

**NORTH CAROLINA
REGISTER**

IN THIS ISSUE



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I. EXECUTIVE ORDERS
Executive Order 4..... 1626

II. IN ADDITION
Voting Rights Letters..... 1627 - 1628
Labor – Declaratory Rule 1629 - 1632

III. RULE-MAKING PROCEEDINGS
Environment and Natural Resources
Radiation Protection..... 1633 - 1634
Health and Human Services
Mental Health, Developmental Disabilities and
and Substance Abuse Services..... 1633

IV. PROPOSED RULES
Agriculture
Pesticide Board 1635
Licensing Boards
Nursing, Board of..... 1639 - 1641
Transportation
Highways, Division of..... 1635 - 1639

V. TEMPORARY RULES
Licensing Boards
Massage and Bodywork Therapy 1648 - 1656
Nursing, Board of..... 1656 - 1660
Public Education
Elementary and Secondary Education 1642 - 1648

VI. RULES REVIEW COMMISSION..... 1661 - 1662

VII. CONTESTED CASE DECISIONS
Index to ALJ Decisions..... 1663 - 1672

VIII. CUMULATIVE INDEX 1 - 81

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
25	State Personnel	Nursing	36
26	Administrative Hearings	Nursing Home Administrators	37
27	NC State Bar	Occupational Therapists	38
28	Juvenile Justice and Delinquency	Opticians	40
	Prevention	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	01/17/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	01/31/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	02/16/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/02/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	03/16/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	03/30/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	04/17/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/01/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/16/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	05/30/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
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16:01	07/02/01	06/11/01	09/04/01	07/17/01	07/17/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	07/31/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
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16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/02/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

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

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.
(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

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

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

EXECUTIVE ORDER NO. 4

CLEMENCY

WHEREAS, Article III, Section 5(6) of the Constitution of North Carolina, vests the power of clemency exclusively with the Governor.

WHEREAS, the Constitution of North Carolina empowers the Governor with sole, unrestricted, and unlimited discretion to exercise the power of clemency to pardon, commute, or grant reprieves, except in cases of impeachment.

WHEREAS, North Carolina General Statute, Section 15A-838, the Crime Victims' Rights Act, requires, the Governor's Clemency Office to notify certain victims, as defined by North Carolina General Statute, Section 15A- 830, when it is considering commuting the defendant's sentence or pardoning the defendant.

WHEREAS, crime victims and prosecutors should have the right to be notified, and the general public has the right to know, if the convicted perpetrator in a particular case has a petition for a reprieve, commutation, or pardon actively being considered before the Governor's Clemency Office.

NOW THEREFORE, by the authority vested in me as Governor of the State of North Carolina. IT IS ORDERED:

Section 1. The Governor's Clemency Office will create for public posting a listing of the names of every individual whose application for a reprieve, commutation, or pardon is actively being considered.

Section 2. The list of names will be publicly posted on a state governmental website. Additionally, the Governor's Clemency Office will post the list of names on a bulletin board outside of its office for public inspection during normal business hours.

Section 3. In addition to the applicant's name, information related to the individual's offense, conviction date, and length of sentence should also be publicly available.

Section 4. Beyond the requirements of the Crime Victims' Rights Act, North Carolina General Statute, Section 15A-838, the Governor's Clemency Office will notify the relevant crime victim and prosecutor in every case where the convicted perpetrator has a petition for a reprieve, commutation, or pardon actively being considered by the Governor's Clemency Office.

Section 5. For all petitions now actively being considered by the Governor's Clemency Office, public posting will take effect within thirty days from the effective date of this Executive Order. All other petitions subsequently filed, and actively considered, will be posted within thirty days of filing.

Section 6. Exceptions to this Executive Order may be made in capital cases where the Office of the Attorney General ensures that the victim's family and the relevant District Attorney's office are notified as to clemency petitions, and in other special cases, such as with claims of "actual innocence", where any delay for public posting and comment would cause further unjust incarceration or record of conviction. In such cases, the Clemency Office must notify the Governor's Office of Legal Counsel immediately.

This Executive Order is effective immediately and shall remain in effect, as written, until terminated or amended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this 6th day of March 2001.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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.

U.S. Department of Justice

Civil Rights Division

JDR:MSR:NT:jdh:par
DJ 166-012-3
2001-0043

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

February 16, 2001

Robert E. Hornik, Jr., Esq.
The Brough Law Firm
1829 East Franklin St., Suite 800-A
Chapel Hill, NC 27514

Dear Mr. Hornik:

This refers to the annexation (Ordinance No. 00-34) and its designation to Ward 4 of the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 5, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Finally, we wish to take this opportunity to inform you that beginning January 29, 2001, Section 5 submissions sent to the Attorney General, other than through the United States Postal Service, should be addressed, or may be delivered to: Chief, Voting Section, Civil Rights Division, Department of Justice, 1800 G. Street, N.W., Room 7254, Washington, D.C. 20006. Our postal box address (P.O. Box 66128, Washington, D.C. 20035-6128) remains unchanged.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:BGE:nj
DJ 166-012-3
2000-4592
2001-0072

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

February 23, 2001

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to three annexations (Ordinance Nos. 00-134, 00-150, and 00-151) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on December 27, 2000 and January 10, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Finally, we wish to take this opportunity to inform you that beginning January 29, 2001, Section 5 submissions sent to the Attorney General, other than through the United States Postal Service, should be addressed, or may be delivered to: Chief, Voting Section, Civil Rights Division, Department of Justice, 1800 G. Street, N.W., Room 7254, Washington, D.C. 20006. Our postal box address (P.O. Box 66128, Washington, D.C. 20035-6128) remains unchanged.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

NORTH CAROLINA DEPARTMENT OF LABOR

IN RE REQUEST FOR DECLARATORY)
BY NORTH CAROLINA CITIZENS)
FOR BUSINESS AND INDUSTRY)

DECLARATORY RULING

I, Cherie K. Berry, the North Carolina Commissioner of Labor, issue this Declaratory Ruling pursuant to G.S. 150B-4, on behalf of the North Carolina Department of Labor (the "Department"). The Department issues this Ruling in response to a Petition for Declaratory Ruling dated February 19, 2001 from Thomas R. West of Poyner & Spruill L.L.P. on behalf of North Carolina Citizens for Business and Industry ("NCCBI").

This Declaratory Ruling addresses the validity of the verbatim adoption of the Federal Ergonomics Program adopted by the Department on November 14, 2000 as an amendment to 13 NCAC 07F .0101 ("State Ergonomics Rule"). For reasons explained fully below, I conclude that: (1) the State Ergonomics Rule was void ab initio because it was promulgated prior to the effective date of the federal ergonomics program January 16, 2001 which the State Ergonomics Rule adopts by reference, and (2) declaring the State Ergonomics Rule invalid and adopting a new State rule, if necessary, will resolve any doubt about the validity of the State Ergonomics Rule, which is in the best interests of both the Department and the individual and corporate citizens of North Carolina.

This Declaratory Ruling will be binding on the Department with regard to the validity of the State Ergonomics Rule, as adopted on November 14, 2000.

STATEMENT OF FACTS

On November 14, 2000, the Department purported to promulgate a State Ergonomics Rule which adopted verbatim the Federal Ergonomics Program, published that same date in the Federal Register by the federal Occupational Safety and Health Administration ("OSHA"). The Department published a "Notice of Verbatim Adoption of Federal Standards" in the North Carolina Register on December 15, 2000. This notice stated, in pertinent part, that the Occupational Safety and Health Division of the Department "has submitted a permanent rule change to 13 NCAC 07F .0101, General Industry to incorporate the verbatim adoption of the Federal Ergonomics Program found at 65 FR 68261-68870, November 14, 2000." The Department purported to adopt the new State Ergonomics Rule pursuant to G.S. 150B-21.5(c).

In accordance with G.S. 150B-21(f), the Department submitted with the Rule a "Federal Law Rule Certification" dated November 14, 2000, which stated that the new State Ergonomics Rule was required by "29 CFR 1952.23(a)(2) [sic] and G.S. 95-131(a) in order for North Carolina=s Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina=s state plan status under the federal Occupational Safety and Health Act of 1970." This certification also stated that "[the State Ergonomics Rule] will be effective November 14, 2000 pursuant to the provisions of G.S. 150B-21.3(e)."

The final rule setting forth the Federal Ergonomics Program adopted by OSHA was published in the Federal Register at 65 Fed. Reg. 68261-68870, on November 14, 2000; however, the effective date of the Federal Ergonomics Program was January 16, 2001. 65 Fed. Reg. 68261-68870, Nov. 14, 2000.

ANALYSIS

I. THIS DECLARATORY RULING IS ISSUED IN ACCORDANCE WITH THE NORTH CAROLINA ADMINISTRATIVE PROCEDURE ACT

The North Carolina Administrative Procedure Act ("North Carolina APA") provides that upon request of a person aggrieved, an agency must issue a declaratory ruling as to the validity of a rule, except when the agency for good cause finds issuance of a declaratory ruling undesirable. G.S. 150B-4(a) (2001). A person aggrieved is "any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision." G.S. 150B-2(6) (2001).

This Declaratory Ruling is in response to such a request by NCCBI, an organization that qualifies as a person aggrieved because it is both a person (as defined by G.S. 150B-2(7)) and a group of persons that will be directly and indirectly affected substantially in property and employment by the State Ergonomics Rule. NCCBI is a nonprofit, nonpartisan trade association with more than 2,300 member companies representing approximately 1.1 million employees. NCCBI=s membership includes small and large businesses, as well as many local school systems, public and private colleges and universities, and community colleges. NCCBI

1 The Department mistakenly cited 29 CFR 1952.23(a)(2) in support of the State Ergonomics Rule. No such federal regulation does or has ever existed. The Department intended to cite 29 CFR 1953.23(a)(2).

and its member businesses will be affected substantially in their property and employment on a daily basis by the State Ergonomics Rule and the costs and significant efforts associated with compliance.

North Carolina's courts repeatedly have recognized that associations such as NCCBI can be persons aggrieved. *See e.g., ACT-UP Triangle v. Comm=n for Health Serv.*, 345 N.C. 699, 704-05, 483 S.E.2d 388, 391 (1997) (holding that judicial review of Commission=s denial of rule-making petition was available to AIDS activist group pursuant to G.S. 150B-20(d), which provides for judicial review in accordance with Article 4 of North Carolina APA, which defines aggrieved person=s right to judicial review of agency decision, G.S. 150B-43); *Save Our Rivers, Inc. v. Town of Highlands*, 113 N.C. App. 716, 723, 440 S.E.2d 334, 339 (1994); *rev=d on other grounds*, 341 N.C. 635, 461 S.E.2d 333 (1995) (holding that non-profit environmentalist corporation composed of Macon County residents who used river qualified as person aggrieved by permit modification increasing local wastewater treatment plant=s discharge capacity issued by Division of Environmental Management); *Citizens for Clean Indus. v. Lofton*, 109 N.C. App. 229, 234, 427 S.E.2d 120, 123 (1993) ("There seems to be no dispute that CCI [citizens= environmentalist group] and City are aggrieved persons."). Moreover, this State=s courts have defined the term person aggrieved broadly:

The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. It has been variously defined: "Adversely or injuriously affected; damnified, having a grievance, having suffered a loss or injury, or injured; also having cause for complaint. More specifically the word(s) may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights."

In re Assessment of Sales Tax, 259 N.C. 589, 595, 131 S.E.2d 441, 446 (1963) (interpreting predecessor judicial review statute, which did not define the term) (citations omitted) (quoted in *Empire Power Co. v. N.C. Dep't of Evn't, Health and Natural Resources*, 337 N.C. 569, 588, 447 S.E.2d 768, 779 (1994) (interpreting G.S. 150B-23(a)).

Because NCCBI is a person aggrieved by the Department=s adoption of the State Ergonomics Rule and because sound public policy dictates that the Department issue this Declaratory Ruling, the Department is obligated, pursuant to G.S. 150B-4(a), to respond to NCCBI=s Request and issue this Declaratory Ruling regarding the validity of the State Ergonomics Rule.

II. NORTH CAROLINA=S OCCUPATIONAL SAFETY AND HEALTH PROGRAM MUST BE AS EFFECTIVE AS THE FEDERAL OSHA PROGRAM

Federal regulations require North Carolina=s Department of Labor to maintain and enforce an occupational safety and health program ("State Program") which is "at least as effective as in providing safe and healthful employment and places of employment as the standards promulgated under . . . the Act." 29 C.F.R. 1902.1(b), *et seq.*, and 1952.154(c). North Carolina=s State Program was granted final approval by the U.S. Department of Labor effective December 10, 1996, and concurrent federal enforcement authority over our State Program was relinquished at that time. 29 C.F.R. 1952.154(a), 1952.155. Since this final approval, North Carolina has exercised independent control over the operation and enforcement of its State Program.

In order to maintain a State Program that is as effective as the Federal Program, federal regulations require that North Carolina "shall promulgate a State standard adopting such new Federal standard, . . . or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard . . ." 29 C.F.R. 1953.23(a)(2). An OSHA regulation generally is deemed to be promulgated when it is published in the Federal Register. *See, e.g., Horsehead Resource Dev. Co., Inc. v. EPA*, 130 F.3d 1090 (D.C. Cir. 1997); *United Tech. Corp. v. OSHA*, 836 F.2d 52 (2d Cir. 1987). Therefore, 29 C.F.R. 1953.23(a)(2) requires North Carolina to promulgate a State standard adopting a new federal standard within six months of the date the federal standard is published in the Federal Register. Applying this rule to the new Federal Ergonomics Program, North Carolina must promulgate a corresponding State standard on or before May 14, 2001.

The requirement that our State adopt occupational safety and health standards equally effective to federal standards is mirrored in North Carolina law, which provides that the Commissioner of Labor must adopt federal OSHA standards verbatim unless alternative state standards that are as effective as the federal standards adopted. G.S. 95-131(a). Section 95-131(a) provides that all federal OSHA standards "shall be adopted as the rules of the Commissioner [of Labor] of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement . . ." @ Also pursuant to this statute, the North Carolina Administrative Procedure Act ("North Carolina APA"), codified at G.S. 150B, governs the adoption of such rules by the Commissioner.

A. The Federal Ergonomics Program Was Not Effective Until January 16, 2001

The federal Administrative Procedure Act ("Federal APA") requires each agency to publish in the Federal Register substantive rules of general applicability adopted as authorized by law. 5 U.S.C. 553. Every federal substantive rule must be published at least thirty days before its effective date, with limited exceptions not applicable to the Federal Ergonomics Program. 5 U.S.C. 553 (d). The purpose of the Section 553(d) notice requirement is to inform affected persons and afford them reasonable time and opportunity to prepare for the effective date of the rule or to take any other action which issuance of the rule may prompt. *Rowell v. Andrus*, 631 F.2d 699, 703 (4th Cir. 1980). An agency may avoid the Section 553(d) notice requirement only "for good cause found and published with the rule." 5 U.S.C. 553(d)(3). As noted in *Rowell*, "[t]he required publication of the adopted rule, and the

subsequent time lapse required before its effective date, cannot be dispensed with by the agency merely because the adopted rule turns out to be the same as the proposed rule." *Id.* North Carolina=s citizens must be afforded no less than the same opportunity contemplated by the federal standard.

Moreover, under federal law, there is a sixty day period following publication of a final rule in the Federal Register during which the United States Congress may review the rule and repeal it through a joint resolution of disapproval. *See* 5 U.S.C. 801, 802. Accordingly, and by its own terms, the Federal Ergonomics Program final regulations were not effective until January 16, 2001, sixty days after the rules were published in the Federal Register.

B. The Department Cannot Adopt By Reference a Federal OSHA Rule Until that Rule Is Legally Effective

Compliance with the procedural requirements of the Federal APA is essential to the validity of a federal administrative rule. A federal regulation is invalid if the agency fails to follow procedures required by the Federal APA. *E.g., Buschmann v. Schweiker*, 676 F.2d 352, 355-56 (9th Cir. 1982) (citations omitted). As noted above, Section 553(d) of the Federal APA requires the agency to publish a substantive rule in the Federal Register at least thirty days before the rule=s effective date, unless the agency finds good cause not to comply with this requirement. A similar notice provision applies to proposed administrative rules. 5 U.S.C. 553(b).

Exceptions to the notice provisions of Section 553 are "narrowly construed and only reluctantly countenanced." *Am. Fed=n of Gov=t Employees v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (quoting *State of New Jersey, Dep=t of Env'tl. Protection v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)); *accord Env'tl. Def. Fund, Inc. v. Gorsuch*, 713 F.2d 802 (D.C. Cir. 1983). The D.C. Circuit has stated that "use of these [good cause] exceptions by administrative agencies should be limited to emergency situations; furthermore, the grounds justifying the agency=s use of the exception should be incorporated within the published rule." *Id.* (internal citations omitted). Federal courts repeatedly have acknowledged the importance of an agency=s compliance with the notice requirements of Section 553. *See, e.g., Buschmann*, 676 F.2d at 358 (holding that interim amendment to supplemental security income regulation was invalid due to failure to comply with notice and comment requirements of Section 553(b) until proper promulgation of final rule); *Kollett v. Harris*, 619 F.2d 134 (1st Cir. 1980) (striking down interim regulations implementing amendments to Social Security Act due to failure to comply with Section 553(b)); *State of New Jersey*, 626 F.2d 1038 (holding that agency=s request for comments after promulgation of rule was not viable substitute for Section 553(b) notice and comment procedure). In addition to complying with the Federal APA, to have the *force of law*, a federal substantive rule must have an *effective date*. *Gorsuch*, 713 F.2d at 817-18 (emphasis added); *accord Associated Builders & Contractors, Inc. v. Herman*, 976 F. Supp. 1, 7 (D.D.C. 1997). Promulgation of the rule does not constitute an effective date. "As the term is generally used, >promulgate= means >to make known by open declaration= or >to make . . . public the terms = of a rule or law." *United Tech. Corp.*, 836 F.2d at 54 (citing Webster=s Third New Int=l Dictionary 1816 (1981)). The Second Circuit concluded that the rules were *issued* when filed in the Office of the Federal Register and *promulgated* when published therein. *Id.* In contrast, the "effective date" is defined as "[t]he date on which a statute, contract, insurance policy, or other such instrument becomes enforceable or otherwise takes effect, which sometimes differs from the date on which it was enacted or signed." Black=s Law Dictionary 533 (7th ed. 1999). Clearly, the promulgation of a rule is very different from its taking effect and the promulgation of the rule cannot give rise to an action pursuant thereto which predates the rule=s effective date.

With regard to the Federal Ergonomics Program, OSHA clearly did not find good cause to avoid the notice requirement of Section 553(d) because the regulations setting forth the Program expressly state that they are *not effective until January 16, 2001*, approximately sixty days after the rules were published in the Federal Register. The Federal Ergonomics Program did not have the force of law prior to this effective date. Accordingly, there was no legally effective federal OSHA standard for North Carolina=s Department of Labor to adopt by reference until January 16, 2001.

Historically, the Department=s pattern and practice with regard to adoption of federal OSHA standards by reference, has been to wait until after the OSHA rule has taken legal effect before adopting the corresponding State rule. Since 1996 and until the purported adoption of the State Ergonomics Rule, the Department had not adopted by reference as a State rule any substantive OSHA rule before the OSHA standard was legally effective. In each of these other instances, the Department waited to adopt the new federal OSHA standard until it was legally effective, *i.e.*, more than sixty days after the federal rule was published in the Federal Register.

In order to continue operating and retain independent control of its occupational safety and health program in accordance with OSHA=s regulatory requirements, North Carolina must adopt a State standard that is as effective as the Federal Ergonomics Final Rule on or before May 14, 2001. The Department purported to adopt such a standard on November 14, 2000, the very day the Federal Ergonomics Standard was published in the Federal Register. However, this purported State Ergonomics Rule was void *ab initio* because it adopted by reference federal regulations that were not yet effective and had no legal force. As discussed above, the Department=s own past pattern and practice indicate that the Department must wait to adopt a federal OSHA standard until the federal rule has taken legal effect.

III. IT IS IN NORTH CAROLINA=S BEST INTERESTS FOR THE DEPARTMENT TO ENSURE THE VALIDITY AND ENFORCEABILITY OF THE STATE ERGONOMICS STANDARD

In its Request, NCCBI states that many of its member businesses have questioned the validity and enforceability of the State Ergonomics Rule, and that the Department may expect challenges to the State Ergonomics Rule because of the premature timing of its

IN ADDITION

purported adoption. Uncertainty as to the validity and enforceability of the State Ergonomics Rule is contrary to the interests of (1) the persons purportedly regulated by it, (2) the people who are intended to benefit from the Rule, and (3) the Department. To avoid any such uncertainty, the Department hereby declares that the State Ergonomics Rule adopted on November 14, 2000 was void *ab initio* for all of the reasons set forth above.

Federal law requires the Department to adopt a State ergonomics standard that is as at least as effective as the Federal Ergonomics Program. Therefore, if the Federal Ergonomics Program promulgated on November 14, 2000 and effective January 16, 2001 remains in force and effect, the Department must adopt the federal program by reference on or before May 14, 2001, in order to comply with federal and state law. Because State regulations which adopt verbatim federal OSHA rules are excluded from the standard rule-making procedural requirements, the Department can readily promulgate a new State Ergonomics Rule properly prior to that deadline.

CONCLUSION

For all of the reasons set forth above, I hereby rule that North Carolina's State Ergonomics Rule adopted on November 14, 2000 was void *ab initio* and therefore, was without legal force and effect from its inception.

Issued this the 6th day of March, 2001.

NORTH CAROLINA DEPARTMENT OF LABOR

Cherie K. Berry
Commissioner of Labor

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 18 – MENTAL HEALTH: OTHER PROGRAMS

Notice of Rule-making Proceedings is hereby given by the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 18W .0101-.0104 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122C-3; 122C-112; 122C-115; 122C-116; 122C-117; 122C-118; 122C-132; 143B-147

Statement of the Subject Matter: Due to several mergers of area programs in North Carolina, it is necessary to revise the rules contained in this Subchapter to reflect appropriate catchment areas.

Reason for Proposed Action: During the merger of area programs in specified catchment areas, a Request for Waiver of these Rules was necessary, since some of those programs would no longer be located in a catchment area that is reflected in these Rules. Therefore, it is now necessary to revise the rules for clarification and appropriate change in catchment areas.

Comment Procedures: Written comments should be submitted to Charlotte F. Hall, Rulemaking Coordinator, 3012 Mail Service Center, Raleigh, NC 27699-3012.

Citation to Existing Rule Affected by this Rule-making: 15 NCAC 11 .0100; .0300; .0500; .0700; .1300; .1400; and .1600. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 104E-2; 104E-7; 104E-9; 104E-10; 104E-11; 104E-12; 104E-14; 104E-15; 104E-18; 104E-19; 104E-20; C.F.R Chapter 1, Commission Notices, Policy Statements, Agreement States; 46 F.R. 7540

Statement of the Subject Matter: The Radiation Protection Commission is initiating rulemaking proceedings as a result of recommendations received from the Non-Ionizing Committee and its Commission members to update and improve existing regulations and make others compatible with the federal requirements of the U.S. Nuclear Regulatory Commission as required by North Carolina's agreement with them, authorized under G.S. 104C-5, 1963.

Reason for Proposed Action: The Radiation Protection Commission is initiating rulemaking proceedings as a result of recommendations received from the Non-Ionizing Committee and its Commission members to update and improve existing regulations and make others compatible with the federal requirements of the U.S. Nuclear Regulatory Commission as required by North Carolina's agreement with them, authorized under G.S. 104C-5, 1963.

Comment Procedures: Written comments may be submitted to Richard M. Fry, Director, Division of Radiation Protection, Dept. of Environment & Natural Resources, 3825 Barrett Drive, Raleigh, NC 27609-7221.

CHAPTER 11 – RADIATION PROTECTION

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 11 – RADIATION PROTECTION

Notice of Rule-making Proceedings is hereby given by NC Radiation Protection Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Notice of Rule-making Proceedings is hereby given by Division of Radiation Protection - DENR in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 11 .1100 and .1400. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 104E-9(8); 104E-19(a)

RULE-MAKING PROCEEDINGS

Statement of the Subject Matter: *Division of Radiation Protection is initiating rule-making proceedings as a result of staff recommendations to update existing fees to more closely reflect current inspection program costs.*

Reason for Proposed Action: *Division of Radiation Protection is initiating rule-making proceedings as a result of staff recommendations to update existing fees to more closely reflect current inspection program costs.*

Comment Procedures: *Written comments may be submitted to Richard M. Fry, Director, Division of Radiation Protection, Dept. of Environment & Natural Resources, 3825 Barrett Drive, Raleigh, NC 27609-7221.*

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Pesticide Board intends to amend the rule cited as 02 NCAC 09L .1005. Notice of Rule-making Proceedings was published in the Register on January 2, 2001.

Proposed Effective Date: July 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than April 17, 2001, to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, P.O. Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: The Pesticide board initiated rule-making proceedings as a result of a petition for rule-making from Mr. Elbie Powers, a farmer and aerial applicator from Sampson County. His stated purpose is to allow the aerial application of pesticides within 100 feet of a residence to treat fruit and nut trees and for mosquito control.

Comment Procedures: Written comments may be submitted no later than May 2, 2001, to James W. Burnette, Jr. Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, P.O. Box 27647, Raleigh, NC 27611.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 09 – FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09L – PESTICIDE SECTION

SECTION .1000 – AERIAL APPLICATION OF PESTICIDES

02 NCAC 09L .1005 RESTRICTED AREAS

- (a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under F.A.R.-137.
(b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or

any building (other than a residence) which is used for business or social activities if either the premises or the building is occupied by people.

(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

(d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or near any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.

(e) No pesticide shall be deposited within 100 feet of any residence. This Paragraph shall not apply to any licensed aerial applicator when conducting aerial pest control operations (applications) providing the following conditions are met:

- (1) Only approved labeled pesticide(s) whose active ingredients are also registered with USEPA for ornamental and turf pest control or public health pest control will be used (applied/deposited).
(2) After application (use), the licensed aerial applicator will have 72 hours to have on record a written description of the operation, which meets or exceeds the following standards:
(A) Showing a request for a licensed aerial applicator to apply the named pesticide(s) within 100 feet of residence;
(B) Showing that the crop manager or owner was advised of the precautionary label statements for the named pesticide(s);
(C) A statement from the owner (manager) of the building, etc., indicating all hours that anyone is on the premises (property); and
(D) A record of application information complying with Paragraphs (c) and (d) of 2 NCAC 9L .1002, General Requirements.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

Authority G.S. 143-458.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to amend the rule cited as 19A NCAC 02D .0607. Notice

PROPOSED RULES

of Rule-making Proceedings was published in the Register on January 16, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: April 24, 2001

Time: 2:00 pm

Location: Transportation Building Auditorium, 1 South Wilmington Street, Raleigh, NC

Reason for Proposed Action: G.S. 136-18(5) authorizes DOT to promulgate rules governing the safe movement of trucks, tractors, trailers and other heavy vehicles or machinery on highways. G.S. 20-115 sets forth weights and dimensions to move loads over the highways. G.S. 20-119 authorizes DOT to issue permits to move vehicles with excessive weight or dimensions. HB 1854, ratified in 2000, changed the statute. On August 7, 2000, DOT filed temporary rules to regulate oversize/overweight vehicles. The changes increased penalties for non-compliance and enforcement criteria. Permit applications increased dramatically; the changes were effective October 1, 2000. The DOT Permit Unit issued permits far exceeding those prior to the statutory changes. Temporary rule 19A NCAC 02D .0642, effective October 19, 2000, expired December 31, 2000. An amended 19A NCAC 02D .0607 was filed as a temporary rule effective December 31, 2000 to allow the department to continue to issue blanket permits for oversize/overweight loads. The blanket permits allow the industry greater movement flexibility and decrease DOT paperwork considerably.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by May 2, 2001.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .0600 – OVERSIZE-OVERWEIGHT PERMITS

19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D.0600 et seq. Exception: A mobile/modular unit with maximum measurements of 13' 6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit

policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load except as provided in 19A NCAC 02D .0607. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12" of roof overhang or the total width of overhang on the appropriate side of the home. Reflective extenders of a design and color approved by the Department of Transportation equal to the width of the roof overhang or protrusion shall be attached to the front and rear of the home to clearly identify the total width of the unit while moving on North Carolina highways. A 16' wide mobile/modular home unit shall not be allowed any protrusions beyond the maximum 3" gutter edge. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit may be issued vehicle specific not to exceed a width of 15 feet for all movements unless authorized by the Central Permit Office or the State Maintenance and Equipment Engineer. Exception: A mobile/modular unit with maximum measurements of 13' 6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

~~(c) An annual permit shall be issued vehicle specific not to exceed a maximum width of 12' and a maximum height of 13' 6" for movement on all highways in North Carolina. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations with a minimum extreme wheel base of 51 feet transporting general commodities and which does not exceed: a width of 12 feet; a height of 13 feet, 6 inches; an overall length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour with a minimum wheel base of 30 feet and which does not exceed: a width of 10 feet; a height of 13 feet, 6 inches; an overall length of 45 feet with front and/or rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; and axle weights of 20,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and~~

PROPOSED RULES

which does not exceed: a width of 14 feet; a height of 13 feet, 6 inches; and a weight as set forth in G.S. 20-118(b)(3).

Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14' unit with an allowable roof overhang not to exceed a total of 12". These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12"

and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

~~(b)~~(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.
3 axle single vehicle	60,000 lbs. to 70,000 lbs. determined by extreme wheelbase measurement
4 axle single vehicle	75,000 lbs. to 90,000 lbs. determined by extreme wheelbase measurement
5 axle single vehicle	86,000 lbs. to 94,500 lbs.
5 axle vehicle combination	minimum 51' extreme wheelbase 112,000 lbs.
6 axle single vehicle	100,000 lbs. to 108,000 lbs. determined by extreme wheelbase measurement
6 axle vehicle combination	120,000 lbs. minimum 51' extreme wheelbase'
7 axle single vehicle	105,000 to 122,000 lbs. minimum 35' extreme wheelbase
7 axle vehicle combination	122,000 to 132,000 lbs. minimum 40' extreme wheelbase
7 axle vehicle combination with a gross wt. exceeding 132,000 lbs.	requires a Department of Transportation Engineering Study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle	37,000 lbs.
Tandem axle	50,000 lbs.
2 axle single vehicle	65,000 to 70,000 lbs. determined by extreme wheelbase measurement
3 axle single vehicle	75,000 to 80,000 lbs. determined by extreme wheelbase measurement
4 axle single vehicle	80,000 to 90,000 lbs. determined by extreme wheelbase measurement

- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle: transported available for law enforcement officer inspection.

- (A) Is going to or from a designated seaport (to include in state and out of state) and has been or will be transported by marine shipment;
- (B) Is licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified in G.S. 20-118;
- (C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;
- (D) Is a vehicle combination with at least five axles;
- (E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being

~~(e)~~(e) Overlength permits will be limited as follows:

- (1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of route of travel. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.
- (2) Annual (blanket) permits will not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.
- (3) Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.

PROPOSED RULES

~~(4)~~(f) An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16' wide mobile/modular unit with a maximum 3" gutter edge shall not exceed a height of 13' 6" while traveling on North Carolina highways. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

~~(e)~~(g) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with properly marked overhang (front and/or rear) not to exceed a total of 10 feet. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

~~(f)~~(h) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.

~~(g)~~(i) Additional safety measures are as follows:

- (1) A yellow banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;

- (2) Red flags measuring 18" square shall be displayed on all sides at the widest point of load for all loads in excess of 8' 6" wide but the flags shall be so mounted as to not increase the overall width of the load;
- (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes, Motor Carrier and Housing and Urban Development (HUD) regulations.
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

~~(h)~~(j) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

~~(i)~~(k) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10' shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

~~(j)~~(l) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

~~(k)~~(m) The Department of Transportation may require escort vehicles accompany oversize or overweight loads. The Department of Transportation shall coordinate with the proper agencies to establish an escort driver training and certification program. Once the program is established, the driver of the escort vehicle is required to be certified according to State regulations. North Carolina may reciprocate with other states that have an accredited escort certification program. Certification credentials are required to be carried in the vehicle readily available for enforcement inspection. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel ~~shall will~~ be considered to determine escort requirements.

Authority G.S. 20-118(f); 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978.

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to amend the rule cited as 19A NCAC 02D .1003. Notice of Rule-making Proceedings was published in the Register on January 2, 2001.

Proposed Effective Date: August 1, 2002

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, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Proposed amendments add language to the rule to enhance the safety of DOT employees. Adoption agreement terms are lengthened from 1 year to 4 years to reduce staff and volunteer paperwork.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by May 2, 2001.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .1000 – ADOPT-A-HIGHWAY PROGRAM

19A NCAC 02D .1003 PARTICIPATION IN THE PROGRAM

(a) The adoption of a section of highway is a privilege in consideration for public service that may be granted by the Department to individuals or groups who would assist the Adopt-A-Highway Program in achieving its purpose.
(b) Only individuals or groups determined by the Department to be responsible and to exhibit in good faith the willingness and the capacity to perform the responsibilities of the Program will be allowed to adopt a highway. The Department may refuse to grant a request to adopt a section of highway if, in its opinion, granting the request would jeopardize the Program, be counterproductive to its purpose or create a hazard to the safety of Department employees or the public. Highway safety is a principal concern in all decisions related to the Program. Program participants shall not be discriminated against on the basis of religion, race, national origin, sex or handicap (except where the handicap would affect the individual's safe participation in the Program) with respect to their participation in the Program.

(c) The Division Engineer or his designee shall approve applications of individuals or groups applying to participate in the Program. A list of the newly approved participants, by division, shall be submitted to the Program Director for review on the first of each month. The approval of the Division Engineer is final unless the applications are disapproved by the Program Director by the first day of the next calendar month. If the Division Engineer has any uncertainty regarding the qualifications of the individual or group applying to the Program, the Division Engineer shall submit the application and all accompanying documents to the Program Director for final action.

(d) Initial agreements-Agreements of adoption shall be for a period of four years.one year.

(e) Each person participating in the Program shall execute a written release of the Department, its officials, employees and agents from any liability arising out of his or her participation in the Program. In the case of a minor, such release shall be executed by a parent or guardian. Physical participation in the Program shall constitute a waiver by the participant of any claim or cause of action of liability against the Department.

(f) Program participants are encouraged to recycle material collected from the adopted section when it is feasible to do so.

Authority G.S. 143B-350.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0404-.0405. Notice of Rule-making Proceedings was published in the Register on November 15, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: May 17, 2001

Time: 1:00 p.m.

Location: North Carolina Board of Nursing Office, 3724 National Dr., Suite 201, Raleigh, NC

Reason for Proposed Action:

21 NCAC 36 .0404 – Revision to the Rule will allow high school students or others prior to completion of a GED or high school diploma to enter a NA II training program.

21 NCAC 36 .0405 – Revision to the Rule will require a GED/high school diploma prior to listing on the NA II Registry.

Comment Procedures: Comments regarding this action should be directed to Jean Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129 by May 17, 2001.

Fiscal Impact

- State

- Local**
- Substantive** (≥\$5,000,000)
- None**

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0404 LISTING AND RENEWAL

(a) All nurse aide II's, as defined in Rule .0403(b) of this Section, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Nurse Aide II Registry and shall meet the following requirements:

- (1) successful completion of a nurse aide II program or its Board approved equivalent;
- ~~(2)~~ **GED or high school diploma;**
- ~~(3)(2)~~ listed as a Level I nurse aide on the DFS Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- ~~(4)(3)~~ submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 days of completion of the nurse aide II program. Application for initial listing received in the Board office between April and June shall show an expiration day of June 30 of the following year.

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a nurse aide II shall submit:

- (1) An application fee; and
- (2) A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses to practice in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who have been granted approval by the Board of Nursing or its designee may make application as a nurse aide II.

(d) An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete an entire nurse aide II program.

(e) Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nurse aide I personnel without the nurse aide I completing the entire nurse aide II program. These tasks are individual activities which may be performed after the nurse aide has received the approved training and competency evaluation as defined in Rule .0403(b) of this Section.

- (1) The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing or may submit a self generated curriculum to the Board for approval. Board approval must be obtained prior to teaching the nurse aide II tasks.
- (2) Once approval has been obtained, the Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.
- (3) Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.

(g) Each nurse aide II shall renew listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.

- (1) To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
- (2) Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation shall successfully complete the competency evaluation portion of the nurse aide II program and submit application in order to be placed on the Board of Nursing Nurse Aide II Registry.
- (3) A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
- (4) A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds on the DFS Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

Authority G.S. 90-171.19; 90-171.20(2)(4)(7)d.,e.,g.; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987).

21 NCAC 36 .0405 APPROVAL OF NURSE AIDE EDUCATION PROGRAMS

PROPOSED RULES

- (a) The Board of Nursing shall accept those programs approved by DFS to prepare the nurse aide I.
- (b) The North Carolina Board of Nursing shall approve nurse aide II programs. Nurse aide II programs may be offered by an individual, agency, or educational institution after the program is approved by the Board.
- (1) Each entity desiring to offer a nurse aide II program shall submit a program approval application at least 60 days prior to offering the program. It shall include documentation of the following standards:
- (A) policy established which provides for supervised clinical experience with faculty/student ratio not to exceed 1:10;
- (B) Board of Nursing approval of each clinical facility for student use as defined in 21 NCAC 36 .0322(b);
- (C) a written contract between the program and clinical facility prior to admitting students to the facility for clinical experience;
- (D) admission requirements which include:
- (i) successful completion of nurse aide I training program or Board of Nursing established equivalent and current nurse aide I listing on DFS Registry; and
- ~~(ii) GED or high school diploma; and~~
- ~~(ii)(iii)~~ other admission requirements as identified by the program; and
- (E) policy regarding the processing and disposition of program and student complaints.
- (2) Level II nurse aide programs shall include a minimum of 80 hours of theory and 80 hours of supervised clinical instruction consistent with the legal scope of practice as defined by the Board of Nursing in Rule .0403(b) of this Section. Changes made by the Board of Nursing in content hours or scope of practice in the nurse aide II program shall be published in the Bulletin. Requests by the programs to modify the nurse aide II course content shall be directed to the Board office.
- (3) The Board shall identify and publish minimum competency and qualifications for faculty for the nurse aide Level II programs. These are:
- (A) hold a current unrestricted license to practice as a registered nurse in North Carolina;
- (B) have had at least two years of direct patient care experiences as an R.N.; and
- (C) have experience teaching adult learners.
- (4) Each nurse aide II program shall furnish the Board records, data, and reports requested by the Board in order to provide information concerning operation of the program and any individual who successfully completes the program.
- (5) When an approved nurse aide II program closes, the Board shall be notified in writing by the program. The Board shall be informed as to permanent storage of student records.
- (c) An annual program report shall be submitted by the Program Director to the Board of Nursing on Board form by March 15 of each year. Failure to submit annual report shall result in administrative action affecting approval status as described in 21 NCAC 36.0405(5)(d) and (e). Complaints regarding nurse aide II programs may result in an on site survey by the North Carolina Board of Nursing.
- (d) Approval status shall be determined by the Board of Nursing using the annual program report, survey report and other data submitted by the program, agencies, or students. The determination shall result in full approval or approval with stipulations.
- (e) If stipulations have not been met as specified by the Board of Nursing, a hearing shall be held by the Board of Nursing regarding program approval status. A program may continue to operate while awaiting the hearing before the Board. **EXCEPTION:** In the case of summary suspension of approval as authorized by G.S. 150B(3)(c), the program must immediately cease operation.
- (1) When a hearing is scheduled, the Board shall cause notice to be served on the program and shall specify a date for the hearing to be held not less than 20 days from the date on which notice is given.
- (2) If the Board determines from evidence presented at hearing that the program is complying with the Law and all rules, the Board shall assign the program Full Approval status.
- (3) If the Board, following a hearing, finds that the program is not complying with the Law and all rules, the Board shall withdraw approval.
- (A) This action constitutes discontinuance of the program; and
- (B) The parent institution shall present a plan to the Board for transfer of students to approved programs or fully refund tuition paid by the student. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board; and
- (C) The parent institution shall notify the Board of the arrangements for storage of permanent records.

Authority G.S. 90-171.20(2)(4)(7)d., e., g.; 90-171.43(4); 90-171.55; G.S. 90-171.83; 42 U.S.C.S. 1395i-3 (1987).

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

Rule-making Agency: *State Board of Education*

Rule Citation: *16 NCAC 06G .0305*

Effective Date: *March 5, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 115C-12(9)c4*

Reason for Proposed Action: *The U.S. Dept. of Education, including the Office for Civil Rights, has indicated that the current State testing program does not comply with the requirements of federal laws such as Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title I of the Elementary and Secondary Education Act, and the Individuals with Disabilities Education Act. To comply, the State Board must require much broader participation of limited English proficient students and students with disabilities in the State testing program and accountability program. Our continued receipt of federal funding is contingent upon our making these changes.*

Comment Procedures: *Questions or written comments regarding this matter may be directed to Harry E. Wilson, Rule-making Coordinator, 2086 Education Building, 301 N. Wilmington St., Raleigh, NC 27601-2825; telephone (919) 807-3406, fax (919) 807-3407.*

CHAPTER 06 – ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06G – EDUCATION AGENCY RELATIONS

SECTION .0300 – SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM

16 NCAC 06G .0305 ANNUAL PERFORMANCE STANDARDS, GRADES K-12

(a) For purposes of this Section, the following definitions shall apply to kindergarten through twelfth grade:

- (1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.
- (2) "b₀" means the state average rate of growth used in the regression formula for the respective grades and content areas (reading

and mathematics) in grades 3 through 8 and grade 10; or the state average performance used in the prediction formula for respective high school end-of-course tests. The values for b₀ shall be as follows:

- (A) for reading:
 - (i) 6.2 for grade 3;
 - (ii) 5.2 for grade 4;
 - (iii) 4.6 for grade 5;
 - (iv) 3.0 for grade 6;
 - (v) 3.3 for grade 7;
 - (vi) 2.7 for grade 8; and
 - (vii) 2.3 for grade 10.
- (B) for mathematics:
 - (i) 12.8 for grade 3;
 - (ii) 7.3 for grade 4;
 - (iii) 7.4 for grade 5;
 - (iv) 7.1 for grade 6;
 - (v) 6.5 for grade 7;
 - (vi) 4.9 for grade 8; and
 - (vii) 2.3 for grade 10.
- (C) for EOC courses:
 - (i) 60.4 for Algebra I;
 - (ii) 55.2 for Biology;
 - (iii) 54.0 for ELPS (Economic, Legal, and Political Systems);
 - (iv) 53.3 for English I;
 - (v) 56.0 for U.S. History;
 - (vi) 59.3 for Algebra II;
 - (vii) 56.9 for Chemistry;
 - (viii) 58.5 for Geometry;
 - (ix) 53.8 for Physical Science; and
 - (x) 56.1 for Physics.

(3) "b₁" means the value used to estimate true proficiency in the regression formulas for grades 3 through 8 and grade 10. The values for b₁ shall be as follows:

- (A) for reading:
 - (i) 0.46 for grade 3;
 - (ii) 0.22 for grades 4 through 8; and
 - (iii) 0.24 for grade 8 to 10.
- (B) for mathematics:
 - (i) 0.30 for grade 3;
 - (ii) 0.26 for grades 4 through 8; and
 - (iii) 0.28 for grade 8 to 10.

- (4) "b₂" means the value used to estimate regression to the mean in the regression formula for grades 3 through 8 and 10. The values for b₂ shall as follows:
- (A) for reading:
- (i) -0.91 for grade 3;
- (ii) -0.60 for grades 4 through 8; and
- (iii) -0.52 for grades 8 to 10.
- (B) for mathematics:
- (i) -0.47 for grade 3;
- (ii) -0.58 for grades 4 through 8; and
- (iii) -0.43 for grades 8 to 10.
- (5) "b_{IRP}" means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b_{IRP} shall be as follows:
- (A) 0.71 for Biology;
- (B) 0.88 for ELPS;
- (C) 1.01 for English I;
- (D) 0.68 for U.S. History;
- (E) 0.43 for Algebra II;
- (F) 0.42 for Geometry; and
- (G) 0.58 for Physical Science.
- (6) "b_{IMP}" means the value used to estimate the effect of the school's average math proficiency on the predicted average EOC test score. The values for b_{IMP} shall be as follows:
- (A) 0.88 for Algebra I;
- (B) 0.318 for Biology;
- (C) 0.88 for ELPS;
- (D) 0.15 for U.S. History;
- (E) 0.39 for Geometry;
- (F) 0.34 for Physical Science; and
- (G) 0.58 for Physics.
- (7) "b_{IAP}" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b_{IAP} shall be as follows:
- (A) 0.89 for Algebra II;
- (B) 0.18 for Chemistry; and
- (C) 0.43 for Geometry.
- (8) "b_{IBP}" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for b_{IBP} shall be 0.51 for Chemistry and 0.66 for Physics.
- (9) "b_{IEP}" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for b_{IEP} shall be 0.27 for Chemistry and 0.32 for Physics.
- (10) "Compliance commission" means that group of 22 persons selected by the SBE to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of two members from each of the eight educational districts: five teachers, five principals, four central office staff representatives, two local school board representatives; and five at-large members who represent parents, business (two members), and the community.
- (11) "Composite score" means a summary of student performance in a school. A composite score may include reading, writing, and mathematics in grades 3 through 8 and in Algebra I & II, Biology, ELPS, English I, English II (Writing), Geometry, Chemistry, Physics, Physical Science, and U.S. History in a school where one or more of these EOC tests are administered, as well as student performance on the NC High School Comprehensive Test, the NC Computer Skills Test, competency passing rate, dropout rates, and percent diploma recipients who satisfy the requirements for College Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.
- (12) "Eligible students" means the total number of students in membership minus the number of students excluded from participation in a statewide assessment.
- (13) "Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 and grade 10 in reading and mathematics.
- (14) "Exemplary growth" means the amount of growth in student performance in grades 3 through 8 and grade 10 in reading and mathematics that is projected through use of the regression formula that includes the state average rate of growth adjusted by an additional ten percent (10%).
- (15) "Growth standards" are the benchmarks set annually by the SBE to measure a school's progress.
- (16) "IRM" is the index for regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the North Carolina average reading scale score from the local school average mathematics scale score. The SBE shall base the state average on data from the 1994-95 school year.
- (17) "ITP" is the index for true proficiency used in the regression formula. The SBE shall compute the ITP by adding the North Carolina average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state average on data from the 1994-95 school year.

- (18) "IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (19) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the average mathematics scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (20) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the average Algebra I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (21) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the average Biology scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (22) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the average English I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (23) "Performance Composite" is the percent of scores of students in a school ~~who that~~ are at or above Level ~~III or III~~, are at a passing level on the Computer Skills Test (students in eighth grade only) as specified by 16 NCAC 6D .0503(e), .0503(c), and at proficiency level or above on the Alternate Assessment Portfolio to the extent that any apply in a given school. ~~In determining the number of scores of students who are performing at or above Level III at a school, the~~ The SBE shall:
- (A) determine the number of scores that are at Level III or IV in reading, mathematics, or writing across grades 3 through 8 and 10, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills ~~Test; Test (students in eighth grade only); add the number of scores that are proficient or above on the~~ Alternate Assessment Portfolio; and use the total of these numbers as the numerator;
- (B) determine the number of student scores in reading, mathematics, or writing, ~~or Computer Skills in across~~ grades 3 through 8 and 10; or ~~determine the number of student scores~~ on all EOC tests administered as part of the statewide testing program; add the number of student scores on the N.C. Computer Skills Test (students in eighth grade only); add the number of student scores on the Alternate Assessment Portfolio; and use ~~this number the total of these numbers~~ as the denominator; and
- (C) total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator to compute the performance composite.
- (24) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.
- (25) "Predicted EOC exemplary mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional five percent (5%).
- (26) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.
- (27) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.
- (28) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation values used for the growth standards are as follow:
- (A) for reading in grades K-8:
- (i) 1.7 for grade 3;
 - (ii) 1.3 for grade 4;
 - (iii) 1.2 for grade 5;
 - (iv) 1.3 for grade 6;
 - (v) 1.1 for grade 7;
 - (vi) 1.2 for grade 8; and
 - (vii) 1.6 for grade 10.
- (B) for mathematics in grades K-8:
- (i) 2.6 for grade 3;
 - (ii) 2.1 for grade 4;
 - (iii) 2.0 for grade 5;
 - (iv) 2.1 for grade 6;

- (v) 2.0 for grade 7;
- (vi) 1.7 for grade 8; and
- (vii) 2.0 for grade 10.
- (C) for courses with an EOC test:
 - (i) 3.3 for Algebra I;
 - (ii) 2.6 for Biology;
 - (iii) 3.1 for ELPS;
 - (iv) 1.8 for English I;
 - (v) 7.6 for English II (expected gain);
 - (vi) 7.5 for English II (exemplary gain);
 - (vii) 2.2 for U.S. History;
 - (viii) 2.9 for Algebra II;
 - (ix) 2.5 for Chemistry;
 - (x) 2.5 for Geometry;
 - (xi) 2.5 for Physical Science;
 - (xii) 3.3 for Physics;
 - (xiii) 10.0 for College Prep/College Tech Prep (CP/CTP);
 - (xiv) 12.8 for Competency Passing Rate; and
 - (xv) Dropout Rate will be determined based upon data from the 2000-01 school year.

(29) "Weight" means the number of students used in the calculation of the amount of growth/gain for a subject or content area.

(b) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards.

- (1) The SBE shall calculate the expected growth rate for grades 3 through 8 and grade 10 in an individual school by using the regression formula "Expected Growth = $b_0 + (b_1 \times ITP) + (b_2 \times IRM)$."
- (2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.
 - (A) "Predicted Algebra I Mean Score = $b_0 + (b_{IMP} \times IMP)$," where b_0 is the North Carolina average of school means and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
 - (B) "Predicted Biology Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IMP}^2 \times IMP^2) + (b_{IMP}^3 \times IMP^3)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
 - (C) "Predicted ELPS Mean Score = $b_0 + (b_{IRP} \times IRP)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency.

- (D) "Predicted English I Mean Score = $b_0 + (b_{IRP} \times IRP)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency.
- (E) "Predicted U.S. History Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IMP}^2 \times IMP^2)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
- (F) "Predicted Algebra II Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IAP} \times IAP)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, and $(b_{IAP} \times IAP)$ is the impact of Algebra Proficiency.
- (G) "Predicted Chemistry Mean Score = $b_0 + (b_{IAP} \times IAP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$," where b_0 is the North Carolina average of school means and $(b_{IAP} \times IAP)$ is the impact of Algebra Proficiency, $(b_{IBP} \times IBP)$ is the impact of Biology Proficiency, and $(b_{IEP} \times IEP)$ is the impact of English I Proficiency.
- (H) "Predicted Geometry Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IAP} \times IAP)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency, and $(b_{IAP} \times IAP)$ is the impact of Algebra I Proficiency.
- (I) "Predicted Physical Science Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP)$," where b_0 is the North Carolina average of school means and $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency.
- (J) "Predicted Physics Mean Score = $b_0 + (b_{IMP} \times IMP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$," where b_0 is the North Carolina average of school means and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency, $(b_{IBP} \times IBP)$ is the impact of Biology Proficiency, and $(b_{IEP} \times IEP)$ is the impact of English I Proficiency.

(c) Schools shall be accountable for student performance and achievement.

- (1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:
 - (A) have a pre-test score and a post-test score in reading and mathematics.

Students in grades four or seven with writing scores shall also be included; and

(B) have been in membership more than one-half of the instructional period (91 of 180 days).

(2) Students in grades 9-12 shall be included in the performance composite:

(A) if they have reading, mathematics, writing, Computer Skills, or EOC scores without reference to pretest scores or length of membership;

(B) if they have been in membership 160 of 180 days; and

(C) if they have scores for all tests used in the prediction formula.

(d) The SBE shall include in the accountability system on the same basis as all other public schools each alternative school with an identification number assigned by the Department. Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.

(e) Each K-8 school shall test at least 98 percent of its eligible students. If a school fails to test at least 98 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.

(f) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests and the NC Comprehensive Test, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.

(g) All students who are following the standard course of study and who are not eligible for exclusion as set out in paragraph (g) of this Rule shall take the SBE-adopted tests. Every student, including those students who are excluded from testing, shall complete or have completed an answer document (except in writing). Both the school and the LEA shall maintain records on the exclusions of students from testing. The Department may audit these records.

(h) Individual students may be excluded from SBE-adopted tests as follows:

(1) Limited English proficient students may be excluded for ~~up to two years~~ one year beginning with the time of enrollment in the LEA if the student's English language proficiency has been assessed as novice/low to intermediate/low in listening, reading, and writing. A student whose English language proficiency has been assessed as intermediate/high or advanced may be excluded from tests in which the student writes responses for up to two years. Twelve months after a limited English proficient student has enrolled in the LEA, the student must be reassessed on the same language proficiency test that was used as a part of the identification of the student for inclusion in the limited

English proficiency program in that LEA. A student assessed as novice/low to intermediate/low after 12 months may be excluded for an additional 12 months. A student assessed as intermediate/high or above must participate in the state testing program. After two years from the time of initial enrollment in the LEA, all limited English proficiency students must participate in the state testing program. LEAs shall report results of the initial language proficiency test and the results on the same test 12 months after enrollment in the LEA to the Department. LEAs shall use other assessment methods for excluded students to demonstrate that these students are progressing in ~~English and~~ other subject areas.

(2) ~~Students with disabilities may be excluded on an individual basis if the exclusion is stated in the student's IEP and if the student is following a functional curriculum as defined by 16 NCAC 6D .0501(3). If a student with disabilities is excluded from participation in a statewide assessment in one subject but is included in testing for the remaining subjects, that student shall be included in the school's percent tested requirement. The parent or guardian, or the student if over age 18, shall sign a written consent for test exclusion that certifies that the parent, guardian, or student understands that the exclusion for the eighth grade tests may cause the student not to be eligible to receive a high school diploma. All students with disabilities including those identified under Section 504 shall be included in the statewide testing program through the use of state tests with appropriate accommodations or through the use of other state assessments designed for these students. The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using another state assessment designed for that student's disability.~~

(i) ~~LEAs shall administer alternative assessments to students who are excluded from participation in a regular statewide assessment to demonstrate mastery of course or specific curriculum content. Students in grades 3-8 and 10 with IEPs and serious cognitive deficits and whose program of study focuses on functional/life skills shall participate in the North Carolina Alternate Assessment Portfolio as an alternative.~~

(j) The SBE shall calculate a school's expected growth/gain composite in student performance using the following process:

(1) Calculate the indices for writing in grades 4 and 7 (separately) for the three most current years for achievement levels as defined by 16 NCAC 6C .0103(a)(1) as follows:

(A) Multiply the percent of students at level IV by 3.

TEMPORARY RULES

- (B) Multiply the percent of students at level III by 2.
- (C) Determine the percent of students at level II.
- (D) Add the three numbers together and divide by three.
- (E) Determine the difference in scores that is greatest by subtracting the index two years ago from the most recent index and then by subtracting the index for the prior school year from the most recent index. Multiply the resulting difference by one half.
- (F) Subtract 0.1 from the difference.
- (G) Divide by the associated standard deviation. The result is the standard gain for writing.
- (2) Review expected and exemplary growth standards for all grades and subjects, and review the predicted EOC mean for expected standard gain and the exemplary standard gain for EOC courses.
- (3) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students, and determine the actual EOC mean for EOC tests using data on the same groups of students from one point in time to another point in time.
- (4) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8 and grade 10; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.
- (5) Divide the differences for reading, writing, and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.
- (6) The SBE shall calculate a school's gain composite in college prep/college tech prep using the following process:
- (A) Compute the percent of graduates who receive diplomas who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
- (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study.
- (C) Subtract the baseline from the current year's percentage.
- (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
- (E) Divide by the associated standard deviation. The result is the standard gain for college prep/college tech prep.
- (7) The SBE shall calculate a school's expected gain composite in the competency passing rate by comparing the grade 10 competency passing rate on a matched set of students to the grade 8 passing rate for the same group of students.
- (A) Subtract the grade 8 rate from the grade 10 rate.
- (B) Subtract 0.1.
- (C) Divide by the standard deviation. The result is the standard gain in competency passing rate.
- (8) Determine the composite expected gain in English II for a high school as follows:
- (A) Compute the English II index for the current year and for the two previous years by multiplying the percentage of students at level IV by 3, the percentage of students at level III by 2, and the percentage of students at level II by 1. Add the products and divide by 3 to obtain the EOC index.
- (B) Compute the EOC indices for the same three years.
- (C) Determine the baseline by adding Year One and Year Two and dividing by 2.
- (D) Subtract the baseline from the current year's index.
- (E) Subtract 0.1 from the difference.
- (F) Divide the result by the associated standard deviation of change. This is the standard expected gain for English II.
- (9) The SBE shall calculate a school's expected growth/gain composite by ~~adding-multiplying~~ the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, writing at grades 4 and 7, gain in competency passing rate, gain in college prep/college tech prep, change in dropout rate, and English II ~~gain,~~ gain by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard.
- (10) The SBE shall compute exemplary growth using the exemplary growth standard ($b_o \times 1.10$) in the accountability formula for grades 3 through 8 and 8 to 10 in reading and mathematics, and ($b_o \times \del{1.05}1.03$) for predicted EOC means. There is no exemplary standard for writing, competency passing ~~rate,-rate~~ or college prep/college tech prep gain.
- (11) To determine the composite score for exemplary standards:

- (A) Subtract the exemplary growth/gain from the actual growth/gain standard in reading and mathematics at grades 3 through 8 and 10; subtract the predicted exemplary EOC mean from the actual EOC mean for each EOC test. In writing, one tenth (.1) must be subtracted from the greater of the two writing differences.
- (B) Divide the difference in growth/gain by the standard deviations of the respective differences in growth/gain to determine the standard growth/gain score.
- (C) ~~Add~~ Multiply the exemplary standard growth/gain scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, expected standard gain in writing at grades 4 and 7, Competency Passing Rate, Dropout Rate, and for College Prep/College Tech Prep, and exemplary standard gain in English ~~II–II~~ by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the exemplary growth standard.

(k) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint an appeals committee composed of a panel selected from the compliance commission to review written appeals from schools. The school officials must clearly document the circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.

History Note: Authority G.S. 115C-12(9)c4.; Eff. January 1, 1998; Amended Eff. December 1, 2000; Temporary Amendment Eff. March 5, 2001.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

Rule-making Agency: *North Carolina Board of Massage and Bodywork Therapy*

Rule Citation: *21 NCAC 30 .0602, .0605-.0606*

Effective Date: *April 1, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 90-626(9)*

Reason for Proposed Action: *The Board is required by G.S. 90-631 to establish rules for the approval of massage and bodywork therapy schools.*

Comment Procedures: *Written comments must be directed to Charles P. Wilkins, Rule-making Coordinator, PO Box 2539, Raleigh, NC 27602.*

SECTION .0600 – MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0602 APPROVAL STANDARDS

(a) The following definitions shall apply to this Section:

- (1) Program. - A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set forth in Paragraph (m) of this Rule, which is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.
- (2) Massage and bodywork therapy school. - Any educational institution that conducts a program, as defined above, for a tuition charge. Such institutions may be organized as proprietary schools, which are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.
- (3) Instructor. - A person who meets the qualifications set forth in Subparagraph (e)(1) or (e)(2) of this Rule, who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.
- (4) Teaching assistant. - A person who meets the qualifications set forth in Subparagraph (e)(3) or (e)(4) of this Rule, who is in the classroom to support the role of the instructor, and who may only provide instruction to students under the direct supervision of the instructor.
- (5) One classroom hour of supervised instruction. - At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the school's instructional staff.

(b) Authority to operate.

TEMPORARY RULES

- (1) A proprietary school shall provide documentation that it is licensed or approved by the educational regulatory authority in the state, territory or country in which it operates; or shall be exempt from licensure or approval by statute.
- (2) A regionally accredited post-secondary institution within the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval to conduct such program from the State Board of Community Colleges or the University of North Carolina.
- (3) A regionally accredited post-secondary institution outside the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state, territory or country in which it operates.

(c) Program director. One person shall be designated as the program director, and shall be qualified in accordance with the requirements listed in Subparagraph (d)(2) of this Rule. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including: curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of proper administrative records, financial management, recruitment of students, and maintenance of school plant and equipment.

(d) Administrative staff and qualifications.

- (1) The school shall have administrative staff to support the number of students enrolled.
- (2) The program director or department chair shall have the following qualifications:
 - (A) Be a graduate of a regionally accredited college or university and hold a baccalaureate degree, or have at least five years of professional experience in the field of massage and bodywork therapy; and
 - (B) Have at least two years experience as an instructor in one or more of the major courses which are presented in the schools curriculum, or have at least two years experience in education administration.

Persons who possess qualifications which are equivalent to the requirements prescribed in Paragraphs (a) and (b) of this Rule may be approved individually by the Board.

- (3) Other administrative staff who oversee such areas as operations, education, admissions, financial aid, or student services, shall have the following qualifications:
 - (A) Be a high school graduate or its equivalent; and
 - (B) Have at least one year of professional experience in their area of their job

responsibility, or have received training from the school sufficient to perform their defined job responsibilities.

(e) Instructional staff qualifications. The requirements herein shall apply to instructors and teaching assistants who provide more than six instructional hours in the program. Instruction is provided by persons with appropriate education and experience as follows:

- (1) Instructors who teach courses related to the theory and practice of massage and bodywork therapy shall have the following qualifications:
 - (A) Have a minimum of two years of professional practice experience in, and have received training and certification in the subject area they teach; and
 - (B) Have received training in teaching methods, which shall include:
 - (i) Presentation skills;
 - (ii) Development and implementation of lesson plans;
 - (iii) Dynamics of the teacher/student relationship;
 - (iv) Management of the classroom environment;
 - (v) Evaluation of student performance;
 - (vi) Orientation to the school's administrative policies and procedures; and
 - (C) Have one of the following credentials:
 - (i) Be licensed under the Practice Act; or
 - (ii) For schools and instructors outside the State, hold a similar credential in massage and bodywork therapy; if no such credential is available, hold a valid certification from a certifying agency which is approved by the National Commission of Certifying Agencies; or
 - (iii) Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, or acupuncturist.

- (2) Instructors in all other courses in the curriculum shall have received training in teaching methods as defined in Subparagraph (e)(1)(B) of this Rule, and shall have one of the following qualifications:
 - (A) Have a minimum of two years of professional practice experience in, or have received training and

certification in the subject area they teach; or

(B) Have a minimum of 12 semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(3) Teaching assistants in courses related to the theory and practice of massage and bodywork therapy shall have one of the credentials listed in Subparagraph (e)(1)(C) of this Rule.

(4) Teaching assistants in all other courses in the curriculum shall have one of the following qualifications:

(A) Have a minimum of one year of professional practice experience in, or have received training and certification in the subject area they teach; or

(B) Have a minimum of six semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(f) Job descriptions and contracts.

(1) The school shall have written job descriptions with performance standards for each administrative and instructional position on its staff.

(2) The school shall execute an employment agreement with each staff member, whether such staff member works in a full-time or part-time capacity, or is an employee or an independent contractor.

(g) School plant and equipment.

(1) The school plant, premises, and facilities shall be safe and sanitary and shall be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation. Classrooms shall have sufficient lighting, ventilation, and temperature control to provide a comfortable environment for students.

(2) The equipment, supplies, and instructional materials of the school shall be adequate in type, quality, and amount for each course offered by the school. These shall also meet all requirements of statutory provisions, and rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation.

(3) The school shall have an annual inspection from the city or county agencies which determine compliance with requirements for fire, safety, health, and sanitation in its jurisdiction.

(4) For classes conducted in the practice of massage and bodywork therapy, the school shall provide a minimum of 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be

one therapy treatment table, adjustable in height, for every two students in such classes.

(h) Financial management systems and economic stability.

(1) Schools shall maintain financial management systems which assure safety, accountability and effective use of financial resources, and which provide accurate information for assessing the financial condition of the institution. This includes regular profit and loss statements, balance sheets, and an annual budget. The following standards shall be met:

(A) Generally accepted accounting principles are followed in the preparation of financial statements; and

(B) Accuracy and security of records is maintained.

(2) Schools shall be financed to ensure long term stability. The following standards shall be met:

(A) Income and reserves are sufficient to complete instruction of currently enrolled students while still meeting all requirements for Board approval;

(B) A ratio of assets to liabilities of at least 1:1 is maintained; and

(C) An annual independent review or audit of the school's financial statements is conducted by a Certified Public Accountant.

(3) The Board may request a credit report on a school;

(4) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.

(i) Admissions.

(1) The school shall maintain admission policies and procedures which are fully disclosed and which are administered consistently.

(2) Admissions standards are designed to ensure that only those students who have the ability to successfully complete the program will be admitted.

(3) The school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.

(4) Documentation is maintained, for a minimum of three years, of the reasons for the denial of admission of any student.

(5) A school is not precluded from enrolling students in individual courses not leading to a credential.

(j) Tuition, refunds and financial aid.

TEMPORARY RULES

- (1) The school shall fully and clearly disclose tuition and all related program costs to prospective students.
 - (2) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:
 - (A) Cancellation of enrollment within 72 hours of signing an student enrollment agreement;
 - (B) Student withdrawal before the program start date;
 - (C) Student withdrawal after the program start date;
 - (D) Student dismissal; and
 - (E) Cancellation of program by the school.
 - (3) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non-residents.
 - (4) The school shall maintain a refund policy as follows:
 - (A) Proprietary schools shall base refunds on a percentage of the program actually completed by the student. At a minimum, such policy shall grant refunds up to and including the 25 percent point of the program. Refunds shall be calculated from the last date of attendance and made within 30 days of the date of termination or dismissal.
 - (B) Programs offered by post-secondary colleges or universities shall follow the refund policy set forth by their program's governing body or regulatory agency.
 - (5) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools which administer Title IV funds shall also include in its catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."
- (k) Student records and academic progress.
- (1) The school shall maintain current, complete, and accurate records on each student. Such records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.
- (2) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.
 - (3) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.
 - (4) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced. Students shall be notified when completion standards are not being met.
- (l) Educational credential issued to graduates; reporting of graduates' pass rate on national certification examination.
- (1) Upon completion of the program, the student is given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been satisfactorily completed.
 - (2) Such credentials are only granted to students who have completed the entire program for which the student enrolled.
 - (3) The school shall authorize agencies which conduct national certification examinations which are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.
- (m) Pursuant to G.S. 90-631(1), programs shall meet the following standards:
- (1) The school shall develop a set of educational objectives which describe the intended skills, knowledge, and attitudes which the program is designed to develop in the student by the completion of such program.
 - (2) The school shall offer a program consisting of a minimum of 500 classroom hours of supervised instruction. Such program shall contain the following hours of specific course work which are consistent with the school's mission and educational objectives:
 - (A) 200 hours in the fundamental theory and practice of massage and bodywork therapy, which shall include a minimum of 100 hours in application of hands-on methods; the balance of such hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;
 - (B) 100 hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies; and
 - (C) 50 hours in the following areas:

TEMPORARY RULES

- (i) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;
 - (ii) 15 hours in business practices related to the field of massage and bodywork therapy; and
 - (iii) 20 hours in somatic psychology, including dynamics of the therapist/client relationship, communication skills, and boundary functions;
- (D) 150 hours in other courses related to the practice of massage and bodywork therapy; such courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychology, movement education, or supervised clinical practice. First Aid or CPR may not be included in this category.
- (3) For programs which include a student clinic or fieldwork experiential component, such hours do not exceed 100 hours of the minimum requirement set forth in Subparagraph (m)(2)(D) of this Rule. All such work is directly supervised and evaluated by an instructional staff member.
 - (4) For programs which include an externship component, such hours shall not be included in the minimum requirements set forth in Subparagraph (m)(2) of this Rule, and shall not comprise more than 20 percent of the total program hours. All such work is supervised by a designated person at the externship site, and is evaluated by the school.
 - (5) Programs shall consist of a series of courses which are organized in a logical sequence, and which are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and knowledge to utilize that material safely and effectively.
 - (6) Course titles match the content of the course; published course descriptions accurately reflect the specific learning objectives of each course; sufficient hours are allotted to each course to allow students to gain competence in the subject areas covered.
 - (7) A course curriculum is developed for each course, which shows the basic content of each individual class in the course, in the sequence presented.
 - (8) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure such consistency. Teaching methods are appropriate to course content, and to diverse learning styles.
 - (9) Programs shall be a minimum of six months in length, with no more than nine instructional hours in one day. There shall be no more than two hours of instruction without a break. There shall be no more than four hours of instruction without a meal break.
 - (10) For a student to receive credit in a course, the school shall require students to attend no less than 75 percent of the instructional hours, and to make up all missed instructional hours according to the procedures established by the school.
 - (11) A syllabus is developed for each course, and provided to students prior to the beginning of instruction. The syllabus shall include the following elements: course title, course description, learning objectives, total number of instructional hours, meeting dates and class times, assignments, textbooks, evaluation methods, quiz and examination dates, and performance standards.
 - (12) For post-secondary institutions, courses which fulfill the minimum requirements set forth in Subparagraph (m)(2) of this Rule, shall support the program in massage and bodywork therapy. Courses in addition to the minimum requirements may include courses from other departments or programs which are directly relevant to the practice of massage and bodywork therapy.
- (n) Student to instructor ratios.
- (1) For classes which involve hands-on practice, the student to instructor ratio shall not exceed 16 to 1.
 - (2) Both instructors and teaching assistants, as defined in Paragraph (a) of this Rule, shall be considered in calculating these ratios.
- (o) Learning resources. The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:
- (1) The school shall maintain a library or resource center which contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.
 - (2) All other resources, such as charts, models, or videotapes, shall be maintained in good condition.
- (p) Standards of professional behavior.

TEMPORARY RULES

- (1) Conduct by instructional staff and students shall follow the Standards of Practice set forth by the National Certification Board for Therapeutic Massage and Bodywork, and those standards set forth in Section .0500 of this Chapter.
- (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this section, "nudity" is defined as exposure of the genital or anal area for men or women, or the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.
- (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.
- (4) The above requirements shall apply to all classroom settings, as well as any location where instructional staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements, whether at the school or another location.
- (q) Student compensation prohibited. A student enrolled in a Board-approved school shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.
- (r) Transfer of Credit. A school shall not grant transfer credit from another institution unless the following standards are met:
- (1) The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;
- (2) The school from where credit is being transferred shall provide an official transcript;
- (3) Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and
- (4) Documentation of previous training shall be included in each student's permanent file.
- (s) Advanced placement. A school may only grant advanced placement to a student, or exempt the student from curriculum requirements, based on the student's performance on an examination which the school administers to determine competency in that subject area. Such advanced placement or exemption shall not exceed 35 percent of the total number of hours in the program.
- (t) Ethical requirements in advertising. The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:
- (1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public.
- (2) All statements and representations made shall be clearly worded, factually accurate, and current. Supporting information shall be kept on file and available for review. All advertising and promotional materials shall include the correct name and location of the school.
- (3) The school shall not falsely represent its facilities in photographs, illustrations, or through other means.
- (4) The school catalog or bulletin shall contain all information required in Paragraph (v) of this Rule.
- (5) All advertising and promotional activities shall clearly indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field of massage and bodywork as a result of the completion of the course of study shall be used to solicit students.
- (6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection.
- (7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data.
- (8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they also indicate the normal range or starting salaries for graduates.
- (9) Schools offering programs which are not approved by the Board shall clearly identify which programs are Board approved.
- (10) Schools shall accurately describe requirements for state licensure.
- (11) The school shall not defame competitors by falsely imputing to them dishonorable conduct, inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.
- (u) The school shall execute a Student Enrollment Agreement for training with every student. A copy of the executed agreement shall be provided to the student. At a minimum, such agreement shall contain the following:

TEMPORARY RULES

- (1) Name and telephone number of the school; location of where the student will attend classes.
 - (2) Student's name, address, telephone number, social security number.
 - (3) Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date.
 - (4) Program tuition and all related costs, including application and registration fees, estimated cost of books and supplies.
 - (5) Refund and cancellation policies, including buyer's right to cancel.
 - (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition.
 - (7) Placement guarantee disclaimer.
 - (8) Grounds for dismissal from the school.
 - (9) Statement referencing the school catalog and student handbook as a legal part of the enrollment agreement.
 - (10) Statement certifying that student has read and understands all terms of the enrollment agreement.
 - (11) Signature lines for school official and student.
- (v) The school shall publish a catalog or bulletin which is certified by an authorized official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:
- (1) School name, location address, phone number.
 - (2) Volume number and date of publication.
 - (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions.
 - (4) Names and titles of all instructional and key administrative staff.
 - (5) Statement of school mission, philosophy, and educational program objectives.
 - (6) School history and identification of all licenses, approvals or accreditations which the school maintains.
 - (7) Definition of measurement of program, whether in clock hours or credit hours.
 - (8) Detailed course descriptions, including number of hours for each course.
 - (9) Graduation requirements, including type of credential issued upon graduation.
 - (10) Requirements for licensure, certification or registration of therapists in the state in which the school operates.
 - (11) Standards for admission and description of the school's admissions process.
 - (12) School calendar, including beginning and ending dates of all programs, all holidays and days off.
- (13) Length of time required for completion of the program.
 - (14) Program tuition and all associated costs, including textbooks, supplies, and other expenses.
 - (15) Refund policy.
 - (16) Description of facilities and learning resources.
 - (17) Student services.
 - (18) Academic policies, including the following:
 - (A) Grading system;
 - (B) Standards of satisfactory academic progress;
 - (C) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;
 - (D) Transfer of credit from other institutions;
 - (E) Attendance requirements, make-up work, tardiness, leave of absence;
 - (F) Standards of conduct, including a sexual harassment policy; and
 - (G) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.
- (w) Notification of changes. An approved school shall notify the Board in writing within 30 days of any changes in administration, facilities, instructional staff, curriculum, or other changes that may effect the programs offered.
- (x) Board approval not transferable.
- (1) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. Provided, however, the Board may issue temporary operating approval for a period of 90 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.
 - (2) For the purposes of this Paragraph, "change of ownership" is defined as, but not limited to the following situations:
 - (A) Sale of the school;
 - (B) Transfer of controlling interest of stock of the school or its parent corporation;
 - (C) Merger of two or more schools;
 - (D) Transfer of controlling interest of stock to parent corporation;

TEMPORARY RULES

- (E) Transfer of assets or liabilities of school to parent corporation or owners; or
- (F) Change from profit to non-profit status.
- (y) Initial application for Board approval. The school shall submit an application for approval on a form provided by the Board, which shall be accompanied by the following:
- (1) A certified check for the application fee set forth in 21 NCAC 30 .0606, made payable to the Board.
 - (2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person.
 - (3) Job descriptions for school director, administrative staff, instructors, and teaching assistants.
 - (4) Examples of contracts for administrative and instructional staff.
 - (5) Detail of ownership structure of the school, and organizational chart.
 - (6) Facility plan, including detailed floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control.
 - (7) Equipment list, including furniture, office equipment, and instructional equipment for classroom.
 - (8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility.
 - (9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval.
 - (10) Statement of Financial Affirmation; copies of the school's financial statements for the previous fiscal year; letter from a Certified Public Accountant affirming that the school is in compliance with the requirements of Paragraph (h) of this Rule.
 - (11) Copy of the application for admission which is submitted by prospective students; copies of materials used to document the admission process with applicants.
 - (12) Copies of the forms used for documentation of attendance, missed class make-up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action.
 - (13) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
 - (14) Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
 - (15) List of student to instructor ratios for each course offered.
 - (16) List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library.
 - (17) Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements.
 - (18) Copy of the Student Enrollment Agreement issued by the school.
 - (19) Catalog Certification Form; copy of the current school catalog or bulletin, with accompanying student handbook (if applicable).
 - (20) As applicable, copy of state license or approval to operate school, or citation of statutory exemption; copy of certificate of accreditation (if applicable).
- (z) Application for Board approval of additional programs. An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:
- (1) A certified check for the application fee set forth in 21 NCAC 30 .0606, made payable to the Board.
 - (2) Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
 - (3) List of student to instructor ratios for each course offered.
 - (4) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
 - (5) Copy of the school catalog or bulletin which describes the additional program.
 - (6) Complete documentation of any other requirement set forth in Paragraph (y) of this Rule, which is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.

History Note: Authority G.S. 90-631; Temporary Adoption Eff. February 15, 2000; Temporary Adoption Eff. April 1, 2001 replaces the Temporary Adoption Eff. February 15, 2000.

21 NCAC 30 .0605 SCHOOL INSPECTIONS

In order to verify that a school is in compliance with the minimum requirements for approval set forth in this Section, the Board may inspect a school during the application process, or at any time after approval has been granted. Such inspection may include the school's physical facilities, equipment, learning materials, and records. Such inspection may also include interviews with members of the school's administrative staff, instructional staff, or student body.

History Note: Authority G.S. 90-631; Temporary Adoption Eff. April 1, 2001.

21 NCAC 30 .0606 TERM OF SCHOOL APPROVAL; FEES

(a) School approvals are granted for a one year term, beginning on July 1 and ending on June 30.

(b) The Board shall charge fees for a request for an application approval package, initial application for school approval, application for additional program approval, and annual renewal of approval. The fees collected under this Section are to be applied to the administrative costs of the approval program. No fee for approval application or renewal shall be refunded in the event the application is rejected or the approval suspended or revoked.

(c) Fees for schools within the State are as follows:

- (1) Request for Approval Application Package \$20.00
(2) Fee for initial application for Board approval 1500.00
(3) Fee for application for Board approval of additional programs 750.00
(4) Fee for annual renewal of Board approval (one program) 1000.00
(5) Fee for annual renewal of Board approval (each additional program) 500.00

(d) Fees for schools outside the State which are licensed are approved by the educational regulatory authority in the state in which it operates:

- (1) Request for Approval Application Package \$20.00
(2) Fee for initial application for Board approval 500.00
(3) Fee for application for Board approval of additional programs 200.00
(4) Fee for annual renewal of Board approval (one program); 200.00
(5) Fee for annual renewal of Board approval (each additional program) 100.00

History Note: Authority G.S. 90-626(8); 90-631; Temporary Adoption Eff. April 1, 2001.

CHAPTER 36 – BOARD OF NURSING

Rule-making Agency: North Carolina Board of Nursing

Rule Citation: 21 NCAC 36 .0217

Effective Date: March 5, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42

Reason for Proposed Action: We are moving into a severe shortage of licensed nurses (both Registered Nurses and Licensed Practical Nurses) in our state. The Board believes that we could better serve the public's health by allowing those nurses who are not being charged with egregious violations of the Nursing Practice Act to remain in licensed positions with appropriate restrictions to enhance their knowledge, skills or ability to provide safe nursing care.

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.

SECTION .0200 – LICENSURE

21 NCAC 36 .0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), and (8b) are incorporated by reference within this Rule according to G.S. 150B-21.6. In addition, the following definitions apply:

- (1) "Investigation" means a careful and detailed exploration of the events and circumstances related to reported information in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by the Board.
(2) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.
(3) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

- (1) drug or alcohol abuse;
(2) violence-related crime;
(3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
(4) commission of any crime which undermines the public trust;

TEMPORARY RULES

- (5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
 - (6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
 - (7) practicing or offering to practice beyond the scope permitted by law;
 - (8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
 - (9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
 - (10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
 - (11) harassing, abusing, or intimidating a client either physically or verbally;
 - (12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
 - (13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
 - (14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
 - (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
 - (16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
 - (17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
 - (18) guaranteeing that a cure will result from the performance of professional services;
 - (19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
 - (20) using a license which has been altered;
 - (21) permitting or allowing another person to use his or her license for the purpose of nursing;
 - (22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
 - (23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
 - (24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents;
 - (25) falsifying a client's record or the controlled substance records of the agency; or
 - (26) inappropriately kissing, fondling, touching or engaging in any other activities of a sexual nature with a client while responsible for the care of that individual.
- (d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:
- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
 - (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
 - (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.
- (e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of G.S.150B, Article 3A.
- (1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.
 - (2) The following general statutes, rules, and procedures apply and are adopted by reference within this Rule according to G.S. 150B-21.6, unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.
 - (3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate

number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

(1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.

(A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.

(C) The Letter of Charges does not in and of itself constitute a contested case.

(2) The Letter of Charges shall include the following:

(A) a short and plain statement of the factual allegations;

(B) a citation of the relevant sections of the statutes or rules involved;

(C) notification that a settlement conference shall be scheduled upon request;

(D) explanation of the procedure used to govern the settlement conference;

(E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing shall be scheduled; and

(F) if applicable, ~~and in any sanction or remediation in~~ accordance with Board-adopted ~~policy, an offer of voluntary surrender or reprimand also policy~~ may be included, included in specified types of alleged violations of the Nursing Practice Act.

(3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses

to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

(1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.

(2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.

(3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.

(4) At the conclusion of the day during which the settlement conference is held, a form shall be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:

(A) if a settlement is reached, the Board of Nursing shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or

(B) if a settlement cannot be reached, the case shall proceed to a formal administrative hearing.

(j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

(1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;

(2) Date, time, and place of the hearing;

(3) Notification of the right of a party to represent himself or to be represented by an attorney;

(4) A statement that, pursuant to Paragraph (m) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;

(5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;

- (6) A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and
 - (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.
- (l) Pre-hearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.
- (1) The pre-hearing conference shall be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.
 - (2) The pre-hearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
 - (3) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.
- (m) Pre-hearing conferences or administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance with G. S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.
- (n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.
- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
 - (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought.
 - (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
- (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.
- (o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.
- (p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the Hearing Officer of the Board. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Judge sitting at hearing.
- (q) All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.
- (1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.
 - (2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show

cause why the person(s) should not be held in contempt of the Board and its processes.

- (3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

- (1) Sworn affidavits may be introduced by mutual agreement from all parties.
- (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and shall be supplied at a reasonable cost.

History Note: Filed as a Temporary Amendment Eff. February 26, 1991 for a period of 35 days to expire on April 1, 1991;
 Filed as a Temporary Amendment Eff. December 7, 1990 for a period of 180 days to expire on June 5, 1991;
 Authority G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42;
 Eff. February 1, 1976;
 Amended Eff. October 1, 1989; November 1, 1988; July 1, 1986; July 1, 1984;
 ARRC Objection Lodged December 20, 1990;
 Amended Eff. January 1, 1991;
 ARRC Objection Removed February 25, 1991;
 Amended Eff. January 1, 1996; February 1, 1995; April 1, 1991;
Temporary Amendment Eff. March 5, 2001.

Rule-making Agency: North Carolina Board of Nursing

Rule Citation: 21 NCAC 36 .0231

Effective Date: April 15, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 90-6; 90-171.43; 90-171.51; 90-171.83(a); 90-640(a)-(d)

Reason for Proposed Action: Law passed in 1999 with full implementation date of October 1, 2001 (Session Law 1999-320, Senate Bill 951 – An Act to Protect Patient's Rights by Requiring Name Badges or other identification for Health Care Practitioners.)

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.

SECTION .0200 – LICENSURE

21 NCAC 36 .0231 EXCEPTIONS TO HEALTH CARE PRACTITIONERS IDENTIFICATION REQUIREMENTS

(a) The licensed nurse or nurse aide II is not required to wear a readily visible badge or other form of identification in the following direct patient care situations:

- (1) procedures requiring full sterile dress; or
- (2) procedures requiring other protective clothing or covering.

(b) Identification of the licensed nurse or nurse aide may be limited to first name only and level of licensure or listing status when the full name identification may:

- (1) place the personal safety of the nurse or nurse aide II in jeopardy; or
- (2) interfere with the therapeutic relationship between the nurse or nurse aide and client(s).

(c) In all other situations involving the direct provision of health care to clients, the licensed nurse or nurse aide II shall wear or display a readily visible form of identification to include:

- (1) the individual's first and last name; and
- (2) the license, approval to practice title or listing title as required by law, or standard abbreviations for such title.

(d) There shall be written agency policy outlining any exceptions to the requirements consistent with Paragraph (b) of this Rule.

History Note: Authority G.S. 90-6; 90-171.43; 90-171.51; 90-171.83(a); 90-178.3; 90-640(a)-(d);
Temporary Adoption Eff. April 15, 2001.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Wednesday, April 19, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Tuesday, April 13, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

April 19, 2001
May 17, 2001
July 19, 2001
June 14, 2001
August 16, 2001

Log of Filings (Log #174) February 21, 2001 through March 20, 2001

DHHS/DIVISION OF MEDICAL ASSISTANCE

Personal Care Services 10 NCAC 26H .0506 Amend

DHHS/SOCIAL SERVICES COMMISSION

Licensing Process 10 NCAC 41S .0102 Amend
Definitions 10 NCAC 41S .0201 Amend
Responsibility to Division of Social Services 10 NCAC 41S .0202 Amend
Licensure Procedures 10 NCAC 41S .0204 Amend
Recordkeeping and Reporting 10 NCAC 41S .0305 Amend
Client Rights 10 NCAC 41S .0306 Amend
Personnel Deployment 10 NCAC 41S .0402 Amend
Personnel Positions 10 NCAC 41S .0405 Amend
Admission Agreement 10 NCAC 41S .0503 Amend
Client Records 10 NCAC 41S .0506 Amend
Work 10 NCAC 41S .0612 Amend
Incident Reports 10 NCAC 41S .0614 Amend
Fire and Building Safety 10 NCAC 41S .0704 Amend
General Sanitation 10 NCAC 41S .0705 Amend
Sleeping Areas 10 NCAC 41S .0707 Amend
Vehicles Used for Transportation 10 NCAC 41S .0713 Amend
Buildings and Ground Equipment 10 NCAC 41T .0106 Amend
Applicability 10 NCAC 41T .0201 Amend

JUSTICE/N C SHERIFFS' EDUCATION AND TRAINING STANDARDS

Purpose 12 NCAC 10B .1601 Adopt

DENR

Definitions 15 NCAC 18A .3301 Adopt
Approval of Construction and Renovation Plans 15 NCAC 18A .3302 Adopt
Inspections and Reports 15 NCAC 18A .3303 Adopt
Food Supplies 15 NCAC 18A .3304 Adopt
Food Protection 15 NCAC 18A .3305 Adopt

RULES REVIEW COMMISSION

Food Storage	15 NCAC 18A .3306	Adopt
Food Preparation	15 NCAC 18A .3307	Adopt
Food Service	15 NCAC 18A .3308	Adopt
Food Service Equipment and Utensils	15 NCAC 18A .3309	Adopt
Specifications for Kitchens	15 NCAC 18A .3310	Adopt
Cleaning and Sanitizing of Equipment and Utensils	15 NCAC 18A .3311	Adopt
Manual Cleaning and Sanitizing	15 NCAC 18A .3312	Adopt
Mechanical Cleaning and Sanitizing	15 NCAC 18A .3313	Adopt
Food Service Equipment and Utensil Storage	15 NCAC 18A .3314	Adopt
Water Supply	15 NCAC 18A .3315	Adopt
Drinking Water Facilities	15 NCAC 18A .3316	Adopt
Toilets	15 NCAC 18A .3317	Adopt
Lavatories and Bathing Facilities	15 NCAC 18A .3318	Adopt
Clothing and Clothing Changing	15 NCAC 18A .3319	Adopt
Storage	15 NCAC 18A .3320	Adopt
Beds and Linens	15 NCAC 18A .3321	Adopt
Furniture, Equipment and Activities Supplies	15 NCAC 18A .3322	Adopt
Personnel	15 NCAC 18A .3323	Adopt
Floors	15 NCAC 18A .3324	Adopt
Walls and ceilings	15 NCAC 18A .3325	Adopt
Lighting and Thermal Environment	15 NCAC 18A .3326	Adopt
Communicable Diseases and Conditions	15 NCAC 18A .3327	Adopt
Handwashing	15 NCAC 18A .3328	Adopt
Wastewater	15 NCAC 18A .3329	Adopt
Solid Wastes	15 NCAC 18A .3330	Adopt
Animal and Vermin Control: Premises	15 NCAC 18A .3331	Adopt
Outdoor Areas	15 NCAC 18A .3332	Adopt
Swimming and Wading Pools	15 NCAC 18A .3333	Adopt
Compliance	15 NCAC 18A .3334	Adopt
Appeals Procedures	15 NCAC 18A .3335	Adopt
EDUCATION, STATE BOARD OF		
Test Administration	16 NCAC 06D .0302	Amend
Driver Training	16 NCAC 06E .0301	Amend
NC STATE BOARD OF COMMUNITY COLLEGES		
Drivers' Eligibility Certificate	23 NCAC 02C .0308	Adopt
Tuition and Fees for Curriculum Programs	23 NCAC 02D .0202	Amend
Fees for Extension Programs	23 NCAC 02D .0203	Amend
DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION		
Designation of Terms of Teleworking Arrangements	25 NCAC 01C .0807	Adopt
Termination of Teleworking Arrangement	25 NCAC 01C .0808	Adopt
Appeals	25 NCAC 01I .2310	Amend
OFFICE OF ADMINISTRATIVE HEARINGS		
Cost for Copies	26 NCAC 01 .0103	Amend

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. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Beryl E. Wade
A.B. (Butch) Elkins

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOL BEVERAGE CONTROL COMMISSION				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC Beverage Control Commission v. Rhonda Davis Lemons, Ind. T/A	00 ABC 0965	Mann	02/05/01	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
BOARD OF MORTUARY SCIENCE				
NC Board of Mortuary Science v. R.L. Sanders Funeral Home, Hugh Sanders and Demetrice Brewington	99 BMS 1180	Lassiter	11/27/00	
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
CRIME CONTROL AND PUBLIC SAFETY				
Terry Ramey D/B/A/Ramey's Wrecker Service v. NC Dept. of of Crime Control & Public Safety, NC State Highway Patrol	99 CPS 1160	Morrison	01/26/01	15:17 NCR 1594
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
Kenneth E. Brooks v. NC Crime Victims Compensation Commission	00 CPS 1048	Lassiter	12/21/00	
Kathy Oates Parzygnat v. NC Crime Victims Compensation Commission	00 CPS 1054	Conner	01/29/01	
Dowu Thomas v. NC Crime Victims Compensation Commission	00 CPS 1090	Mann	01/17/01	
Derrick Davis v. NC Crime Victims Compensation Commission	00 CPS 1352	Gray	02/01/01	
HEALTH AND HUMAN SERVICES				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 ¹	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Tyrone Banks v. Department of Health & Human Services	00 CRA 1759	Gray	01/16/01	
Terry Weathers v. Department of Health & Human Services	00 CRA 1769	Conner	02/14/01	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	

CONTESTED CASE DECISIONS

David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00
Charles Jr. Lotharp v. Department of Health & Human Services	99 CSE 0626	Lassiter	02/09/01
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00
Richard Cook v. Department of Health & Human Services	99 CSE 0873 ⁴	Chess	10/27/00
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Tony R. Wood v. Department of Health & Human Services	99 CSE 1501	Gray	01/12/01
Samuel E. Massenber, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 ⁴	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Todd A. Flanders v. Department of Health & Human Services	00 CSE 0152	Mann	03/13/01
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twiggs v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00

CONTESTED CASE DECISIONS

Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Ronnie N. Morgan v. Department of Health & Human Services	00 CSE 0446	Gray	01/17/01
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 ²	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 ²	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Anthony L. Reid v. Department of Health & Human Services	00 CSE 0647	Lassiter	01/16/01
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Ottis Hairr v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
Gregory C. Tweed v. Department of Health & Human Services	00 CSE 0876	Conner	01/25/01
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 ³	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00

CONTESTED CASE DECISIONS

Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00
Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 ³	Conner	10/06/00
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00
Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00
Larry D Houston v. Department of Health & Human Services	00 CSE 1155	Gray	02/27/01
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00
Travis Armstrong v. Department of Health & Human Services	00 CSE 1283	Lassiter	02/22/01
Daniel J. Sandford v. Department of Health & Human Services	00 CSE 1350	Wade	02/13/01
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00
Tony E. Plyler v. Department of Health & Human Services	00 CSE 1447	Wade	01/12/01
Teresa A. Ingraham v. Department of Health & Human Services	00 CSE 1464	Chess	12/29/00
Tommy William Carter v. Department of Health & Human Services	00 CSE 1485	Gray	01/31/01
Michael Hudson v. Department of Health & Human Services	00 CSE 1493	Wade	02/02/01
Robert M. Murray v. Department of Health & Human Services	00 CSE 1507	Lassiter	02/09/01
Misha C Mfum v. Department of Health & Human Services	00 CSE 1509	Wade	02/12/01
Kevin R. McCray v. Department of Health & Human Services	00 CSE 1525	Chess	01/30/01
Keith Everett Fick v. Department of Health & Human Services	00 CSE 1531	Lassiter	02/28/01
Jimmy Moore v. Department of Health & Human Services	00 CSE 1535	Conner	02/14/01
Stan Matthire v. Department of Health & Human Services	00 CSE 1536	Chess	01/30/01
Richard McC Carson v. Department of Health & Human Services	00 CSE 1543	Mann	01/03/01
Calvin G. Carter v. Department of Health & Human Services	00 CSE 1546	Lassiter	02/09/01
Mark Andrew Cohn v. Department of Health & Human Services	00 CSE 1560	Gray	02/09/01
Savoy L. Miler v. Department of Health & Human Services	00 CSE 1571	Lassiter	01/31/01
Elmer L. Mosley v. Department of Health & Human Services	00 CSE 1581	Wade	02/02/01
David E. Allen v. Department of Health & Human Services	00 CSE 1589	Lassiter	02/09/01
David W Morris v. Department of Health & Human Services	00 CSE 1591	Wade	02/13/01
Jonathan Gregg Holland v. Department of Health & Human Services	00 CSE 1592	Conner	02/14/01
David Bass Jr v. Department of Health & Human Services	00 CSE 1595	Mann	02/13/01
Clyde Michael Trout v. Department of Health & Human Services	00 CSE 1596	Morrison	01/03/01
Sharon S. Godwin v. Department of Health & Human Services	00 CSE 1598	Morrison	02/09/01
Vincent Ackerman v. Department of Health & Human Services	00 CSE 1599	Wade	02/13/01
Micheal King v. Department of Health & Human Services	00 CSE 1600	Conner	02/22/01
Johnny Drakakides v. Department of Health & Human Services	00 CSE 1608	Morrison	02/28/01
Phyllis A King v. Department of Health & Human Services	00 CSE 1609	Lassiter	02/20/01
Bonita Ann Wilson v. Department of Health & Human Services	00 CSE 1619	Chess	02/27/01
Bernie Mayr Jr v. Department of Health & Human Services	00 CSE 1622	Morrison	01/31/01
Stephen N Powers v. Department of Health & Human Services	00 CSE 1623	Lassiter	02/20/01
Kenneth B Thomas v. Department of Health & Human Services	00 CSE 1624	Mann	02/21/01
Reginald Sanders v. Department of Health & Human Services	00 CSE 1626	Wade	02/20/01
Cleveland J Johnson v. Department of Health & Human Services	00 CSE 1628	Chess	02/27/01
Mark D Kane v. Department of Health & Human Services	00 CSE 1634	Morrison	03/13/01
Charles M Edwards v. Department of Health & Human Services	00 CSE 1635	Lassiter	02/20/01
Stephen Hiles v. Department of Health & Human Services	00 CSE 1638	Conner	02/22/01
Ricky L McCartney v. Department of Health & Human Services	00 CSE 1641	Wade	03/05/01
Timothy F Fulbright v. Department of Health & Human Services	00 CSE 1647	Morrison	02/20/01
David E Evans v. Department of Health & Human Services	00 CSE 1648	Lassiter	02/20/01
James David Johnson Jr v. Department of Health & Human Services	00 CSE 1650	Wade	02/20/01
Michael Dewayne Hester v. Department of Health & Human Services	00 CSE 1653	Gray	02/20/01
Mark A Pekuri v. Department of Health & Human Services	00 CSE 1658	Lassiter	02/28/01
Curtis B Blakney v. Department of Health & Human Services	00 CSE 1670	Gray	02/20/01
Richard Bourbon Jr. v. Department of Health & Human Services	00 CSE 1674	Lassiter	03/12/01
James M McCoy v. Department of Health & Human Services	00 CSE 1678	Wade	02/20/01
Carl R Cooper v. Department of Health & Human Services	00 CSE 1682	Lassiter	02/27/01
James Scott Lee v. Department of Health & Human Services	00 CSE 1688	Conner	02/15/01
Robert E Peterson Jr. v. Department of Health & Human Services	00 CSE 1696	Lassiter	02/27/01
Karen R. McLean v. Department of Health & Human Services	00 CSE 1707	Gray	01/12/01
Jonathan B Frazier v. Department of Health & Human Services	00 CSE 1715	Gray	02/27/01
Daniel L. Phillips v. Department of Health & Human Services	00 CSE 1717	Morrison	01/31/01
Mauricio Lopez-Granados v. Department of Health & Human Services	00 CSE 1729	Gray	02/06/01
Emar Ifediora v. Department of Health & Human Services	00 CSE 1731	Morrison	02/27/01
Martin W Rogers v. Department of Health & Human Services	00 CSE 1748	Wade	03/05/01
Louis William v. Department of Health & Human Services	00 CSE 1754	Lassiter	02/27/01
Robert Barry Jenkins Jr v. Department of Health & Human Services	00 CSE 1755	Gray	03/13/01
John F McCollum v. Department of Health & Human Services	00 CSE 1760	Wade	02/28/01
John B Cox v. Department of Health & Human Services	00 CSE 1766	Lassiter	02/27/01
Anthony D Hines v. Department of Health & Human Services	00 CSE 1771	Gray	02/27/01
Gary E Nielsen v. Department of Health & Human Services	00 CSE 1772	Mann	02/28/01
James Faison v. Department of Health & Human Services	00 CSE 1774	Lassiter	03/05/01
Charles Junot v. Department of Health & Human Services	00 CSE 1775	Morrison	02/27/01
George L Hart Jr. v. Department of Health & Human Services	00 CSE 1784	Morrison	02/27/01
Tammy L Galdones v. Department of Health & Human Services	00 CSE 1800	Wade	03/08/01
Clarence McCorkle, Jr v. Department of Health & Human Services	00 CSE 1805	Chess	02/26/01

CONTESTED CASE DECISIONS

Joseph P Bell v. Department of Health & Human Services	00 CSE 1807	Morrison	03/12/01
Clinton Wilson v. Department of Health & Human Services	00 CSE 1810	Wade	03/08/01
Rodney Foster v. Department of Health & Human Services	00 CSE 1813	Gray	03/09/01
James S Rollins v. Department of Health & Human Services	00 CSE 1816	Lassiter	03/12/01
Johnny Worth Deaver v. Department of Health & Human Services	00 CSE 1817	Morrison	03/13/01
Shawn T Miller v. Department of Health & Human Services	00 CSE 1818	Wade	03/08/01
Mark Jeffrey Duncan v. Department of Health & Human Services	00 CSE 1825	Lassiter	02/20/01
Ricky Lee Barrett v. Department of Health & Human Services	00 CSE 1827	Wade	03/08/01
Cynthia W McDaniel v. Department of Health & Human Services	00 CSE 1830	Gray	03/13/01
James T Jarvis IV v. Department of Health & Human Services	00 CSE 1832	Morrison	03/12/01
Michael O'Neal Fletcher v. Department of Health & Human Services	00 CSE 1834	Wade	03/08/01
Dexter Leon Scott v. Department of Health & Human Services	00 CSE 1839	Chess	02/27/01
Jacqueline R Graham v. Department of Health & Human Services	00 CSE 1845	Morrison	03/12/01
Roger H Allred Jr. v. Department of Health & Human Services	00 CSE 1848	Wade	03/08/01
David M Greene v. Department of Health & Human Services	00 CSE 1852	Morrison	03/12/01
Michael T Wilfong v. Department of Health & Human Services	00 CSE 1854	Lassiter	03/12/01
Richard H Burkett v. Department of Health & Human Services	00 CSE 1864	Morrison	03/12/01
Terry L Barnette v. Department of Health & Human Services	00 CSE 1874	Gray	03/06/01
Lonnie Mathwig v. Department of Health & Human Services	00 CSE 1893	Lassiter	02/28/01
Carl Miller v. Department of Health & Human Services	00 CSE 1894	Morrison	01/31/01
Victor S Glass v. Department of Health & Human Services	00 CSE 1902	Morrison	02/28/01
Johnny R Chance v. Department of Health & Human Services	00 CSE 1925	Wade	03/05/01
Andrea Wilson v. Department of Health & Human Services	00 CSE 1966	Lassiter	03/12/01
Everett McClain Jr v. Department of Health & Human Services	00 CSE 1979	Gray	03/09/01
Joseph J McDowell v. Department of Health & Human Services	00 CSE 1982	Lassiter	02/20/01
Roger D Mintz v. Department of Health & Human Services	00 CSE 1997	Morrison	01/31/01
Jimmy Clark v. Department of Health & Human Services	00 CSE 1999	Conner	02/14/01
Nancy Sells v. Department of Health & Human Services	00 CSE 2001	Conner	02/14/01
Jeffery A Maness v. Department of Health & Human Services	00 CSE 2003	Gray	02/28/01
Robert W MacDonald Sr. v. Department of Health & Human Services	00 CSE 2015	Wade	03/05/01
Norman Lee Fillers v. Department of Health & Human Services	00 CSE 2016	Conner	02/14/01
Philip Ligatti v. Department of Health & Human Services	00 CSE 2058	Lassiter	02/20/01
Philip Ligatti v. Department of Health & Human Services	00 CSE 2059	Wade	02/20/01
Crystal Anne Barton v. Department of Health & Human Services	00 CSE 2064	Morrison	02/27/01
Chris Alexander King v. Department of Health & Human Services	00 CSE 2066	Wade	03/13/01
Dwayne Scott Barlow v. Department of Health & Human Services	00 CSE 2070	Gray	03/06/01
Harold D Overby Jr v. Department of Health & Human Services	00 CSE 2074	Morrison	02/20/01
Victor L Foster Sr v. Department of Health & Human Services	00 CSE 2110	Morrison	03/05/01
Jonathan P Deese v. Department of Health & Human Services	00 CSE 2112	Wade	02/02/01
Dwayne Scott Barlow v. Department of Health & Human Services	00 CSE 2131	Wade	03/05/01
Anita Davis v. Department of Health & Human Services	00 CSE 2145	Lassiter	02/27/01
Nathaniel Armstrong v. Department of Health & Human Services	00 CSE 2150	Gray	02/27/01
Boulware, Rodney Durand v. Department of Health & Human Services	00 CSE 2154	Wade	03/13/01
Keith V Cunningham v. Department of Health & Human Services	00 CSE 2161	Gray	02/20/01
Derrick Link v. Department of Health & Human Services	00 CSE 2166	Mann	03/13/01
Christopher Scott v. Department of Health & Human Services	00 CSE 2182	Morrison	03/05/01
Courtney Brown v. Department of Health & Human Services	01 CSE 0059	Lassiter	03/05/01

Division of Social Services

Mary Laforet v. Department of Health & Human Services	99 DCS 0372	Lassiter	01/12/01
Emma Burkes (Edwards) v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 ¹	Wade	06/30/00
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00
Tameca Grant v. Department of Health & Human Services	00 DCS 1533	Wade	01/12/01
Della T Austin for Christopher Moore v. Dept. of Health & Human Svcs.	00 DCS 1740	Lassiter	01/31/01

CONTESTED CASE DECISIONS

Michael Anthony Bowden v. Department of Health & Human Services	00 DCS 2050	Lassiter	01/31/01	
Sanja S Whittington v. Department of Health & Human Services	00 DCS 2084	Morrison	02/12/01	
Albemarle Mental Health Center, Developmental Disabilities: Substance Abuse Services v. NC Dept. of Health & Human Services, Division of Medical Assistance and NC Council of Community Mental Health, Developmental Disabilities and Substance Abuse Programs, Inc.	98 DHR 1598	Reilly	12/15/00	15:15 NCR 1440
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00	
Carrie Jenkins, by and through her Guardian, John Jenkins v. NC Dept. of Health & Human Services	00 DHR 0119	Wade	02/14/01	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00	
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00	
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00	
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00	
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00	
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00	
Lenora M Brewer v Office of Administrative	00 DHR 0943	Conner	03/01/01	
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	
Janie Best v DHHS, NC Medial Examiner's Office	00 DHR 1029	Mann	02/20/01	
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Mildred Willis v. Avante of Wilson, NC Dept of Health & Human Services	00 DHR 1310	Conner	02/16/01	
Iola Jones v. NC Department of Human Resources	00 DHR 1320	Morrison	02/23/01	
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Chawona Lynn Emanuel v. Department of Health & Human Services	00 DHR 1360	Gray	01/31/01	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1371 ⁶	Gray	01/09/01	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR -DOFS	00 DHR 1382	Gray	11/21/00	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1383 ⁶	Gray	01/09/01	
Penny Jean Leary for Hyailey Okamoto v. Div. of Medical Assistance	00 DHR 1400	Gray	01/11/01	
Sylvia Davis v. Homeplace of Burlington Nurse Aide Registry	00 DHR 1488	Mann	02/26/01	
Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00	
William C Wetmore v. DHHS, Health Care Personnel Registry Invstgns.	00 DHR 1744	Mann	02/08/01	
Barbara Hayes v. Sampson Co Dept of Social Services, Sarah W. Bradshaw, Director & NC DHHS	00 DHR 2040	Gray	02/21/01	
Beatrice Harper v. NC Human & Health Services	00 DHR 2048	Gray	02/06/01	
Melissa M. Hale v. State of NC Office of Administrative Hearings	00 DHR 2077	Chess	01/26/01	
James Crosland and wife, Carolyn Crosland v. Polk County Dept. of Social Services	00 DHR 2130	Gray	01/04/01	
Brandi Joanna Padgett v. NC Department of Human Resources	00 DHR 2277	Gray	02/26/01	
Division of Facility Services				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00	
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR 1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00	
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00	
Nancy Yarbrough Allen v. DHHS, Division of Facility Services	00 DHR 0356	Gray	06/23/00	
Greensboro Heart Center, LLC v. NC DHHS, Division of Facility Services, Certificate of Need Section & The Moses H. Cone Memorial Hospital & The Moses H. Cone Memorial Hospital Operating Corporation	00 DHR 0375	Lassiter	12/19/00	
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
Helen Ramsey v. DHHS, Division of Facility Services	00 DHR 0578	Conner	01/29/01	
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00	
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00	
Anthony Alan Bennett v DHHS, Division of Facility Services	00 DHR 0664	Conner	03/06/01	
Violet Anne Berliner v. DHHS, Division of Facility Services	00 DHR 0685	Gray	11/17/00	
MariaGoretti Aduago Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00	
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00	
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00	
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00	
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR 1045

CONTESTED CASE DECISIONS

Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00	
Faleisha Cassandra Worsley v. DHHS, Division of Facility Services	00 DHR 1013	Chess	02/22/01	
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00	
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00	
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00	
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00	
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00	
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00	
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 DHR 1299	Morrison	12/18/00	
Mary Carmon Williams v. DHHS, Division of Facility Services	00 DHR 1308	Conner	02/01/01	
Ruby L. Laughter v. DHHS, Division of Facility Services	00 DHR 1346	Lassiter	01/31/01	
Lakiya S Mewborn v. DHHS, Division of Facility Services	00 DHR 1437	Gray	02/19/01	
Jonathan L. Merrell & Judith A. Merrell, and Eyring Realty, Inc. v. DHHS, Division of Facility Services & S & R Healthcare, Inc.	00 DHR 1461	Mann	01/31/01	
Ms Erman M Patterson v. DHHS, Division of Facility Services	00 DHR 1465	Gray	02/16/01	
Elois Little v. DHHS, Division of Facility Services	00 DHR 1790	Morrison	02/15/01	
Janet Stephens v. DHHS, Division of Facility Services	01 DHR 0008	Mann	02/08/01	
Octavia L Hill v. WisperPines Nursing Home of Fayetteville and DHHS, Division of Facility Services	01 DHR 0009	Mann	02/08/01	

DEPARTMENT OF AGRICULTURE

Norman Dudgeon dba Mountain Vista Growers v. NC Department of Agriculture	00 DAG 0676	Gray	02/16/01	
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ENVIRONMENT AND NATURAL RESOURCES

Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR 501
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00	
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00	
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1136 ⁷	Lassiter	01/01/00	
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR 696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00	
Sarah Robbins Collins v. Dept. of Environment & Natural Resources	99 EHR 1265	Wade	11/28/00	
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR 343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00	
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00	
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1627 ⁷	Lassiter	01/01/00	
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00	
Leonard F. Sutton v. Division of Forest Resources	00 EHR 0072	Morrison	12/18/00	15:15 NCR 1435
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR 693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00	
Samuel A. Perrella v. Div. of Environmental Health, New Bern, NC	00 EHR 0219	Gray	11/16/01	
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00	
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00	
Turnbull Company LLC v. NC Dept of Environment & Natural Resources	00 EHR 0881	Wade	02/02/01	
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00	
Dudley A. Dawson v. NC DENR, (Person County Health Department)	00 EHR 0920	Lassiter	02/15/01	
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00	
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00	
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00	
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00	
Arland Community Development v. Dept. of Environment & Natural Resources	00 EHR 1300	Mann		03/08/01
Randy Graham v. Environmental Health of Alamance County	00 EHR 1393	Gray	12/29/00	
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00	
Lisa King v. Brunswick County Health Department	00 EHR 1778	Lassiter	01/19/01	
Robert H. Bilbro v. DENR/Division of Coastal Management	00 EHR 1843	Chess	01/19/01	
Levi Moore, Jr. v. Brunswick County Health Department	00 EHR 1883	Lassiter	02/13/01	
Kelly Jones v. Office of Administrative Hearings	01 EHR 0007	Chess	02/22/01	

Coastal Resources Commission

Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR 342
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Division of Air Quality

Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00	
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00	
MW Clearing and Grading, Inc. v. DENR, Div. of Air Quality	00 EHR 0286	Wade	11/28/00	
Billy V. Cain v. NC DENR, Division of Air Quality	00 EHR 1351	Lassiter	01/11/01	

Division of Land Resources

James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00	
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Division of Water Quality

CONTESTED CASE DECISIONS

Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00	
Town of Wallace v. NCDENR, Division of Water Quality	00 EHR 0247	Lassiter	10/05/00	
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00	
John P. Hendrix v. NC DENR, Div. of Water Quality	00 EHR 0966	Wade	03/09/01	
Johnny Barrier, Jonas Ridge Nursing Home v. NC DENR, Division of Water Quality	00 EHR 2155	Conner	02/26/01	

Division of Waste Management

A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR 636
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JUSTICE

Alarm Systems Licensing Board

John Martin Canter v Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00	
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00	
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00	
Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00	
Brain Craig Glass v. Alarm Systems Licensing Board	00 DOJ 2053	Gray	02/09/01	
Jody Durell Stancil v. Alarm Systems Licensing Board	00 DOJ 2054	Conner	02/22/01	

Education and Training Standards Division

Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00	
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00	
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00	
Larry G. McClain v. Sherriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00	
Ersal Overton, III v. Sherriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR 883
Keith Allen Murchison v. Sheriffs' Education & Training Stds Comm.	00 DOJ 0006	Lassiter	06/26/00	
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00	
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00	
Larry Kevin Dean v. NC Criminal Justice Education & Training Standards Commission	00 DOJ 0610	Wade	02/06/01	
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00	
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00	
Andrew Newsom v. Sheriffs' Education & Training Standards Comm.	00 DOJ 0909	Conner	03/05/01	
Gary J Watts v. Sheriffs' Education & Training Standards Commission	00 DOJ 0910	Lassiter	03/02/01	
Charles L. Garner, Jr. v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0993	Morrison	01/05/01	
James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00	
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00	
William J. Sciacca v. Sheriffs' Education & Training Stds. Comm	00 DOJ 1555	Mann	01/17/01	
Rosamel T. Gresham v. Sherriffs' Education & Training Standards Comm.	00 DOJ 1557	Lassiter	12/20/00	

Private Protective Services Board

Leisa M Roberts v. Private Protective Services Board	99 DOJ 0112	Conner	02/14/01	
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00	
George Thomas Bond v. Private Protective Services Board	00 DOJ 0014	Conner	05/11/00	
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00	
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00	
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00	
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00	
Tammy Goforth Nichols v Private Protective Services Board	00 DOJ 2051	Gray	02/09/01	
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00	
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00	
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00	
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00	
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00	
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00	
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00	
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00	
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00	
Richard Asiedu v Private Protective Services Board	01 DOJ 0012	Gray	02/07/01	

PUBLIC INSTRUCTION

Doris G. Branch v. NC Department of Public Instructions	98 EDC 0368	Gray	10/08/00	15:13 NCR 1233
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00	
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR 45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00	
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00	
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR 492
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00	

CONTESTED CASE DECISIONS

Christopher Paul Thompson v. Polk County School System	00 EDC 1291	Conner	12/28/00	
DEPARTMENT OF INSURANCE				
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00	
MISCELLANEOUS				
Nancy York Vorys v. Raleigh Police Department	00 MIS 1436	Gray	10/27/00	
Shane C. Balance v. Watauga County District Attorney and Watauga County Superior Court	00 MIS 1685	Mann	01/31/01	
STATE PERSONNEL				
Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services	95 OSP 1011	Gray	08/29/00	
Sheila Harris	96 OSP 0686	Mann	02/12/01	
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00	
Roosevelt Wilkerson, Jr. v. NC Department of Correction	98 OSP 1198 ⁸	Gray	01/30/01	
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR 624
Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00	
Roosevelt Wilkerson, Jr. v. NC Department of Correction	99 OSP 0084 ⁸	Gray	01/30/01	
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR 47
Betty R. Holman v. Broughton Hospital	99 OSP 0580	Hunter	05/08/00	
Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00	
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR 772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00	
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR 781
Ronald Dennis Long v. Western Carolina University	99 OSP 0870 ⁹	Chess	02/01/01	
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR 5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00	
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR 924
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00	
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00	
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00	
Ronald Dennis Long v. Western Carolina University	99 OSP 1347 ⁹	Chess	02/01/01	
Benny Callihan v. Department of Correction	99 OSP 1381	Wade	09/06/00	
Russell J. Suga v. Employment Security Commission of NC	99 OSP 1649	Gray	06/09/00	15:04 NCR 508
Thelma T. Utley v. NC State University	99 OSP 1708	Conner	12/08/00	
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00	
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00	
Brenda Parker v. NC Div. of Motor Vehicles	00 OSP 0021	Gray	01/19/01	15:16 NCR 1545
Forrest Travis Coston v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0022	Conner	01/24/01	
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00	
Robert Boyd Choat v. Department of Correction		00 OSP 0102	Reilly	07/24/00
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 ⁵	Reilly	09/28/00	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 ⁵	Reilly	09/28/00	
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00	
Robert L. Swinney v. NC Department of Transportation	00 OSP 0281	Morrison	12/20/00	15:14 NCR 1392
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00	
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00	
Ronald Dennis Long v. Western Carolina University	00 OSP 0413 ⁹	Chess	02/01/01	
Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton	00 OSP 0443	Lassiter	07/24/00	
Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction	00 OSP 0460	Chess	10/24/00	
Mary D. Eurquhart v. NC DOT, Division of Motor Vehicles	00 OSP 0470	Wade	03/09/01	
George W. Baysden, Jr. v. NC Department of Corrections	00 OSP 0483	Chess	12/20/00	
Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00	
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00	
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00	
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00	
Pathe S. Vivek v. NC Dept. of Environment & Natural Resources	00 OSP 0631	Smith	01/12/01	
Linda O. Leder v. NC Department of Correction		00 OSP 0632	Conner	09/29/00
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00	
Robert L. Moore v. Pitt County Mental Health Dev Disabilities/SA	00 OSP 0708	Wade	02/05/01	
Warren Carlos Moore v. Pitt County Menatl Health Dev Disabialities/SA	00 OSP 0713	Wade	02/05/01	
Ronald Dennis Long v. Western Carolina University	00 OSP 0745 ⁹	Chess	02/01/01	
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00	
Ronald Dennis Long v. Western Carolina University	00 OSP 0821 ⁹	Chess	02/01/01	
Ronald Dennis Long v. Western Carolina University	00 OSP 0822 ⁹	Chess	02/01/01	
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00	
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00	
Ronald Dennis Long v. Western Carolina University	00 OSP 1094 ⁹	Chess	02/01/01	
Bernadine Johnson v. Department of Correction		00 OSP 1118	Morrison	11/20/00
Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00	
Pamela DeVose v. Durham County DSS	00 OSP 1189	Conner	12/28/00	
Billy Anderson v. NC Department of Correction		00 OSP 1196	Gray	03/08/01
Steven Allen Slocum v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol	00 OSP 1203	Conner	12/28/00	
Robert J. Lane v. Jim Webb, NC Special Care Center (DHR)	00 OSP 1241	Gray	01/23/01	

CONTESTED CASE DECISIONS

Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00	
Linda Sharp Brady v. Halifax Co. Department of Social Services	00 OSP 1263	Gray	02/23/01	
Wayne M. Wise v. NCCU-WNCU	00 OSP 1269	Gray	01/09/01	
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00	
David A. Greats v. NC Department of Correction	00 OSP 1282	Conner	11/09/00	
Ronald Dennis "Butch" Long v. Western Carolina University	00 OSP 1307	Chess	02/02/01	
Richard A Patterson v. Currituck Co. EMS, Currituck County, NC 27929	00 OSP 1330	Conner	02/21/01	
Wayne Davis v. Shelby City Schools	00 OSP 1402	Lassiter	12/20/00	
Larry Joel Williams v. Durham Co. Gov't, The Durham Center	00 OSP 1417	Gray	01/24/01	
Treana S. Greene v. NC DOC, Pamlico Correctional Institution	00 OSP 1647	Chess	02/28/01	
Susan Mote Smith v. NC DHHS/Murdoch Center	00 OSP 1662	Mann	02/23/01	
Mary Ann Suprenant v Randolph County Mental Health	00 OSP 2089	Morrison	02/14/01	
Billy Wayne Lacy v. Sandhills Center for Mental Health DD & SAS	00 OSP 2127	Morrison	02/28/01	
Erthel Hines v. NC Agricultural & Technical State University	00 OSP 2139	Morrison	12/21/00	
Johnny Lee Brown v. Harnett Correctional Institute	00 OSP 0146	Chess	03/06/01	
STATE TREASURER				
Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00	15:05 NCR 633
DEPARTMENT OF REVENUE				
Eddie B. Thomas v. NC Department of Revenue	00 REV 0530	Gray	08/24/00	
Samuel W. Hinshaw v. NC Department of Revenue	00 REV 1008	Gray	12/20/00	
SECRETARY OF STATE				
Pamela J. Rollefson v. Secretary of State (Notary Division)	00 SOS 1470	Conner	01/26/01	
UNIVERSITY OF NORTH CAROLINA				
Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00	
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00	
Ande West v. UNC Hospitals	00 UNC 1267	Conner	12/14/00	
Lisa Morelli v. SODCA Representative, UNC Hospitals	00 UNC 1328	Gray	12/28/00	
Felicia Higgins v. UNC Hospitals at Chapel Hill	00 UNC 1486	Mann	02/23/01	
NC BOARD OF ETHICS				
H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00	