1603 recodified as 14U .0303 - Registered Nurse Agency Revised Rule	RRC Objection 11/18/93 Obj. Removed 11/18/93
10 NCAC 14A .1903 recodified as 14U .0603 - Space Requirements Agency Revised Rule	RRC Objection 11/18/93 Obj. Removed 11/18/93
10 NCAC 14A .2204 recodified as 14U .0904 - Treatment or Habilitation Plan Agency Revised Rule	RRC Objection 11/18/93 Obj. Removed 11/18/93
10 NCAC 14A .2208 recodified as 14U .0908 - Rel Planning/Res/Inpatient Svcs Agency Revised Rule	RRC Objection 11/18/93 Obj. Removed 11/18/93
10 NCAC 14A .2304 recodified as 14U .1004 - Testing Services Agency Revised Rule	RRC Objection 11/18/93 Obj. Removed 11/18/93
10 NCAC 14A .2404 recodified as 14U .1104 - Invol Admin/Psychotropic Med Agency Revised Rule	RRC Objection 11/18/93 Obj. Removed 11/18/93

INSURANCE

Financial Evaluation Division

11 NCAC 11H .0011 - Insolvency or Hazardous Financial Condition Agency Revised Rule	RRC Objection 11/18/93 Obj. Cont'd 11/18/93
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Special Services Division

11 NCAC 13 .0318 - Request for Cancellation Notice	RRC Objection 11/18/93
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Agency Revised Rule

Obj. Removed 11/18/93

JUSTICE

Criminal Justice Education and Training Standards

- | | |
|---|-------------------------------|
| <i>12 NCAC 9A .0107 - Rule-Making and Administrative Hearing Procedures</i> | <i>RRC Objection 10/21/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |
| <i>12 NCAC 9B .0101 - Minimum Standards for Criminal Justice Officers</i> | <i>RRC Objection 10/21/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |

Private Protective Services

- | | |
|---|-------------------------------|
| <i>12 NCAC 7D .0108 - Law Enforcement Officers Special Provisions</i> | <i>RRC Objection 11/18/93</i> |
|---|-------------------------------|

Sheriffs' Education and Training Standards Commission

- | | |
|--|-------------------------------|
| <i>12 NCAC 10B .1003 - Basic Law Enforcement Certificate</i> | <i>RRC Objection 11/18/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 11/18/93</i> |

LICENSING BOARDS AND COMMISSIONS

Electrolysis Examiners

- | | |
|---|-------------------------------|
| <i>21 NCAC 19 .0604 - Program Directors</i> | <i>RRC Objection 10/21/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 11/18/93</i> |
| <i>21 NCAC 19 .0611 - Identification of Students</i> | <i>RRC Objection 10/21/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |
| <i>21 NCAC 19 .0613 - Student/Teacher Ratio and Equipment</i> | <i>RRC Objection 10/21/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 11/18/93</i> |

Foresters

- | | |
|---|-------------------------------|
| <i>21 NCAC 20 .0020 - Certification of Consulting Foresters</i> | <i>RRC Objection 09/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |
| <i>21 NCAC 20 .0021 - Rejection of Consultant Affidavit</i> | <i>RRC Objection 09/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |
| <i>21 NCAC 20 .0022 - Handling of Complaints</i> | <i>RRC Objection 09/17/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |

Plumbing, Heating and Fire Sprinkler Contractors

- | | |
|---|-------------------------------|
| <i>21 NCAC 50 .0506 - Minor Repairs and Alterations</i> | <i>RRC Objection 10/21/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 10/21/93</i> |

Practicing Psychologists

- | | |
|--------------------------------|-------------------------------|
| <i>21 NCAC 54 .1605 - Fees</i> | <i>RRC Objection 11/18/93</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed 11/18/93</i> |

Refrigeration Examiners

- | | |
|---|-------------------------------|
| <i>21 NCAC 60 .0101 - Structure of Board</i> | <i>RRC Objection 11/18/93</i> |
| <i>Agency Repealed Rule</i> | <i>Obj. Removed 11/18/93</i> |
| <i>21 NCAC 60 .0207 - Requirements for Examination Applicants</i> | <i>RRC Objection 11/18/93</i> |

Agency Revised Rule

Obj. Removed 11/18/93

REVENUE

Corporate Income and Franchise Tax

17 NCAC 5C .0904 - *The Term Employee*
Agency Repealed Rule

RRC Objection 10/21/93
Obj. Removed 10/21/93

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .0308 - *Salary Increases*
Agency Revised Rule
25 NCAC 1E .0301 - *Sick Leave Credits*
Agency Revised Rule
25 NCAC 1E .1102 - *Maximum Amount*
Agency Revised Rule
25 NCAC 1E .1105 - *Retention of Benefits*
Agency Revised Rule

RRC Objection 11/18/93
Obj. Removed 11/18/93
RRC Objection 11/18/93
Obj. Removed 11/18/93
RRC Objection 11/18/93
Obj. Removed 11/18/93
RRC Objection 11/18/93
Obj. Removed 11/18/93

TRANSPORTATION

Departmental Rules

19A NCAC 1B .0202 - *Contents of Petition*
Agency Revised Rule
19A NCAC 1B .0302 - *Record of Hearing*
Agency Revised Rule

RRC Objection 10/21/93
Obj. Removed 10/21/93
RRC Objection 10/21/93
Obj. Removed 10/21/93

Deputy Secretary - Transit, Rail, and Aviation

19A NCAC 6C .0112 - *Allowable Project Costs*
Agency Revised Rule
19A NCAC 6C .0128 - *State Aid to Airports Program Guidance Handbook*
Agency Repealed Rule

RRC Objection 11/18/93
Obj. Removed 11/18/93
RRC Objection 11/18/93
Obj. Removed 11/18/93

Director of Administration

19A NCAC 5B .0101 - *Fiscal Section Operations*
Agency Revised Rule

RRC Objection 11/18/93
Obj. Removed 11/18/93

Division of Highways

19A NCAC 2D .0403 - *Use of Dust Allaying Materials*
Agency Revised Rule
19A NCAC 2D .0404 - *Maintenance Within Municipalities*
Agency Revised Rule
19A NCAC 2D .0405 - *Examples of Construction and Maintenance Activities*
Agency Revised Rule
19A NCAC 2D .0502 - *Ticket Conditions*
Agency Revised Rule
19A NCAC 2D .0601 - *Permits-Authority, Application and Enforcement*
Agency Revised Rule

RRC Objection 10/21/93
Obj. Removed 10/21/93
RRC Objection 10/21/93
Obj. Removed 10/21/93
RRC Objection 10/21/93
Obj. Removed 10/21/93
RRC Objection 11/18/93
Obj. Removed 11/18/93
RRC Objection 10/21/93
Obj. Removed 10/21/93

RRC OBJECTIONS

19A NCAC 2D .0633 - Denial: Revocation: Refusal/Renew: Appeal: Invalidation Agency Revised Rule	RRC Objection Obj. Removed	10/21/93 10/21/93
19A NCAC 2D .0801 - Pre-Qualifying to Bid: Requalification No Response from Agency Agency Revised Rule	RRC Objection Obj. Cont'd Obj. Removed	09/17/93 10/21/93 11/18/93
19A NCAC 2D .0802 - Invitation to Bid No Response from Agency Agency Revised Rule	RRC Objection Obj. Cont'd Obj. Removed	09/17/93 10/21/93 11/18/93
19A NCAC 2D .0803 - Advertisement and Invitations for Bids No Response from Agency Agency Revised Rule	RRC Objection Obj. Cont'd Obj. Removed	09/17/93 10/21/93 11/18/93
19A NCAC 2D .0821 - Return of Bid Bond or Bid Deposit No Response from Agency Agency Revised Rule	RRC Objection Obj. Cont'd Obj. Removed	09/17/93 10/21/93 11/18/93
19A NCAC 2E .0404 - Highway Obstructions Interfering/Traffic/Maintenance Agency Revised Rule	RRC Objection Obj. Removed	10/21/93 10/21/93
19A NCAC 2E .0606 - Exceptions to the Policy Agency Repealed Rule	RRC Objection Obj. Removed	11/18/93 11/18/93

Division of Motor Vehicles

19A NCAC 3B .0616 - Approval: Com School: Community College Instructors Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 11/18/93
19A NCAC 3B .0620 - Grounds for Revocation or Denial of Certification	RRC Objection	11/18/93
19A NCAC 3B .0621 - Denial/Revocation: Company Examiner: Instructor Cert.	RRC Objection	11/18/93
19A NCAC 3C .0223 - Registration: Motor Homes: Etc. Rule Returned to Agency for Failure to Comply with APA		11/18/93
19A NCAC 3C .0436 - Highway Use Tax	RRC Objection	11/18/93
19A NCAC 3C .0521 - Taxicab Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 11/18/93
19A NCAC 3G .0205 - Issuing of Original Certificate	RRC Objection	11/18/93
19A NCAC 3I .0505 - Confidentiality	RRC Objection	11/18/93

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 26I .0101 - PURPOSE: SCOPE AND NOTICE OF CHANGE IN LEVEL OF CARE

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0101 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

10 NCAC 26I .0102 - REQUEST FOR RECONSIDERATION AND RECIPIENT APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0102 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0104 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
LMS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	
Travel, Incorporated v. Administration	93 DOA 0362	Nesnow	11/08/93	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0288	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Azzat Aly Amer	92 ABC 1149	Reilly	09/01/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isacc Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
Johnnie L. Baker v. Alcoholic Beverage Control Commission	92 ABC 1735	Chess	05/07/93	
RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
Cornelius Hines T/A Ebony Lounge v. Alcoholic Beverage Ctl. Comm.	93 ABC 0118	Morrison	08/04/93	
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
Charles Anthonious Morant v. Alcoholic Beverage Control Comm.	93 ABC 0232	Chess	07/20/93	
Alcoholic Beverage Control Comm. v. Billy Fincher McSwain Jr.	93 ABC 0239	Gray	08/26/93	
Jean Hoggard Askew v. Alcoholic Beverage Control Commission	93 ABC 0255	West	09/10/93	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
Alcoholic Beverage Control Comm. v. James Elwood Alphin	93 ABC 0326	Gray	08/26/93	
Alcoholic Beverage Control Comm. v. James William Campbell	93 ABC 0327	Gray	08/09/93	
Alcoholic Beverage Control Comm. v. Sydner Jan Mulder	93 ABC 0354	Morgan	11/10/93	8:17 NCR 1712
Barbara Locklear v. Alcoholic Beverage Control Commission	93 ABC 0395	West	09/14/93	
Alcoholic Beverage Control Comm. v. Partnership, T/A Hawk's Landing	93 ABC 0407	Becton	10/18/93	
Alcoholic Beverage Control Com. v. Thomas Andrew Reid	93 ABC 0408	Gray	11/01/93	
Zachary Andre Jones v. Alcoholic Beverage Control Commission	93 ABC 0421	West	09/13/93	
Alcoholic Beverage Control Comm. v. Mack Ray Chapman	93 ABC 0423	Gray	09/17/93	
Alcoholic Beverage Control Comm. v. Bistro Enterprises, Inc.	93 ABC 0430	Reilly	10/07/93	
Alcoholic Beverage Control Comm. v. Richard Donald James Jr.	93 ABC 0431	Nesnow	09/01/93	
Alcoholic Beverage Control Comm. v. George Oliver O'Neal III	93 ABC 0433	Morgan	11/01/93	8:16 NCR 1553
Alcoholic Beverage Control Comm. v. The Sideline of Wilmington, Inc.	93 ABC 0462	Becton	10/27/93	
William Vernon Franklin & Gene Carroll Daniels v. ABC Commission	93 ABC 0570	Reilly	09/17/93	
Alcoholic Beverage Control Comm. v. Joseph Adu	93 ABC 0601	Nesnow	10/28/93	8:16 NCR 1560
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0611	West	10/12/93	
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0613	West	10/11/93	
Alcoholic Beverage Control Comm. v. Mohammad Salim Pirini	93 ABC 0616	West	10/13/93	
Linda R. Cunningham v. Alcoholic Beverage Control Commission	93 ABC 0633	Morrison	11/03/93	
Charles Edward Hare, Club Paradise v. Alcoholic Beverage Ctl. Comm.	93 ABC 0644	Gray	08/10/93	
Alcoholic Beverage Control Comm. v. Katherine Mary Dufresne	93 ABC 0667	Reilly	12/13/93	
Alcoholic Beverage Control Comm. v. Jerome Hill T/A Corner Pocket	93 ABC 0672	Gray	11/23/93	
Venus L. Smith v. Alcoholic Beverage Control Commission	93 ABC 0701	Becton	12/08/93	
Alcoholic Beverage Control Comm. v. Partnership t/a RJ's Store	93 ABC 0860	Mann	09/29/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
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* Consolidated cases.

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Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR J109*	Morgan	06/22/93	8:8 NCR 687
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohavichan Rentals v. Human Resources, Division of Facility Services, Certificate of Need Section and Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Hoke County	92 DHR 1116*	Morgan	06/22/93	8:8 NCR 687
Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	
Cynthia Reed v. Human Resources	92 DHR 1329	Chess	05/10/93	
The Neighborhood Center v. Human Resources	92 DHR 1375	Chess	08/02/93	
Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
Britthaven, Inc. v. Human Resources & Valdese Nursing Home, Inc.	92 DHR 1785	Gray	09/17/93	
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
James W. McCall, Alice V. McCall v. Human Resources	93 DHR 0102	Morgan	10/05/93	
Vernice Whisnant v. Human Resources	93 DHR 0332	Morgan	09/23/93	
Nell Brooks v. Child Day Care Section, Cherokee Cty Dept/Social Svcs	93 DHR 0343	Becton	11/29/93	8:18 NCR 1832
Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
Hannah F. Tonkel v. Human Resources	93 DHR 0378	Nesnow	09/10/93	
Fannie Lewis v. Human Resources	93 DHR 0379	Gray	06/28/93	
Human Resources, Div. of Child Development v. Susan Amato	93 DHR 0418	Morgan	08/26/93	
Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
A.C., by & through her agent & personal rep. Hank Neal v. Human Res.	93 DHR 0529	Nesnow	12/06/93	8:19 NCR 1926
Venola Hall, Agape Day Care v. Human Resources	93 DHR 0535	Mann	10/22/93	
Warren Cty NC Lucious Hawkins v. Human Resources, C. Robin Britt	93 DHR 0540	Gray	12/06/93	
Christopher Durrer, Wilson Memorial Hospital v. Human Resources	93 DHR 0566	Chess	09/17/93	
Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
Darryl A. Richardson v. Human Resources	93 DHR 0679	Becton	09/30/93	
Home Health Prof., Barbara P. Bradsher, Admin v. Human Resources	93 DHR 0737	Chess	09/23/93	
Sandra Gail Wilson v. Child Abuse/Neglect, Div. of Child Development	93 DHR 0782	Nesnow	09/09/93	
Thomas M. Moss v. Human Resources	93 DHR 0864	Chess	11/05/93	

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Rosa Wall v. Nurse Aide Registry, Charge of Abuse	93 DHR 0881	West	12/15/93	
Frank S. & Susie R. Wells v. New Hanover Cty. Dept of Social Svcs.	93 DHR 0922	Nesnow	11/08/93	
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Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Scotland Memorial Hospital, Mary Horne Odom v. Bd./Trustees// St. of N.C. Teachers' & St. Emp. Comp. Major Medical Plan, and David G. Devries, as Exec. Admin. of the N.C. Teachers' & St. Emp. Comp. Major Medical Plan	92 INS 1791	Reilly	08/19/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	
Jarmaine Knight v. Ms. Shirley H. Williams, Insurance	93 INS 1056	West	12/01/93	
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Philip B. Cates v. Justice, Attorney General's Office	90 DOJ 0353	Morgan	08/30/93	8:13 NCR 1281
Donald Willard Johnson v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 0420	West	11/05/93	8:17 NCR 1705
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0656*7	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0829*7	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Stds Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*9	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Richard Zander Frink v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
George Wilton Hawkins v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0156*9	Morgan	07/09/93	
Noel B. Rice v. Criminal Justice Ed. & Training Standards Comm.	93 DOJ 0174	Morrison	12/13/93	
Lonnie Allen Fox v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0196	Morrison	08/09/93	
Alarm Systems Licensing Bd. v. Eric Hoover	93 DOJ 0201	Becton	07/12/93	
Alarm Systems Licensing Bd. v. Vivian Darlene Gaither	93 DOJ 0202	Chess	05/10/93	
Rebecca W. Stevenson v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0357	Morrison	09/13/93	
Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Stds Comm	93 DOJ 0377	Reilly	08/31/93	
William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svcs. Bd. v. Fred D. Rector	93 DOJ 0479	Mann	08/19/93	
Private Protective Svcs. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
William M. Medlin v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0569	Chess	10/06/93	
Karl L. Halsey Sr. v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0625	Gray	12/01/93	
Charles Freeman v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0685	Nesnow	12/06/93	
Shayne K. MacKinnon v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0686	Nesnow	12/16/93	
Carl Michael O'Byrne v. Alarm Systems Licensing Board	93 DOJ 0844	Nesnow	09/08/93	8:13 NCR 1300
Private Protective Services Board v. Michael A. McDonald	93 DOJ 0975	Gray	11/29/93	
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Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
Ronald Dennis Hunt v. Labor	92 DOL 1319	Morgan	06/17/93	
Jeffrey M. McKinney v. Labor	92 DOL 1333	Morrison	06/21/93	
Pastor Larry C. Taylor Warsaw Church of God v. Labor	93 DOL 0961	West	11/16/93	
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Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
PUBLIC INSTRUCTION				
Arnold O. Herring v. Public Instruction	91 EDC 0858	Becton	10/20/93	
Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 0628	Mann	07/29/93	
Donna Marie Snyder v. Public Instruction	93 EDC 0731	Nesnow	09/16/93	
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Frances K. Pate v. Transportation	88 OSP 0340	Morrison	05/03/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1064*4	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart,	90 OSP 1065*4	Mann	05/04/93	

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James H. Johnson, James D. Fishel v. Justice				
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066 ^{4d}	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067 ^{4d}	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068 ^{4d}	Mann	05/04/93	
Connie B. Lee v. Justice	91 OSP 0011	Morgan	10/05/93	8:15 NCR 1498
Donald Allen Rutschman v. UNC Greensboro, Office of Human Res.	91 OSP 0305	Chess	10/19/93	
Bernie B. Kelly v. Correction	91 OSP 0344	Morrison	05/27/93	
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Walton M. Pittman v. Correction	91 OSP 0805	Morgan	10/06/93	
Adolph Alexander Justice Jr. v. Motor Vehicles, Transportation	91 OSP 0860	Chess	07/19/93	
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344 ^{4d}	Chess	05/20/93	
Renee E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Eva Dockery v. Human Resources	92 OSP 0010	Chess	05/03/93	
Lee P. Crosby v. Michael Kelly, William Meyer and EHR	92 OSP 0056	Gray	06/07/93	
William Marshall Boyd Jr. v. County Commissioners of Hyde & Certain Board of Health Members	92 OSP 0090	Gray	08/25/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	92 OSP 0188 ^{4d}	Chess	05/20/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 0298 ^{4d2}	Reilly	09/14/93	
Julia Spinks v. Environment, Health, & Natural Resources	92 OSP 0313	Becton	04/12/93	8:4 NCR 382
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
I. Cary Nailling v. UNC-CH	92 OSP 0394	Becton	04/20/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	
Laverne B. Hill v. Transportation	92 OSP 0431 ^{4d}	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432 ^{4d}	West	03/08/93	
Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS	92 OSP 0455	West	05/26/93	8:6 NCR 484
Charles Robinson v. Revenue	92 OSP 0553	Morgan	07/21/93	
Anna L. Spencer v. Mecklenburg County Area Mental Health	92 OSP 0584	Becton	08/16/93	
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 0634	Morrison	05/04/93	
Ronnie H. Mozingo v. Correction	92 OSP 0644	Mann	10/11/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Cindy G. Bartlett v. Correction	92 OSP 0671	Morgan	06/08/93	
William Kenneth Smith Jr. v. Broughton Hospital (Human Resources)	92 OSP 0684	Becton	05/10/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744 ^{4d0}	Morgan	07/16/93	
Tracey Hall v. N.C. Central U., Off. of Scholarship & Student Aid	92 OSP 0815	Morgan	09/16/93	
Sondra Williams v. Winston-Salem State University	92 OSP 0847	Morrison	08/06/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
David Seales v. Correction	92 OSP 0989	Chess	06/24/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 1047	Morrison	05/04/93	
Charles M. Blackwelder v. Correction	92 OSP 1082	Morrison	10/15/93	8:15 NCR 1500
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124 ^{4d0}	Morgan	07/16/93	
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Patti G. Newsome v. Transportation	92 OSP 1180	Becton	09/22/93	8:14 NCR 1346
Nancy McAllister v. Camden County Department of Social Services	92 OSP 1185	Chess	09/07/93	
Gilbert Jaeger v. Wake County Alcoholism Treatment Center	92 OSP 1204	Reilly	05/10/93	
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Glenn D. Fuqua v. Rockingham County Board of Social Services	92 OSP 1318	Morrison	08/03/93	
Dorothy D. Johnson v. Correction	92 OSP 1395	Nesnow	10/29/93	
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Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
Christie L. Guthrie v. Environment, Health, & Natural Resources	92 OSP 1555	Becton	05/31/93	
Sharon Reavis v. Crime Control & Public Safety	92 OSP 1606	Morrison	08/19/93	8:12 NCR 1163
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Jerry L. Jones v. N.C.S.U. Physical Plant	92 OSP 1661	Chess	07/06/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 1691 ^{4d2}	Reilly	09/14/93	
Gina Renee Cox v. UNC Chapel Hill	92 OSP 1692	Becton	10/18/93	
Roland W. Holden v. University of North Carolina at Chapel Hill	92 OSP 1715	Becton	08/30/93	8:13 NCR 1292
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Anthony M. Little v. Human Resources, John Umstead Hospital	92 OSP 1734	Becton	09/01/93	
Jannie C. Sykes v. Employment Security Commission	92 OSP 1738	Gray	10/25/93	

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Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Rebecca Beauchesne v. University of North Carolina at Chapel Hill	92 OSP 1767	Becton	10/01/93	
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Larry G. Riddle v. Correction, Division of Prisons	92 OSP 1774	Gray	04/26/93	
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Buford D. Viergge Jr. v. N.C. State University, University Dining	92 OSP 1796	Morrison	05/27/93	
Dorothy Ann Harris v. Correction	93 OSP 0013	Morrison	09/15/93	
Brenda B. Miles v. University of North Carolina Chapel Hill	93 OSP 0033	Morrison	09/10/93	
Deborah J. Whitfield v. Caswell Center	93 OSP 0064	West	09/20/93	
Karen Canter v. Appalachian State University	93 OSP 0079	Reilly	06/15/93	
Terry Steve Brown v. Iredell County Health Department	93 OSP 0101	Morgan	08/06/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNR	93 OSP 0111	Reilly	04/16/93	
William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed	93 OSP 0134	Becton	04/20/93	
Grace Jean Washington v. Caswell Center	93 OSP 0153	Morgan	06/03/93	
Ralph Snipes v. Transportation and Correction	93 OSP 0157	Mann	12/13/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Willie L. James v. Caswell Center	93 OSP 0171	Morgan	05/27/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
Richard E. Howell v. Correction, Wayne Correctional Center	93 OSP 0245	Gray	08/25/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
F.R. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275 ^{*6}	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Odessa Parker v. Durham County Dept. of Social Services	93 OSP 0366	Nesnow	12/15/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Sharon Brandon v. Dorothea Dix Hospital	93 OSP 0419	Gray	12/06/93	
Shaw Boyd v. Correction	93 OSP 0438	Morgan	11/12/93	8:18 NCR 1838
Ida Gaynell Williams v. Wilson County Dept. of Social Services	93 OSP 0440	Gray	12/01/93	
Linda R. Wharton v. N.C. A & T University	93 OSP 0456	Chess	09/22/93	
Michael L. Pegram v. Correction	93 OSP 0472 ^{*6}	Reilly	06/28/93	
Ralph W. Burcham v. Transportation	93 OSP 0493	Chess	10/15/93	8:16 NCR 1558
Claudius S. Wilson v. Human Resources	93 OSP 0498	Gray	12/15/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0522 ^{*13}	Morrison	12/14/93	8:19 NCR 1922
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0523 ^{*13}	Morrison	12/14/93	8:19 NCR 1922
Alvin Lamonte Breedon v. OPC Mental Health	93 OSP 0551	Gray	11/23/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0567 ^{*13}	Morrison	12/14/93	8:19 NCR 1922
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
Vernell Ellis Turner v. NC A & T Police Dept, NC Agricultural Tech U	93 OSP 0577	Becton	11/03/93	
Everette E. Newton v. University of NC at Chapel Hill	93 OSP 0589	Reilly	12/07/93	
Timothy E. Blevins v. UNC A/K/A Western Carolina University	93 OSP 0604	Morgan	09/29/93	
Xantippe Blackwell v. Human Resources, Murdoch Center	93 OSP 0632	Reilly	09/01/93	
Wayne Bradley Johnson v. State Computing Center	93 OSP 0694	Chess	10/11/93	
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Daniel Thomas Wheeler, Kye Lee Wheeler v. Caldwell County Department of Social Services	93 OSP 0752	Nesnow	09/16/93	
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Kathleen E. Conran v. New Bern Police Dept., City of New Bern; and City of New Bern Police Civil Service Board	93 OSP 0797	Morrison	09/21/93	
Berton Hamm Jr. v. Wake County Child & Family Services	93 OSP 0809	Becton	10/27/93	
John R. Woods Sr. v. Wake County Child & Family Services	93 OSP 0810	Becton	11/02/93	
Coleman F. Tyrance Jr. v. Wake County Child & Family Services	93 OSP 0811	Becton	11/02/93	
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Thomas James v. Wake County Child & Family Services	93 OSP 0813	Becton	11/02/93	
James E. Hargrove v. Wake County Child & Family Services	93 OSP 0814	Becton	11/02/93	
Ricky Harrell v. Wake County Child & Family Services	93 OSP 0815	Becton	11/02/93	
Bruce Creecy v. Wake County Child & Family Services	93 OSP 0816	Becton	11/02/93	
Dana Phillips v. Administrative Office of the Courts	93 OSP 0822	West	09/09/93	
Terry P. Chappell v. Correction	93 OSP 0834	Nesnow	10/11/93	
Willie David Moore v. Correction (Piedmont Correctional Inst.)	93 OSP 1043	Nesnow	12/03/93	
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Herman D. Brooks v. Bd of Trustees/Teachers' & St Emp Ret Sys	91 DST 0566	Gray	04/13/93	
Henrietta Sandlin v. Teachers' & State Emp Comp Major Medical Plan	92 DST 0305	Morgan	04/12/93	

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Frances Billingsley v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 0996	West	09/20/93	
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Mary Alyce Carmichael v. Bd./Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
Shirley M. Smith v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1776	Reilly	11/18/93	8:18 NCR 1829
W. Rex Perry v. Bd./Trustees/Teachers' & St Emp Ret Sys	93 DST 0133	West	08/12/93	8:11 NCR 992
Rory Dale Swiggett v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. Sys.	93 DST 0198	West	09/28/93	8:14 NCR 1360
Catherine D. Whitley v. Bd./Trustees/Teachers & St. Emp. Ret. Sys.	93 DST 0727	Reilly	11/18/93	
TRANSPORTATION				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
American S&P Auto v. Commissioner, Div. of Motor Vehicles	93 DOT 1070	Morrison	12/02/93	
UNIVERSITY OF NORTH CAROLINA HOSPITALS				
Constance V. Graham v. UNC Hospital	93 UNC 0269	Morgan	07/20/93	
Jacqueline Florence v. UNC Hospitals	93 UNC 0355	Becton	06/16/93	

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 EEO 0536

WILLIAM H. PEACE, III,)	
Petitioner,)	
)	
v.)	FINAL DECISION
)	
N. C. EMPLOYMENT SECURITY COMMISSION,)	
Respondent.)	
)	

THIS MATTER was heard before the Honorable Sammie Chess, Jr., Administrative Law Judge, on July 12-14, 1993. Petitioner filed a charge of discrimination with the North Carolina Office of Administrative Hearings and with the Equal Employment Opportunity Commission following his dismissal on June 7, 1993. Petitioner alleged discrimination based on retaliation under Section 704(a) of the Civil Rights Act of 1964, as amended.

APPEARANCES

For Petitioner: Thomas Hilliard, III, Attorney at Law, Post Office Box 97726, Raleigh, North Carolina 27626

For Respondent: Fred R. Gamin, Staff Attorney, North Carolina Employment, Security Commission, Post Office Box 25903, Raleigh, North Carolina 27611

ISSUES

1. Whether Respondent had just cause to dismiss Petitioner on the basis of personal misconduct?
2. Whether Respondent retaliated against Petitioner for having filed charges of discrimination against Respondent in violation of Title VII of the Civil Rights Act of 1964?

APPLICABLE STATUTES AND RULES

Title VII of Civil Rights Act of 1964;
42 U. S. C. 2000e-5;
North Carolina General Statute Section 7A-759;
North Carolina General Statute Section 126-4;
North Carolina General Statute Section 126 through
North Carolina General Statute Section 126-41;
North Carolina General Statute Section 150B-22
through North Carolina General Statute 150B-37;
State Personnel Manual, Section 9, Employee
Relations, page 2 et. seq. (March 1990).

STIPULATIONS

- A. The Respondent was aware of State criminal charges against its Personnel Office employee, Debra Watkins Dunston, when on April 3, 1991 she was arrested by a Raleigh Police Officer pursuant to a warrant for arrest which charged her with felonious embezzlement of \$2,500.00 in U. S. currency

from Hudson Belk Leggett on or about December 4, 1990 through April 2, 1991; that on April 25, 1991 Debra Dunston entered into a felony diversion agreement and prosecution arrangement, and her criminal charge was deferred for one year pursuant to the agreement or until April 25, 1992 when her case was reviewed in Wake County District Court. Notwithstanding the knowledge of criminal acts committed by Debra Dunston, Respondent took no disciplinary action against her in the form of dismissal, suspension, reprimand, etc.

- B. On January 25, 1989, Herbert W. Lee, Personnel Director of the North Carolina Employment Security Commission, deflated the rear tires of a car belonging to a Merri Hoffmeyer, a local employer. The car was parked at the Employment Security Commission in a parking space assigned to Mr. Lee, while Ms. Hoffmeyer attended to business related to her company. Following the incident, Mr. Lee wrote a letter of apology to Ms. Hoffmeyer on orders from then-Commission Chairman, Betsy Y. Justus. No disciplinary action was taken against Mr. Lee in the form of a suspension or dismissal by the Commission Chairman. Prior to January 25th, Mr. Lee had not filed a charge of discrimination against the Commission with the North Carolina Office of Administrative Hearings or the EEOC.
- C.1. Petitioner, William H. Peace, III, a resident of Raleigh and Wake County, North Carolina, began his employment with Respondent on October 15, 1985 as its Equal Opportunity ("EEO") Officer. He directed the Employee Relations Section which was a subset of the Personnel Office.
2. As EEO Officer, Petitioner was responsible for administering an internal and external EEO program for Respondent including developing and implementing systems to ensure equal employment opportunity throughout the agency. In addition, Petitioner interpreted EEO guidelines, directed development of the Affirmative Action Plan and investigated complaints against the agency filed by employees and applicants and wrote various reports required by federal and state laws.
 3. In 1989, Petitioner filed a charge of discrimination with the North Carolina Office of Administrative Hearings and with EEOC against Respondent's Betty Y. Justus, prior chairman of the Employment Security Commission.
 4. In March 1990, Petitioner filed a charge of discrimination against Respondent citing therein, inter alia, the unlawful employment practices of his then-supervisor, Graham Cooke.
 5. On August 9, 1991, the Civil Rights Division of the Office of Administrative Hearings issued a Notice of Determination finding ... "reasonable cause to believe that charging Party was denied interim job performance reviews and merit increases in violation of the Civil Rights Act of 1964, as amended.
 6. Petitioner filed a charge of discrimination against Respondent with the North Carolina Office of Administrative Hearings, and the Equal Employment Opportunity Commission on June 11, 1991. Petitioner alleged discrimination based on retaliation under Section 704(a) of the 1964 Civil Rights Act, as amended. This charge was the basis for the EEO current case, 91 EEO 0536.
 7. On August 14, 1992, the Civil Rights Division of the Office of Administrative Hearings issued a Notice of Determination finding ... "evidence of retaliation" and "reasonable cause to believe that Charging Party was discharged in violation of Title VII." Upon the failure of conciliation, Petitioner received and complied with OAH's February 8, 1993 Notice of Conciliation by electing and petitioning to have OAH charge #91 EEO 0536 heard as a contested case as provided in Article 3 of Chapter 150B of North Carolina General Statute Section 7A-759(d).
 8. None of Petitioner's supervisors discussed with him the coffee incident from April 10, 1991 until June 5, 1991, including supervisors Clarence Jones, Gene Baker, Chief Deputy Joseph G. Elliot or chairperson Ann Q. Duncan.

Based upon the above stipulation, sworn testimony of witnesses and documents admitted into evidence, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. By letter dated June 7, 1991 Respondent terminated the employment of Petitioner as its Equal Employment Opportunity Director. On June 11, 1991, Petitioner filed a charge of discrimination with the North Carolina Office of Administrative Hearings ("OAH") and the United States Employment Security Commission (OAH Charge #91 EEO 536 and EEOC Charge #143910035) alleging retaliatory dismissal by Respondent in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.2000e-5.
2. Previous charges of discrimination filed by Petitioner against Respondent included OAH #89 EEO 0946/EEOC #14390966 in 1989 and OAH#90 EEO 03311/EEOC #14B900038 in March, 1990.
3. Following investigation of the charges, the Civil Rights Division of the Office of Administrative Hearings found reasonable cause to conclude that Respondent unlawfully denied Petitioner performance reviews and merit increases(OAH #90 EEO 0031) and that Respondent engaged in retaliatory dismissal of Petitioner (OAH-7-#91 EEO 0536) in violation of Title VII.
4. Petitioner received and complied with the Office of Administrative Hearing's February 8, 1993 Notice of Termination of Conciliation by electing to file a petition for a contested case hearing with the Office of Administrative Hearings, charge #91 EEO 0536 heard as a contested case as provided in Article 3 of Chapter 150B of the North Carolina General Statutes. North Carolina General Statute Section 7A-759(d).
5. Petitioner William H. Peace, III, a resident of Raleigh and Wake County, North Carolina began his employment with Respondent on October 15, 1985 as its Equal Employment Opportunity ("EEO") Officer. He directed the Employee Relations Section which was a subset of the Personnel Office.
6. Respondent, Employment Security Commission, is an agency of State government created by the General Assembly to administer unemployment insurance laws. In August, 1990, Ann Q. Duncan became Respondent's chairperson succeeding Betsy Y. Justus. Respondent's headquarters were located at 700 Wade Avenue in Raleigh, North Carolina and it maintained 78 local offices throughout the State. Its staff complement was around 1700 employees.
7. As EEO Officer, Petitioner was responsible for administering an internal and external EEO program for Respondent including developing and implementing systems to ensure equal employment opportunity throughout the agency. In addition, he interpreted EEO guidelines, directed development of the Affirmative Action Plan and investigated complaints against the agency filed by employees and applicants and wrote various reports required by federal and state laws.
8. During his agency orientation in 1985, Petitioner was informed that his membership in the Personnel Office's petty fund would entitle him to obtain coffee occasionally from the coffee pot situated in the personnel file room. He subsequently paid his dues (\$2.00/month) for the petty fund and obtained coffee from the file room pot; however, his usual practice was to visit the agency's cafeteria in the mornings to get coffee and talk with other employees over breakfast about any problems they may present.
9. Not at any time prior to April 10, 1991 was Petitioner informed by any employee of Respondent that his petty fund membership did not entitle him to obtain a cup of coffee from the file room pot.
10. Over the years, on an irregular basis, Petitioner obtained coffee from the file room coffee pot. There was never any sign or notice posted at or near the pot indicating a price per cup charge. The discussion and establishment of any rules or policies regarding the petty fund occurred during staff

meetings; Petitioner routinely did not attend staff meetings. A coffee fund was established at a staff meeting sometime after Petitioner was hired; fund membership was \$3.40 per month. Petitioner was never made aware of the coffee fund nor was he asked to join.

11. On April 10, 1991, Petitioner went to the cafeteria around 9:00 A.M. to obtain a cup of coffee. Upon learning that coffee was not available at that time, he returned to his office. Shortly thereafter he went to the Personnel Office with his coffee cup.
12. As the Petitioner entered the Personnel Office the following exchange occurred between the Petitioner and an angry Catherine High, a supervisor with the Personnel Office: Ms. High: "I hope you're not planning to get any of our coffee." Petitioner made no reply but went to the coffeepot. Ms. High: "You are going to have to pay me for that coffee." Petitioner: "I'm not going to pay you." Ms. High: "That's not fair, you know you ought to pay me." Petitioner: "If I'm wrong, write me up. Be sure to spell my name right." Ms. High: "I know how to spell idiot." Petitioner left the room and returned without the coffee cup to make copies. Ms. High in a loud angry tone: "Bill Peace you are despicable. I hope they fire you." Petitioner: "Sticks and stones may break my bones but your words will never hurt me." Ms. High: "If you get another cup of coffee and do not pay me, I'm going to get a cup of coffee and scald you with it."
13. This exchange took place in the presence of several employees who were supervised by Ms. High in the Personnel Office. Ms. High reported the incident to her supervisor, Graham Cooke, shortly after it occurred on the morning of April 10th. Several days later she also informed Gene Baker who was made Petitioner's immediate supervisor effective April 22, 1991 by memorandum from Ann Q. Duncan dated April 19th.
14. After returning from lunch on April 10th, Petitioner telephoned the Magistrate's Office and was advised that if he believed the person capable of carrying out her threat to scald him that he should take out a warrant against the person.
15. Petitioner went to the Personnel Office to talk with Ms. High and told her that he was giving her an opportunity to apologize.
16. Ms. High did not apologize.
17. In Ms. High's opinion, at no time did Petitioner harass, intimidate or threaten her in any manner.
18. Petitioner believed that considering Ms. High's resentment and anger towards him, she was capable of scalding him with coffee. This was the reason he went to her to seek an apology and put the matter behind them.
19. Ms. High's resentment stemmed, in part, from Petitioner having filed a discrimination charge against her supervisor, Graham Cooke, in 1990.
20. Petitioner left Ms. High's office, took leave and visited the Wake County Magistrate's Office where he furnished facts under oath about the coffee incident. The magistrate issued a criminal summons charging Ms. High with communicating a threat to Petitioner.
21. The summons was served on Ms. High at work on April 23, 1991, with a trial date set for May 21, 1991 in Wake County District Court.
22. The Respondent hired a private attorney to defend Ms. High and paid her legal fees of \$516.00. No such effort was advanced on Petitioner's behalf.
23. The charge was dismissed as frivolous and Petitioner was ordered to pay court costs.

24. The warrant issuing judicial officer found the facts sufficient to issue a warrant for communicating a threat.
25. From April 10, 1991 through June 5, 1991, neither Clarence Jones, Petitioner's former supervisor until April 19, 1991, nor Gene Baker, his supervisor from April 22 through June 5, 1991, discussed with him either the coffee incident or the May 21st court judgment. Both subjects were first mentioned in the notice of predissmissal conference memorandum of June 5th from Gene Baker. During the eight week period mentioned above, neither chairperson Ann Q. Duncan nor Chief Deputy Joseph Elliot discussed the coffee/trial issue with Petitioner.
26. Prior to the June 6th predissmissal conference, Graham Cooke, Personnel Officer, advised Mr. Baker and Mr. Jones to follow a predissmissal procedure that had not been adopted by the State Personnel Commission.
27. The procedure used at Petitioner's predissmissal conference differed from the adopted policy which - 13- was applicable at that time.
28. Graham Cooke was not unhappy to see Petitioner's employment terminated by Respondent.
29. Mr. Cooke was the focus of a discrimination charge filed by Petitioner in March 1990 (EEO#14B900038).
30. A Cause finding was issued by the Civil Rights Division of the Office of Administrative Hearings in August 1991. An earlier charge was filed by Petitioner against Respondent in 1989 (EEO#14189990966).
31. Petitioner provided Respondent a written response to the notice of predissmissal conference when he met with Messrs. Baker and Jones on June 6th.
32. Petitioner considered the conference to be illegally constituted because it differed from the adopted policy/practice mandated by the State Personnel Commission. The policy called for the conference to take place between the supervisor and the employee.
33. On June 7, 1991, Petitioner was dismissed for unacceptable personal conduct by Respondent's memorandum from Ann Q. Duncan. Not one of the three reasons given for dismissal in that memorandum was ever discussed with Petitioner prior to June 6, 1991.
34. Petitioner did not receive a work performance appraisal review between April 10 and June 7, 1991.
35. After the April 10th coffee incident, neither Petitioner nor Ms. High was warned, suspended or reprimanded.
36. Neither Petitioner nor Ms. High was disciplined in any manner following the May 21, 1991 court trial and Petitioner and Ms. High continued their usual job duties uninterrupted by Respondent.
37. Petitioner received no complaints about his work performance until June 5, 1991.
38. The remarks made by Ms. High to Petitioner in the presence of other workers was highly inflammatory, derogatory, and unprofessional. They could have provoked an ugly incident, harmful to herself and other employees. Her approach was not acceptable conduct.
39. Petitioner in effect told Ms. High to write him up and let the matter be heard through proper channels. Although Ms. High's approach was highly unprofessional, Petitioner remained calm. Petitioner's suggestion was proper and done in a professional manner.

40. According to Ms. High, Petitioner did not harass, intimidate, or threaten in any manner.
41. Ms. High went forthwith to her supervisors after instigating what could have been an ugly situation. However, she failed to go at the right time, before creating an incident.
42. If Ms. High felt Petitioner was breaking a rule, she should have followed an acceptable procedure to resolve the matter.
43. Respondent's supervisors did not reprimand Ms. High or take any kind of action against her for unacceptable behavior. To the contrary, Respondent rewarded Ms. High by obtaining an attorney for her and paying her \$516.00 attorney fee out of tax payers money.
44. I find no legal reason in the record why the tax payers of North Carolina should pay Ms. High's attorney fee.
45. The level of involvement of high level Employment Security Commission personnel in the minor coffee incident is evidence to be considered in determining whether there was retaliation against Petitioner, especially, since not even the slightest form of reprimand was issued against Ms. High.
46. Ms. High's conduct was unbecoming a supervisor, and even more so, when done in the presence of subordinate employees.
47. On January 25, 1989, Herbert Lee, Respondent's Personnel Director, let the air out of a car driven by Merri Hoffmeyer, an employer, who was interviewing potential employees at Respondent's Wade Avenue Offices. Mr. Lee became angry because the woman had parked her car in a space reserved for him. Respondent did not suspend or dismiss Mr. Lee as a result of his conduct. At the time of the incident Mr. Lee had not filed any charges of discrimination against Respondent.
48. In April 1991, Ms. Debra Dunston, an employee of Respondent's Personnel Office, was arrested and charged with felonious embezzlement of \$2,500.00 from Hudson's Belk's department store in Raleigh, North Carolina. She admitted guilt and entered the Felony Diversion Program in Wake County. She was not reprimanded, suspended or dismissed by Respondent as a result of her criminal activity.
49. In August 1992, Charlotte Ranz, Respondent's Director of Public Information, was found to have taken a State-owned personal computer home and put it to her own use. Ms. Ranz was not dismissed from her position by Ann Q. Duncan.

Based upon the foregoing stipulations and findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Petitioner was a permanent state employee at the time of his dismissal.
2. North Carolina General Statutes section 126-35 provides in pertinent part, that no permanent employee subject to the State Personnel Act shall be discharged, suspended or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights.
3. Where just cause is an issue, the Respondent bears the ultimate burden of persuasion.
4. A permanent state employee may be dismissed for inadequate performance of duties or for personal conduct that is detrimental to State service. Leiphartv. N. C. School of Arts, 80 N.C. App. 339, 342 S.E. 2d 914 (1986). Prior to dismissal for cause related to job performance, a permanent state

employee is entitled to three (3) separate warnings that his/her performance is unsatisfactory. Jones v. Department of Human Resources, 300 N.C. 687, 268 S.E. 2d 500 (1980). However, an employee discharged for personal misconduct is not entitled to prior progressive warnings because personal misconduct discipline is imposed for actions for which no reasonable person should expect to receive prior warning. Office of State Personnel, Personnel Manual, pp. 9-3, 9-8.3.

5. As a permanent state employee of several years Petitioner has a substantial property right in his employment and this right is protected by the Fourteenth Amendment of the United States Constitution and the North Carolina Constitution.
6. The alleged unauthorized taking of a cup of coffee by Petitioner does not rise to the level of "personal conduct" that is detrimental to State service, as to warrant summary dismissal. The alleged misconduct was not such for which no reasonable person should expect to receive a prior warning. Office of State Personnel Manual, Personnel Manual, pp. 9-3, 9-8.3
7. Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for an employer to take retaliatory action against any individual who opposes employment practices prohibited by Title VII, i.e., discriminatory treatment. Petitioner alleged that he was discharged on June 7, 1991 because he had filed a charge of discrimination against Respondent in March, 1990 prior to the one he filed concerning his discharge for alleged unacceptable personal conduct(91 EEO 0536).
8. There are four essential elements of a Section 704(a) violation:
 - a) that the Petitioner engaged in opposition to practices made unlawful by Title VII;
 - b) that the form of Petitioner's opposition was protected;
 - c) that the Petitioner was subjected to adverse treatment by Respondent; and
 - d) that the adverse treatment occurred because of Petitioner's opposition.
9. On March 21, 1990 Petitioner opposed practices he believed to be unlawful practices under Title VII by filing a charge against Respondent with the North Carolina Office of Administrative Hearings and EEOC. The complaint against Graham Cooke, Respondent's personnel officer and Petitioner's immediate supervisor, charged that Mr. Cooke provided Petitioner with a false work performance evaluation, there by denying him a merit pay increase in January, 1990. It was apparent that the form of Petitioner's opposition, filing a charge, was protected under Title VII.
10. Petitioner was subjected to adverse treatment by Respondent in that he was dismissed from employment without warning for alleged unacceptable conduct, (i.e., helping himself to a cup of coffee that he believed himself to be entitled to have, and filing a criminal summons against a co-worker who threatened to scald him with hot coffee) while more serious criminal acts (i.e. embezzlement, larceny of State computer equipment and damage to property) committed by other employees resulted in no disciplinary measures by Respondent.
11. The adverse treatment occurred because of Petitioner's opposition. Graham Cooke, Petitioner's former supervisor, counseled Respondent's management personnel regarding the dismissal procedure to be employed against Petitioner although his earlier actions toward Petitioner had been the subject of a discrimination charge.
12. Mr. Cooke was pleased to see Petitioner's employment terminated and he expressed those sentiments.
13. Respondent's actions against Petitioner were in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, in that the decision to terminate his employment on June 1991 was retaliatory.

14. Respondent's proffered reasons for its employment decision were pretextual and contrived to mask its intent to retaliate against Petitioner. Respondent offered no reasonable explanation for its failure to take any action against Petitioner on April 10, 1991, upon first learning of the alleged unacceptable personal conduct.

Based upon the foregoing Stipulations, Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

FINAL DECISION

Having concluded that Respondent violated Section 704(a) of Title VII of the 1964 Civil Rights Act, as amended, IT IS THE DECISION of this Office, pursuant to 42 U.S.C. Section 2000e-5(g) and (k), that Petitioner shall be reinstated to his former position of EEO Officer (ESC) effective June 7, 1991, with back pay, attorney fees and all the benefits of continued permanent employment with the State as of that date.

ORDER

IT IS HEREBY DECREED AND ORDERED pursuant to 42 U.S.C. Section 2000e-5(g) and (k) that the Petitioner be reinstated to his former position of EEO Officer (ESC) effective June 7, 1991, with back pay, front pay, where applicable, attorney's fees and all the benefits of continued permanent employment with the State as of that date. Respondent is hereby enjoined from engaging in further acts of retaliation against Petitioner. This is a final decision.

NOTICE

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the Final Decision. G.S. 150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

This the 7th day of October, 1993

Sammie Chess, Jr.
Administrative Law Judge

Gary Wayne Beecham
P.O. Box 447
Hubert, NC 28539
Pro Se

Respondent: N.C. Department of Correction by
Valerie L. Bateman
Assistant Attorney General
N.C. Dept. of Justice
P.O. Box 629
Raleigh, NC 27602

WITNESSES

Petitioner Day presented the following witnesses:

1. Edward D. Day, Jr.

Petitioner Beecham presented the following witnesses:

1. Gary Wayne Beecham

The Respondent presented the following witnesses:

1. Jeffrey R. Becker

EXHIBITS

The following exhibits were admitted into evidence by the Respondent:

- R1. Grievance of Mark Floyd and related documents
- R2. Grievance of Edward Day and related documents
- R3. Grievance of Gary Beecham and related documents
- R4. Office of State Personnel Recruitment policy
- R5. Department of Correction Posting and Listing Vacancies policy

Based on a preponderance of the substantial evidence admitted into the record of this case, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 28, 1992, Mark Floyd, an employee of the Department of Correction, filed an administrative grievance claiming that he had inappropriately been passed over for promotions and/or transfers due to retaliation against him for being arrested but not convicted of Possession of Cocaine.
2. By letter dated November 13, 1992, the EEO Officer, Alfonza Fullwood, wrote to Mr. Floyd and advised him that as a result of the agency's preliminary investigation into Mr. Floyd's grievance, the Department of Correction had decided to offer him an Intensive Officer position located in Charlotte, North Carolina, with a five percent increase in his salary.

3. After further negotiations between Mr. Floyd and Mr. Fullwood, the parties came to an agreement that Mr. Floyd receive an Intensive Case Officer position in Jacksonville with a five percent pay increase.
4. Subsequently, Petitioners Day and Beecham initiated grievances concerning, in part, the placement of Mr. Floyd in the Intensive Case Officer position.
5. Both Petitioners received responses to their posting grievances from Jimmy W. Harris, Eastern Chief of Field Services, which explained that the decision to place Mr. Floyd in the position not posted was necessary to bring closure to his administrative grievance.
6. Petitioners continued their appeal to the Personnel Office of the Department of Correction. By letter dated April 26, 1993, they were informed of the conclusion of the investigation of the Personnel Office into their grievance. Specifically, the Petitioners were informed again that the placement of Mark Floyd occurred in settlement of his administrative grievance and that this decision was based on management necessity and consistent with the rules and regulations of the State Personnel Commission which provided that posting was not required for "vacancies which must be used to meet management necessity, for which an agency will not openly recruit."
7. The State Personnel Manual provides that posting requirements shall not apply to "vacancies which must be used to meet management necessity, for which an agency will not openly recruit."
8. Mike Gaddis, the Director of the Employment Practices Division of the Office of State Personnel, averred that the Department's decision not to post the position awarded to Mark Floyd was consistent with the spirit and intent of the posting statute and with the exceptions to the posting requirement contained in the posting policy.

CONCLUSIONS OF LAW

1. G.S. §126-7.1(a) provides that "all vacancies for which any State agency, department or institution openly recruit shall be posted..." Respondent did not violate this statute as it did not openly recruit for the position filled by Mark Floyd.
2. N.C. Gen. Stat. §126-4 provides that "the State Personnel Commission shall establish policies and rules governing . . . [r]ecruitment programs designed to promote public employment, communicate current hiring activities within State Government, and attract a sufficient flow of internal and external applicants. . ."
3. Pursuant to this authority, the State Personnel Commission has adopted rules implementing the posting policy contained in N.C. Gen. Stat. §126-7.1. This rule provides in pertinent part as follows:

Posting requirements shall not apply to:

- (1) Vacancies which must be used to meet management necessity, for which an agency will not openly recruit. Examples include vacancies committed to a budget reduction, vacancies used for disciplinary transfers or demotions, use of an existing vacancy to avoid reduction in force, transfer of an employee to an existing opening to avoid the threat of bodily harm, and the promotion of an employee into an existing opening to avoid the threat of bodily harm, and the promotion of an employee into an opening under a formal, pre-existing "understudy arrangement".

25 N.C.A.C. 1H .0602(c).

4. The Department's decision not to post the position it filled with Mark Floyd, who had filed an

internal agency grievance, was not an abuse of management discretion nor a violation of 25 N.C.A.C. 1H .0602(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

The State Personnel Commission should not disturb the agency's decision not to post the position of Intensive Case Officer which was filled by Mark Floyd.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 14th day of December, 1993.

Fred G. Morrison Jr.
Senior Administrative Law Judge

EXHIBITS

The exhibits listing was omitted from this publication. If you would like a copy, please contact the Office of Administrative Hearings, P.O. Box 27447, Raleigh, NC 27611-7447.

WITNESSES

For Petitioner:

Lester Bradshaw - Social Worker, Mecklenburg County
Patricia O'Connor - Carolina Medical Center, Quality Assessment Coordinator, Nurse
Dr. Pleas Geyer - Charlotte Psychiatrist

For Respondent:

James Robison - Massachusetts Psychiatrist
Teru Morton - Clinical Psychologist, University of Missouri

STIPULATION AGREEMENT

The parties agree and stipulate that the criteria as represented in Plaintiff's Exhibit #C are the criteria which were applicable to the admission of this patient.

Based upon careful consideration of the testimony and evidence presented at the hearing, and the documents and exhibits received into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Patient "AC" was born in June of 1976. She is a female and, at the date of her admission to the Carolinas Medical Center for Mental Health, she was 16 years of age.
2. "AC" had previously been placed in the custody of Mecklenburg County Youth and Family Services (YFS) on August 5, 1990, after she had been adjudicated "Dependent" on September 9, 1990.
3. "AC" has also been adjudicated on numerous occasions as an "Undisciplined Child" for her numerous elopements or "AWOLS" (runaways) from various placements.
4. "AC" has had numerous placements since being placed in the custody of YFS. Those placements, starting in August of 1990, are as follows:

8/6/90	-	8/7/90	Gatling Detention Center
8/7/90	-	8/9/90	Glenn Laurel Group Home
8/9/90	-	9/12/90	Ten Broeck Hospital
9/12/90	-	10/7/90	Continuation Place for Further Substance Abuse Treatment. Client went AWOL from placement
10/8/90	-	10/9/90	The "Relatives"
10/9/90	-	10/10/90	Glenn Laurel Group Home. client went AWOL
10/11/90	-	10/12/90	Emergency Foster Home, Ms. Young
10/12/90	-	10/15/90	Glenn Laurel Group Home. client went AWOL
10/19/90	-	10/22/90	Gatling Detention Center
10/22/90	-	10/22/90	Glenn Laurel Group Home. Client went AWOL
10/31/90	-	11/2/90	Gatling Detention Center
11/2/90	-	11/2/90	Charter Northridge Hospital. client went AWOL during admission
11/8/90	-	11/9/90	Gatling Detention Center
11/9/90	-	11/12/90	Mr. Duckett. Client went AWOL
11/16/90	-	11/26/90	Committed to Broughton Hospital - drug overdose

CONTESTED CASE DECISIONS

11/26/90	-	12/19/90	Charter Northridge Hospital
12/19/90	-	12/23/90	Continuation Place for additional substance abuse treatment. Client went AWOL from treatment.
12/30/90	-	12/31/90	Gatling Detention Center
12/31/90	-	1/18/91	Cedar Springs Hospital
1/18/91	-	1/20/91	The "Relatives". Client went AWOL from placement.
1/23/91	-	1/24/91	Gatling Detention Center.
1/24/91	-	1/24/91	Ms. Young's foster home. Client went AWOL after a couple of hours.
1/25/91	-	1/28/91	Gatling Detention Center.
1/28/91	-	1/28/91	Ms. Young's foster home. Client went AWOL that day.
2/12/91	-	2/13/91	Gatling Detention Center.
2/13/91	-	2/14/91	Renaissance group home. Client went AWOL.
3/9/91	-	3/12/91	Gatling Detention Center.
4/9/91	-	4/15/91	Gatling Detention Center.
4/15/91	-	5/15/91	Catawba Memorial Hospital.
5/15/91	-	9/24/91	"Three Springs Wilderness Camp" in Trenton, Alabama. Client successfully completed this program and was transitioned to Continuation Place in Charlotte, North Carolina.
9/24/91	-	12/14/91	Client was placed at Continuation Place for further Substance Abuse Treatment. Client went AWOL from this program on numerous occasions. During client's last AWOL, YFS learned that client had been sexually inappropriate with her male therapist at CP.
12/30/92	-	6/7/93	Client was admitted to the Mental Health Center for treatment. Client worked on numerous issues and made much progress. Client was transitioned to a Mecklenburg County Foster Home (R. Ralley).
6/7/93	-	6/24/93	Client placed in YFS Foster Home (M. Ralley). Client went AWOL from this placement.
6/24/93	-	7/1/93	Client placed herself with Vicky Jones. Vicky and Jessie Crawford (client's brother) have a child who lives with Vicky. Client is very attached to this child; this is the connection between Vicky and client. Vicky resides at 1300 Jenkins Avenue, Apartment 5.
7/1/93	-	7/8/93	Client moved in with her brother (Jessie Crawford).
7/8/93	-	10/18/93	Client returned to live with Vicky Jones. On 10/18/93 YFS was informed by Vicky Jones that she has moved and has not given her location to anyone.
10/18/93	-	Present	Client's whereabouts unknown.

5. In October of 1991, "AC" was placed in the care of Mecklenburg County YFS with the Social Worker Lester Bradshaw.

6. Prior to that time, "AC" had been assigned to Social Workers John Jones and Lanette Mack with Mecklenburg YFS.

7. In August of 1990, "AC" was given a psychological assessment by David Branyon, M.D. at Ten Broeck Hospital and was diagnosed as having an adjustment disorder with depressed mood, cocaine dependence and abuse.

8. "AC" remained at Ten Broeck Hospital for approximately one month.

9. On October 10, 1990, "AC" was assessed by the STARR team and was recommended for further intensive treatment for long term cocaine dependence.
10. "AC" was examined by psychiatrist Phillip Schmitt, M.D. in April of 1991, and was identified as a polysubstance abuser in need of substance abuse treatment.
11. Social Worker Lester Bradshaw is a specialist in substance abuse and drug problems in the adolescent population.
12. Mr. Bradshaw testified, and it is found as fact, that "AC", like many adolescent substance abusers, was not addicted to any particular drug but would use whatever was available.
13. "AC" has a past history which includes prostitution and IV drug use documented as early as age 13.
14. "AC" has had Hepatitis B and Hepatitis C which, it is believed, she contracted through either IV drug use or unprotected sex.
15. "AC's" mother has remained missing for a number of years because it is believed there are federal and State warrants for drug trafficking outstanding on "AC's" mother. There is no stepfather of record although there are two other siblings.
16. "AC" has never been successfully placed in foster homes because of her chronic elopement behavior.
17. As noted above, "AC" was sent to the Three Springs Wilderness Camp in Trenton, Alabama from May of 1991 through September of 1992 (16 months), which was her most successful attempt at recovery and treatment.
18. After "AC" returned from her stay at Three Springs Wilderness Camp she was placed in a local center called The Continuation Place from which she ran away.
19. At approximately that time, "AC's" social workers learned that she had engaged in sex with a mental health therapist at The Continuation Place. (The mental health therapist was subsequently prosecuted and convicted for this action)
20. When she ran away from The Continuation Place, social worker Bradshaw and several other workers from Mecklenburg YFS searched the community for her.
21. The social workers went out into the community and searched various hangouts including crack houses. "AC" was found by Mr. Bradshaw and, although she did not want to come back, she agreed to return.
22. At that time, they learned that she had started using IV drugs again and was having unprotected sex.
23. The social workers, including Mr. Bradshaw, two male staff members and one female staff member, brought "AC" to the Carolinas Medical Center for evaluation.
24. The social workers were concerned that because of the drug use, prostitution and unprotected sex, "AC" was in danger of contracting Aids or otherwise endangering her life.
25. Mr. Bradshaw testified that although "AC" may have had mental and emotional disturbances, in his experience the focus on "AC" in the past had always been on substance abuse.

26. When Petitioner was brought to the Carolinas Medical Center, she was seen by Dr. Warren Steinmuller, a psychiatrist.

27. At that time Dr. Pleas Geyer was a part-time in-patient psychiatrist at Carolinas Medical Center. Dr. Geyer subsequently became full-time and the Director of Child and Adolescent Psychiatry at the Center.

28. When Dr. Steinmuller "rotated off", Dr. Geyer became "AC's" attending physician.

29. When "AC" was first admitted Dr. Steinmuller and Dr. Geyer discussed her condition and her admission. They both agreed that "AC" was primarily and clearly depressed. They further agreed that the other activities in which she involved herself, including the drug abuse, were symptoms of her depression.

30. Both Dr. Steinmuller and Dr. Geyer observed that although "AC" had a long history of problems and treatment for those problems, she had had almost every possible treatment **except** a thorough, broadbased, in-patient review. Her treatment, they additionally observed, had previously concentrated on substance abuse.

31. Both doctors agreed that "AC" was highly dysfunctional and was in great danger.

32. Dr. Geyer testified, and it found as fact, that "AC" did very well at Camp Wilderness because it was a setting far from her home setting and was extremely structured. Settings such as Camp Wilderness are frequently successful with children or adolescents who are in an unsavory home setting.

33. Both Dr. Steinmuller and Dr. Geyer believed that after "AC" return from Camp Wilderness, at which time she was placed back into her original hometown, her condition deteriorated and became extremely precarious.

34. Dr. Geyer testified, and it is found as fact, that "AC" approached the mental health therapist with whom she had sex, in an effort to seek exploitation of herself. Once she had accomplished that exploitation, the improvements she had made rapidly began to deteriorate.

35. "AC" had experienced physical abuse by her mother and her mother's boyfriends. Additionally, she had been sexually abused by a stepfather.

36. Dr. Geyer testified, and it is found as fact, that "AC" needed a broad review of her treatment plan and needed a more broadly conceptualized plan of treatment to handle the self abuse, incestuous relations, depression and abandonment.

37. N.C. Gen. Stat. 108A-25(b) states:

"The program of medical assistance is hereby established as a program of public assistance and shall be administered by the county Departments of Social Services under rules and regulations adopted by the Department of Human Resources."

38. N.C. Gen. Stat. 108A-54 provides, in pertinent part:

"The Department is authorized and empowered to establish a Medical Assistance Program from federal, State, and county appropriations and to adopt rules and regulations under which payments are to be made in accordance with the provisions of this part."

39. N.C. Gen. Stat. 108A-55 provides, in pertinent part:

"The Department may authorize within appropriations made for this purpose payments of all or part of the cost of medical and other remedial care for any eligible person when it is essential to the health and

welfare of such person that such care be provided..."

40. N.C. Admin. Code, tit. 10, r. 26B .0111 provides, in pertinent part, that inpatient psychiatric hospitals are responsible for obtaining certification for persons under the age of 21 in accordance with subpart D of 42 C.F.R. 441.

41. Subpart D of 42 C.F.R. 441 includes many provisions for the care of a patient but appears to incorporate only one segment of the disseminated Criteria (i.e., III-1, 2 and 3) at 42 C.F.R. 441.152.

42. The Medicaid criteria which has been disseminated across the State by the Respondent for admission of children and adolescents to psychiatric hospitals has not been promulgated as a rule.

43. The Criteria, however, was relied upon by the Carolinas Medical Center and was relied upon by Respondent in assessing "AC's" admission.

44. That document includes three criteria and states "to be approved for admission the patient must meet Criteria I, II and III."

45. Criteria number I of the N.C. Medicaid Criteria states:

"Client meets criteria for one or more DSM-III-R diagnoses."
**(Diagnostic and Statistical Manual of Mental Disorders, Third Edition,
Revised - American Psychiatric Association)**

46. Dr. Steinmuller diagnosed "AC" with three DSM-III-R diagnoses; (1) conduct disorder, (2) major depression, and (3) polysubstance abuse.

47. Dr. Geyer subsequently agreed with that diagnosis and it is found as fact that (a) the conduct disorder was manifested in repeated running away, lying about drugs and truancy; and (b) that the major depression was evidenced by at least five of the nine symptoms suggested in the DSM-III-R, i.e. (1) a depressed mood (which can be irritability in children or adolescents), (2) loss of interests or pleasure in age appropriate activities (anadonia), (3) psychomotor agitation, (4) feelings of worthlessness, and (5) recurrent thoughts of death.

48. "AC", like many children and adolescents, denied thoughts of suicide but in children and adolescents it is frequently necessary to infer suicidal tendencies. In the case of "AC", she had spoken many times about her drug use and her sexual activity and knew that she was engaging in dangerous behavior. She acknowledged that this behavior could result in her death and that it probably would, but she did not refrain from engaging in that behavior.

49. Additionally, "AC" had lost interest in age appropriate behavior. Instead, she engaged in sex, drugs and prostitution and repudiated activities such as play, dating and school. Further, she expressed no pleasure in the activities in which she engaged herself, i.e. the sex and drug use.

50. "AC" expressed her awareness that she was probably "headed for death" but that she did not care, which is an indication of hopelessness, another one of the symptoms of a major depression.

51. Criteria II of the N.C. Medicaid Criteria states at least one or more the following criteria must be met:

II.A. Client is presently a danger to self (e.g., engages in self injurious behavior, has a significant suicide potential, or is acutely manic).

This usually would be indicated by one of the following:

1. Client has made a suicide attempt or serious gesture (e.g., overdose, hanging, jumping from or placing self in front of moving vehicle, self-inflicted gunshot wound), or is threatening same with likelihood of acting on the threat, and there is an absence of the appropriate supervision or structure to prevent suicide.

2. Client manifests a significant depression, including current contemplation of suicide or suicidal ideation, and there is an absence of the appropriate supervision or structure to prevent suicide.

3. Client has a history of affective disorder: a) with mood which has fluctuated to the manic phase or, b) has destabilized due to stressors or non-compliance with treatment.

4. Client is exhibiting self-injurious behavior (cutting on self, burning self) or is threatening same with likelihood of acting on the threat.

52. Dr. Geyer testified, and it is found as fact, that "AC" was a clear danger to herself and was engaging in suicidal behavior. It is further found as fact that "AC" clearly met this category in her repeated elopements, repeated IV drug use and unprotected sex, prostitution, non-compliance with treatments, and elopements which eliminated structure to prevent suicidal behavior

53. Criteria II-B states:

OR

B. Client engages in actively violent, aggressive or disruptive behavior or client exhibits homicidal ideation or other symptoms which indicate he/she is a probably danger to others.

This usually would be indicated by one of the following:

1. Client whose evaluation and treatment cannot be carried out safely or effectively in other settings due to impulsivity, impaired judgment, severe oppositionalism, running away, severely disruptive behaviors at home or school, self-defeating and self-endangering activities, antisocial activity, and other behaviors which may occur in the context of a dysfunctional family and may also include physical, psychological, or sexual abuse.

54. Dr. Geyer testified, and it is found as fact, that Criteria II-B-1 was "written to describe 'AC'".

55. It is found as fact that "AC" clearly suffers from impaired judgment, severe oppositionalism, running away, self defeating and self endangering activities, antisocial activities, a dysfunctional family with a history of physical and sexual abuse.

56. Dr. Geyer further testified that in children and adolescents suicidal tendencies are often manifested by a constant preoccupation with death and activity which causes death. In adults, it is manifested by having a plan, but in adolescents it is manifested by dangerous behavior and consciously courting death in an imminent way.

57. Dr. Geyer testified, and it is found as fact, that criteria C and D do not apply to "AC". These criteria will not be reproduced herein and are listed in the Criteria outline in the disjunctive. Thus, having met Criteria IIA and IIB, it is not necessary that a patient meet Criteria IIC and IID.

58. Criteria II-E, which is also listed in the disjunctive, states:

OR

E. Need for medication therapy or complex diagnostic evaluation where the client's level of functioning precludes cooperation with the treatment regimen, including forced administration of medication.

This usually would be indicated by one of the following:

1. Client whose diagnosis and clinical picture is unclear and who requires 24 hour clinical observation and assessment by a multi-disciplinary hospital psychiatric team to establish the diagnosis and treatment recommendations.

2. Client is involved in the legal system (e.g., in a detention or training school facility) and manifests psychiatric symptoms (e.g., psychosis, depression, suicide attempts or gestures) and requires a comprehensive assessment in a hospital setting to clarify the diagnosis and treatment needs.

59. Dr. Geyer testified, and it is found as fact, that criteria E does apply to "AC", in that she was in dire need of a comprehensive assessment, that she had a history of prolonged, failed attempts to help her which had been targeted toward her substance abuse and overlooked her depression and self abuse, and she was in need of that assessment in a hospital setting.

60. The third and final criteria which must also be met to qualify for admissions according to the N.C. Medicaid Criteria reads as follows:

AND

III. To meet the federal requirement at 42 CFR 441.152, all of the following must apply:

1. Ambulatory care resources available in the community do not meet the treatment needs of the recipient.

2. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician.

3. The services can reasonably be expected to improve the recipient's condition or prevent further regression so that services will no longer be needed.

61. Dr. Geyer testified, and it is found as fact, that as to III - 1 - there were no other resources available in the community, "AC" would not face the fact that she had a problem, many, if not all other community resources had been tried and had been unsuccessful and inadequate to meet "AC's" needs. He further testified, and it is found as fact, that "AC" needed a broadly dimensional intensive treatment, a forced stay in the hospital, and the ambulatory care response in the community had proven to be unable to meet "AC's" needs.

62. Dr. Geyer testified that it was medically necessary that "AC" receive acute psychiatric treatment on an inpatient basis under the care of a physician.

63. Dr. Geyer testified that while showing beyond doubt that inpatient services will be reasonably expected to improve a patient's condition is always extremely problematic, he likened it to a patient who has suffered a heart attack, stating that if that patient was not admitted to a hospital they may survive or they might not but it would be unreasonable and foolhardy not to admit someone who had recently suffered a heart attack. Dr. Geyer further testified that while the prognosis would always be guarded, "AC" could only be expected to improve with serious and broad based intervention on an inpatient basis.

64. It is found as fact that "AC" met all the Criteria outlined in Part III of the N.C. Medicaid Criteria.

65. Dr. Geyer further testified that on an occasion previous to December of 1992, "AC" had been brought to Carolinas Medical Center and it was also recommended at that time that she be admitted as an inpatient. There was, however, no room and she had been referred to Broughton Hospital.

66. Patricia O'Connor is the Quality Coordinator and Utilization Review Nurse at Carolinas Medical Center.

67. Ms. O'Connor was notified sometime in late 1992, that the admission for "AC" had been denied by the outside agency Mental Health Management of America (MHMA) for Medicaid coverage.

68. She arranged for a peer review which is conducted by telephone from her office and is recorded. The peer review is conducted between the attending physician and another physician from MHMA. That review occurred on January 7, 1993, and was conducted between Dr. Steinmuller ("AC's" physician), and Dr. Leavell of MHMA.

69. On January 11, 1993, the admission for "AC" was denied.

70. Ms. O'Connor testified, and it is found as fact, that the medical records for "AC" had not been forwarded to MHMA at the time of the peer review call and, in fact, that the records were not sent to MHMA until February 13, 1993, approximately one month after the denial.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. N.C. Gen. Stats. 108A-25(b) and 108A-54 provide that the N.C. Department of Human Resources shall promulgate rules for the payment of medical care under Medicaid for eligible persons.

2. The only rule promulgated which covers the admission of psychiatric patients under 21 (10 NCAC 26B.0111) provides that the admitting hospital must obtain certification in accordance with subpart D of 42 C.F.R. 441.

3. In Subpart D, 42 C.F.R. 441.152 provides that for inpatient psychiatric services for independent services for individuals under the age of 21 a team specified in 441.154 must certify that: (1) ambulatory care resources available in the community do not meet the treatment needs of the recipient; (2) proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of the physician; and (3) the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed; (4) the certifications specified in this section and in 441.153 satisfies the utilization control requirement for a physician certification.

4. This provision reflects part III of the Medicaid Criteria which had been disseminated by the Respondent and which is outlined in the Findings of Fact.

5. N.C. Gen. Stat. 150B-2 (8a) provides, in pertinent part, that:

(8a) "Rule means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule.

6. In a 1986 Attorney Generals opinion it was determined that:

When 150B-2(8a) and 150B-11(1) are read together, it is apparent that any procedures, whether formal or informal, that directly or substantially affect the rights or procedures of nonagency persons must be adopted as rules. See Opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 56 NCAG 25 (1986). (Emphasis added)

7. N.C. Gen. Stat. 150B-11(1) (repealed in 1991) was part of Article 2 of the APA, all of which was repealed in 1991 and replaced by Article 2A. To a great extent, Article 2A recodified the procedures for rulemaking which had previously been codified in Article 2.

8. Article 2A also enumerated the long-standing tenet that a rule should not repeat the contents of a law, rule, or federal regulation. [N.C. Gen. Stat. 150B-19(4)]

9. In Administrative Law and Practice (Koch, Charles H., West Publishing Co. 1985), statements of policy, i.e. non-rules are discussed at Section 3.24. That missive provides, in pertinent part, that a statement of policy should (a) not purport to establish a "binding norm" and (b) must apply prospectively.

10. The undersigned concludes as a matter of law that the N.C. Medicaid Criteria clearly falls under the definition of "rule" in the Administrative Procedure Act, N.C. Gen. Stat. 150B and that except for Part III, it had not been promulgated as a rule.

11. As a non-rule or a statement of policy, the Criteria has no binding effect on the Petitioner, except for part III.

12. As noted above, 10 NCAC 26B .0111 adopts the Criteria of Subpart D of 42 C.F.R. 441 (Criteria part III) but does not repeat that federal regulation which is the correct rulemaking procedure under G.S. 150B-19(4).

13. Since Part III of the Medicaid Criteria was properly adopted as a rule by the Respondent, that section of the criteria is the only section binding upon the Petitioner.

14. It is concluded that, had the criteria been binding on Petitioner, "AC" met all the requirements of that criteria and Respondent erred in denying the certification for her admission.

15. It has been found as fact that "AC" met the Criteria in Part III of the Medicaid Criteria and it is therefore, concluded as a matter of law that the Respondent erred in denying certification for the admission of "AC" to Carolinas Medical Center on or about December 30, 1992.

Based on the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

That the Respondent certify the admission of "AC" to the Carolinas Medical Center on or about December 30, 1992.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Secretary of the North Carolina Department of Human Resources.

This the 6th day of December, 1993.

Dolores O. Nesnow
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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