

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

Volume 17, Issue 2  
Pages 113 - 137

July 15, 2002

This issue contains documents officially filed through June 21, 2002.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Linda Dupree, Editorial Assistant  
Dana Sholes, Editorial Assistant  
Rhonda Wright, Editorial Assistant

### I. IN ADDITION

- ENR – Intent to Redevelop a Brownsfields  
Property – Asheville Commons, LLC ..... 113
- ENR – Intent to Redevelop a Brownsfields  
Property – Town of Huntersville ..... 114

### II. RULE-MAKING PROCEEDINGS

#### Insurance

- NC Building Code Council..... 115

#### Justice

- Private Protective Services Board ..... 116

#### Licensing Boards

- Appraisal Board ..... 118
- Dental Examiners, Board of ..... 116 - 117
- General Contractors, Licensing Board ..... 116
- Pharmacy, Board of..... 117
- Plumbing, Heating & Fire Sprinkler Contractors .117 - 118
- Real Estate Commission..... 118
- Substance Abuse Professionals Certification Bd. .119

### III. PROPOSED RULES

#### Environment and Natural Resources

- Health Services, Commission for ..... 128 - 129

#### Health and Human Services

- Mental Health, Developmental Disabilities  
And Substance Abuse Services ..... 120 - 128

#### Licensing Boards

- Physical Therapy Examiners, Board of ..... 131 - 133

#### Transportation

- Highways, Division of ..... 129 - 131

### IV. RULES REVIEW COMMISSION ..... 134 - 135

### V. CONTESTED CASE DECISIONS

- Index to ALJ Decisions ..... 136 - 137

### VI. CUMULATIVE INDEX ..... 1 - 53

*North Carolina Register* is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

**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**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
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
		Respiratory Care Board	61
		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 January 2002 – December 2002

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 <sup>th</sup> 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	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

## 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.

*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.*

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**ASHEVILLE COMMONS, LLC**

Pursuant to N.C.G.S. 130A-310.34, Asheville Commons, LLC has filed with the North Carolina Department of Environmental and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Notice of Intent") in Asheville, Buncombe County, North Carolina. The Brownfields Property ("Property") consists of 7.4 acres and is located at 105 Fairview Road. Environmental Contamination exists on the Property in subsurface soil and groundwater. Asheville Commons, LLC has committed itself to using the land only for warehousing, office and/or light industrial purposes. Pursuant to proposed land use restrictions, only those uses will be permitted. Residential, recreational and groundwater use, and child day care facilities and construction of basements, will be prohibited; and certain excavations will be subject to DENR conditions. The Notice of Intent includes: (1) a proposed Brownfields Agreement between DENR and Asheville Commons, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent may be reviewed at the Register of Deeds' Office, Buncombe County Courthouse, 60 Court Plaza, Asheville, NC by contacting Mr. Otto W. DeBruhl, Register of Deeds, at (828) 250-4300 or at 501 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2802, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Summary of Notice of Intent to Redevelop a Brownfields Property ("Notice"). Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Head, Special Remediation Branch  
Superfund Section  
Division of Waste Management  
NC Department of Environmental and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**TOWN OF HUNTERSVILLE**

Pursuant to G.S 130A -310.34, the Town of Huntersville has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") it owns in Huntersville, Mecklenburg County, North Carolina. The Property consists of approximately 32 acres and is located at 404 North Church Street. Environmental contamination exists on the Property in soil and groundwater. The Town of Huntersville intends, through either a public-private partnership or the sale of the Property to a third party developer, to effect the redevelopment of the Property as a mixed-use transit village containing single- and multi-family residential and commercial office and retail space. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the Town of Huntersville, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property ("Notice of Intent") may be reviewed at the offices of the Town of Huntersville, 101 Huntersville-Concord Road, Huntersville, NC 28070, by contacting Janet Pierson, Town Clerk, at that address or at (704) 875-6541, or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days after the Notice of Intent is published in the North Carolina Register or in this newspaper, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the public comment period begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Head, Special Remediation Branch  
Superfund Section  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

*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 11 – DEPARTMENT OF INSURANCE**

**NORTH CAROLINA BUILDING CODE COUNCIL**

**NOTICE OF RULE-MAKING PROCEEDINGS AND PUBLIC HEARING**

**Notice of Rule-making Proceedings** is hereby given by the N.C. Building Code Council in accordance with G.S. 150B-21.5(d).

**Citation to Existing Rule Affected by this Rule-making:** *North Carolina Building Code; North Carolina Plumbing Code; and North Carolina Residential Code.*

**Authority for the Rule-making:** *G.S. 143-136; 143-138*

**Reason for Proposed Action:** *To incorporate changes in the NC Building code as a result of rulemaking petitions filed with the NC Building Code Council and incorporate changes proposed by the Council.*

**Public Hearing:** *September 9, 2002, 1:00 p.m., Wake County Commons, 4011 Cary Drive, Raleigh, N.C.*

**Comment Procedures:** *Written comments may be sent to Wanda Edwards, Secretary, N.C. Building Code Council, c/o NC Department of Insurance, 410 N. Boylan Avenue, Raleigh, NC 27603. Comment period expires on September 9, 2002.*

**Statement of the Subject Matter:**

**1. REVISE SECTION 302.3.3, EXCEPTION 2, OF THE NORTH CAROLINA BUILDING CODE AS FOLLOWS:**

The private garages in Group R-3 shall be separated from the residence and its attic area by means of minimum ½ inch (12.7 mm) gypsum board applies to the garage side. Door openings between the garage and the residence shall be equipped with either solid wood doors not less than 1-3/8 inches (35 mm) thick, solid or honeycomb core steel doors not less than 1-3/8 inches (35 mm) thick or doors in compliance with Section 714.2.3. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted.

**2. REVISE SECTION 903.2.1.3 OF THE NORTH CAROLINA BUILDING CODE AS FOLLOWS:**

**903.2.1.3 Group A-3.** An automatic sprinkler system shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The fire area exceeds 12,000 square feet (1115 m<sup>2</sup>).
2. The fire area has an occupant load of 300 or more.

**Exceptions:**

(1) This requirement shall not apply to assembly occupancies used primarily for worship with fixed seating and part of a separated use.

(2) This requirement shall not apply to assembly occupancies consisting of a single multipurpose room that are not used for exhibition or display and are part of a separated use.

3. The fire area is located on a floor other than the level of exit discharge.

**3. REVISE SECTION 419 AND 425 OF THE NORTH CAROLINA PLUMBING CODE AS FOLLOWS:**

**419.1 Approval.** Urinals shall conform to ASME 112.19.2, CSA B45.1 or CSA B45.5. Urinals shall conform to the water consumption requirements of Section 604.4. Urinals shall conform to the hydraulic performance requirements of ASME 112.19.6, CSA B45.1 or CSA B45.5.

**Urinals that do not use water shall be permitted provided the urinals**

- (1) provide a barrier liquid sealant contained in a removable trap to maintain the trap seal;
- (2) permit the uninhibited flow of water through the trap to the sanitary drainage system;
- (3) comply with ANSI Z124.9 and ASME 112.19.2, as applicable.

**425. Flushing devices required.** Each water closet, urinal, clinical sink, and any plumbing fixture that depends on trap siphonage to discharge the fixture contents to the drainage system shall be provided with a flushometer valve, flushometer tank or a flush tank designed and installed to supply water in quantity and rate of flow to flush the contents of the fixture, cleanse the fixture, and refill the fixture trap.

A flushometer valve, flush tank, or similar device shall not be required for urinal fixtures that comply with the waterless test requirements of ANSI Z124.9 and which:

- (1) provide a barrier liquid sealant contained in a removable trap to maintain the trap seal;
- (2) permit the uninhibited flow of water through the trap to the sanitary drainage system;
- (3) comply with ANSI Z124.9 and ASME 112.19.2 as applicable, and

**4. BUILDING CODE**

Include windborne debris protection for structures within 1500 feet of the mean high water mark of the Atlantic Ocean, as printed in Section 1609.1.4, Table 1609.1.4 and Section 1609.2 of the 2000 International Building Code.

**5. RESIDENTIAL CODE**

Include windborne debris protection for structures within 1500 feet of the mean high water mark of the Atlantic Ocean, as printed in Section R301.2.1.2, Table R301.2.1.2 and Sections R613.4 and R613.7 of the 2000 International Residential Code.

TITLE 12 – DEPARTMENT OF JUSTICE

CHAPTER 07 – PRIVATE PROTECTIVE SERVICES

Notice of Rule-making Proceedings is hereby given by NC Private Protective Services Board 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: 12 NCAC 07D .0807, .0809. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 74C-5(2)

Statement of the Subject Matter: The rules address the training requirements for armed security officers, as well as the weapons and ammunition that are used.

Reason for Proposed Action: The amendments will re-define "duty weapon" and "duty ammunition".

Comment Procedures: Comments may be submitted to W. Wayne Woodard, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

renewal fee is paid by a check which is subsequently returned to the Board because of insufficient funds, the license renewal is treated as never having been renewed of certified funds will be required for subsequent license renewal.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rulemaking to Mark D. Selph, NC Licensing Board for General Contractors, PO Box 17187, Raleigh, NC 27619.

\*\*\*\*\*

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice of Rule-making Proceedings is hereby given by the North Carolina State Board of Dental Examiners 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: 21 NCAC 16B .0304-.0305, .0315; 16C .0101-.0102, .0202-.0203, .0301-.0310; 16E .0101; 16I .0101-.0102, .0106-.0107; 16M .0101-.0102; 16P .0101-.0105; 16R .0101-.0105 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-28; 90-30; 90-31.1; 90-36; 90-39; 90-41; 90-48; 90-222; 90-223; 90-224; 90-224.1; 90-226; 90-227; 90-232; 150B-19(5).

Statement of the Subject Matter: Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy (Board) will consider adopting rules, repealing rules, or amending rules addressing requirements for applicants for dental licensure; time for filing applications for dental licensure; reexamination for dental and dental hygienist licensure; licensure examinations for dental hygienists; eligibility requirements for a dental hygienist provisional license; annual renewal of dental hygienist license; fees payable by dentists and dental hygienists; advertisement of dental services; annual renewal of dental license; instructor license; reporting of substance abuse or other issues involving fitness to practice; nonprofit and teaching facilities; election of Board members; licensure by credentials for dentists and dental hygienists; and continuing education requirements for dentists and dental hygienists.

Reason for Proposed Action: To revise requirements for application for dental licensure and for renewal of dental license; to revise requirements for application for dental hygienist licensure and for renewal of dental hygienist license; to revise requirements for reexamination for dental and dental hygienist licensure; to revise eligibility requirements for dental hygienist provisional licensure; to revise continuing education requirements for dentists and dental hygienists; to set out requirements for an instructors license; to revise rules for advertisement of dental services; to set out requirements for reporting substance abuse issues or other issues involving fitness to practice; to increase certain fees for dentists and dental hygienists; to define and set out requirements for

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

Notice of Rule-making Proceedings is hereby given by the North Carolina Licensing Board for General Contractors 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: 21 NCAC 12 .0202, .0503, .0701, .0703 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 25-3-50; 87-1; 87-10; 87-11; 150B-3; 150B-38

Statement of the Subject Matter: Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors (Board) will consider adopting rules, repealing rules, or amending rules addressing licensure classifications, renewal of licenses, improper practice, and penalty for submittal of a bad check.

Reason for Proposed Action: To amend licensure classifications; require an audited financial statement for renewal while licensee is in bankruptcy; amend notice requirements for charges of improper practice once a charge is referred to the review committee; and clarify that when a license



RULE-MAKING PROCEEDINGS

nonprofit and teaching facilities; to adopt rules governing the election of Board members; to set out requirements for licensure by credentials for dentists and dental hygienists; and to set out a reexamination fee for dentists and dental hygienists.

**Comment Procedures:** Written comments may be submitted on the subject matter of the proposed rulemaking to Lisa Thompson, North Carolina State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513.

\*\*\*\*\*

CHAPTER 46 – BOARD OF PHARMACY

**Notice of Rule-making Proceedings** is hereby given by North Carolina Board of Pharmacy 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:** 21 NCAC 46 .1414, .1505, .1601-.1602, .1606-.1608, .1801, .1808, .1812, .2107, .2109, .2502, .2504, .2801, .2803-.2805, .2808, .3201 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 90-18.1; 90-18.2; 90-85.3; 90-85.6; 90-85.7; 90-85.15; 90-85.15A; 90-85.16; 90-85.20; 90-85.21; 90-85.21A; 90-85.22; 90-85.25; 90-85.26; 90-85.28; 90-85.29; 90-85.30; 90-85.32; 90-85.33; 42 U.S.C. 1396r-8(g)

**Statement of the Subject Matter:** Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy (Board) will consider adopting rules, repealing rules, or amending rules addressing responsibilities of pharmacist-manager, drug distribution and control, casting and counting ballots, right to refuse a prescription, examination for licensure, pharmacy permits, license by reciprocity, out-of-state pharmacies, patient counseling, repackaged pharmaceuticals, sterile pharmaceuticals, pharmacies dispensing sterile pharmaceuticals, pharmaceutical labeling requirements, quality assurance programs, administration of immunizations by pharmacists, device and medical equipment subcommittee, representatives, pharmacy technicians, personal appearance requirement, changes in prescription orders, and device and medical equipment permits.

**Reason for Proposed Action:** To revise requirements for pharmacist-manager; to revise requirements for drug distribution and control in hospitals and other health care facilities; to clarify requirements for casting and counting of ballots; to specify when a pharmacist may refuse to fill or refill a prescription order; to set out requirements prior to issuance of a license when certain deficiencies are demonstrated on the examination for licensure; to revise requirements for pharmacy permit applicants and pharmacy permit holders; to revise requirements for applicants for license by reciprocity, to revise requirements for out-of-state pharmacies; to revise requirements for patient counseling, to revise requirements for repackaged

pharmaceuticals; to delete term "parenteral" from "sterile parenteral pharmaceuticals" and to revise requirements for permit holders dispensing sterile pharmaceuticals; to set out requirements for administration of immunization by pharmacists; to set out requirements for election of representatives to the Device and Medical Equipment Subcommittee; to set out requirements for registration of pharmacy technicians; to revise personal appearance requirements; to revise requirements for requesting changes in prescription orders; and to revise requirements for device and medical equipment permit holders.

**Comment Procedures:** Written comments may be submitted on the subject matter of the proposed rulemaking to David R. Work, Executive Director, P.O. Box 459, Carrboro, NC 27510-0459.

\*\*\*\*\*

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

**Notice of Rule-making Proceedings** is hereby given by Board of Examiners of Plumbing, Heating, & Fire Sprinkler Contractors 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:** 21 NCAC 50 .0301, .0306, .0506, .1101, .1401-.1402, .1404-.1405, .1408-.1409. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 87-18

**Statement of the Subject Matter:** Modifications of continuing education rules relative to credit for approved and non-approved courses, handling of courses on Building Code amendments, elimination of block Code course requirements, mechanisms for elimination of course approval, limited license for residential fire sprinkler systems or industrial or health care system testing and maintenance, licensure requirements for water heater replacements, administration of examination in parts; experience required prior to examination and fees for examination.

**Reason for Proposed Action:** Questions have been raised as to the required block of time required for continuing education on periodic changes in the Building Code, partly on account of Insurance Department difficulty and timing for adoption of the Code as a Rule. Clarification also appears needed as to course approval and handling of courses where teachers fail to comply. Segments of industry have raised questions as to the creation of limited license or requirements of license for residential fire sprinkler systems, testing and service of rest home, nursing home or industrial fire sprinkler systems and water heater replacements. With respect to examinations, issues have been raised as to examination in parts, components of experience prerequisite to examination and the cost of examinations.

**Comment Procedures:** Comments may be submitted in writing to the Board addressed to Rulemaking Coordinator at State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors at 1109 Dresser Court, Raleigh, NC 27609 with a copy to Board counsel addressed to John N. Fountain, Young Moore and Henderson, PO Box 31627, Raleigh, NC 27622. Comments must be received by 5:00 p.m. on August 14, 2002.

\*\*\*\*\*

**CHAPTER 57 - REAL ESTATE APPRAISAL BOARD**

**Notice of Rule-making Proceedings** is hereby given by the North Carolina Appraisal Board 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:** 21 NCAC 57A .0204-.0210, .0301-.0304, .0306, .0401-.0407; 57B .0101-.0104, .0201-.0212, .0301-.0307, .0401-.0403, .0501-.0503, .0601-.0607; 57C .0102 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 93E-1-10

**Statement of the Subject Matter:** A review of the existing rules indicates a need for technical and clerical changes.

**Reason for Proposed Action:** The Appraisal Board did a comprehensive review of its rules in 2001. In implementing these new rules, a few areas have been identified that should have been changed at that time.

**Comment Procedures:** Written comments should be directed to M.L. Black, Executive Director, North Carolina Appraisal Board, PO Box 20500, Raleigh, NC 27619-0500.

\*\*\*\*\*

**CHAPTER 58 – REAL ESTATE COMMISSION**

**Notice of Rule-making Proceedings** is hereby given by NC Real Estate 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.

**Citation to Existing Rule Affected by this Rule-making:** 21 NCAC 58A .0107; .0110; .0113, .0302, .0501-.0502, .0505-.0506; 58C .0603; 58E .0102, .0203, .0304. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 93A-2; 93A-2(b); 93A-3; 93A-3(c); 93A-6(a)(10); 93A-6(b)(2); 93A-4; 93A-4(a),(b),(c), (d); 93A-4A; 93A-33; 93A-34

**Statement of the Subject Matter:**  
21 NCAC 58A .0107 – Handling and Accounting of Funds  
21 NCAC 58A .0110 – Broker-In-Charge

21 NCAC 58A .0113 – Reporting Criminal Convictions  
21 NCAC 58A .0302 – Filing and Fees  
21 NCAC 58A .0501 - Character  
21 NCAC 58A .0502 – Business Entities  
21 NCAC 58A .0505 – Reinstatement of Expired License, Revoked, Surrendered or Suspended License  
21 NCAC 58A .0506 – Salesperson to be Supervised by Broker  
21 NCAC 58C .0603 – Application and Criteria for Original Approval  
21 NCAC 58E .0102 – Update Course Component  
21 NCAC 58E .0203 – Application and Criteria for Original Approval  
21 NCAC 58E .0304 – Criteria for Elective Course Approval

**Reason for Proposed Action:**

21 NCAC 58A. 0107 - amend to eliminate the requirement that trust account software print "subsidiary ledger sheets" for vacation rentals. Instead, the rule would stipulate exactly what information the software needs to be able to supply to the Commission in the event of an audit.  
21 NCAC 58A. 0113 - amend to clarify that licensees must report disciplinary actions as well as criminal convictions within 60 days.  
21 NCAC 58A. 0302 - amend to prevent an individual who has filed for licensure as a real estate salesperson from applying for licensure as a real estate broker during the pendency of the salesperson license application.  
21 NCAC 58A. 0501 - repeal since the passage of A.0616 governing character issues made this rule obsolete.  
21 NCAC 58A. 0502; .0110; .0506 - amend to place on the principal broker of a firm the duty to secure and preserve the records of any of the firm's offices which close or which change their Broker-In-Charge. Also, consider requiring the principal broker to examine the trust account for irregularities upon either of these triggering events and to report problems to the Commission promptly. Finally, consider amending the text concerning the information gathered for the processing of firm license applications.  
21 NCAC 58A. 0505 - amend to change the window for reinstating an expired license from 12 months to 6 months. Also, consider removing the reference to the "late filing fee."  
21 NCAC 58C. 0603 - amend to prescribe conditions for submission of a videotape depicting teaching skills by a prelicensing instructor applicant when the applicant is submitting a videotape after having been previously found not to possess satisfactory teaching skills based on a review of a previously submitted videotape.  
21 NCAC 58E. 0102; .0203; .0304 - amend to require that elective and update course instructors who provide study materials on electronic media provide a paper copy of these materials for their students as well. Amend to require that videotapes provided by update course instructor applicants be made within the previous year. The rule currently requires that tapes be made within the previous three years.

**Comment Procedures:** Written comments regarding the proposed rule-making action may be submitted to Pamela Millward, NC Real Estate Commission, PO Box 17100, Raleigh, NC 27619 or to pamela@ncrec.state.nc.us.

\*\*\*\*\*

**CHAPTER 68 - CERTIFICATION BOARD FOR  
SUBSTANCE ABUSE PROFESSIONALS**

**Notice of Rule-making Proceedings** is hereby given by NC Substance Abuse Professional Certification Board 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:** 21 NCAC 68. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 90, Article 5C

**Statement of the Subject Matter:** Rules governing the certification of Substance Abuse Professionals.

**Reason for Proposed Action:** The Board will review existing rules and determine the need to adopt rules governing definitions, standards, education, and procedures for the registration and certification of Substance Abuse Professionals.

**Comment Procedures:** Written comments should be directed to Jim Scarborough, Board Administrator, PO Box 1026, Raleigh, NC 27605.

*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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDSAS intends to adopt the rules cited as 10 NCAC 14V .0203-.0204 and amend the rules cited as 10 NCAC 14G .0102; 14V .0104, .0202. Notice of Rule-making Proceedings was published in the Register on December 3, 2001.*

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**

**Date:** August 12, 2002

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

**Location:** Holiday Inn North, 2805 Highwoods Blvd., Raleigh, NC

**Reason for Proposed Action:** S.L. 2000-55 rewrote G.S. 122C-26 to amend the powers and duties of the Commission for MH/DD/SAS to include adoption of rules applicable to facilities licensed under G.S. 122C, Article 2 that established staff qualifications and personnel requirements.

**Comment Procedures:** Written comments concerning this rulemaking action must be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012, by August 16, 2002. In addition, oral presentation may be presented at the public hearing on August 12, 2002. Please contact either Cindy Kornegay or Susan Collins at 919-881-2446, should you plan to make a presentation, or email cindy.kornegay@ncmail.net or susan.collins@ncmail.net.

**Fiscal Impact**

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

**CHAPTER 14 - MENTAL HEALTH: GENERAL**

**SUBCHAPTER 14G - COMMITTEES AND PROCEDURES**

**SECTION .0100 - PURPOSE: SCOPE: DEFINITIONS**

**10 NCAC 14G .0102 DEFINITIONS**

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 14G, 14H, 14I, and 14J of this Chapter.

(b) As used in the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Associate Professional (AP)" within the DMH/DD/SAS system of care means an individual who is a:
  - (A) graduate of a college or university with a Masters degree in a related human service field with less than one year of full-time, post-graduate accumulated mh/dd/sa experience with the population served, and a substance abuse professional with less than one year of full-time, post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or
  - (B) graduate of a college or university with a baccalaureate degree in a related human service field with less than two years of full-time, post-baccalaureate accumulated mh/dd/sa experience with the population served, and a substance abuse professional with less than two years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or
  - (C) graduate of a college or university with a baccalaureate degree in a field not related to human services with less than four years of full-time, post-

baccalaureate accumulated mh/dd/sa experience with the population served, and a substance abuse professional with less than four years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or

(D) a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has less than four years of full-time accumulated experience in psychiatric mental health nursing.

~~(2)~~(3) "Basic necessities" ~~means-mean~~ the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.

~~(3)~~(4) "Client record" means any record made of confidential information.

~~(4)~~(5) "Clinically ~~privileged~~"-competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients, within well-defined limits, based on the professional's education, training, experience, competence and judgment.

~~(5)~~(6) "Complaint" means an informal verbal or written expression of dissatisfaction, discontent, or protest by a client concerning a situation within the jurisdiction of the state facility. A complaint would usually but not necessarily precede a grievance.

~~(6)~~(7) "Consent" means concurrence by a client or his legally responsible person following receipt of sufficient information ~~by-from~~ the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with sufficient information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.

~~(7)~~(8) "Dangerous articles or substances" ~~means,~~ mean, but ~~is-are~~ not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.

~~(8)~~(9) "Deputy Director" means a member of the management staff of the Division with responsibility for the state facilities relative to a specific disability area. Such directors may include the Deputy Director of Mental Health, Deputy Director of Mental Retardation, Deputy Director of Substance Abuse, or such deputy's designee.

~~(9)~~(10) "Director of Clinical Services" means Medical Director, Director of Medical Services or such person acting in the position of Director of Clinical Services, or his designee.

~~(10)~~(11) "Division Director" means the Director of the Division or his designee.

~~(11)~~(12) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(22) of this Rule for definition of medical emergency].

~~(12)~~(13) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(22) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.

~~(13)~~(14) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.

~~(14)~~(15) "Exploitation" means the use of a client or his resources for another person's profit, business or advantage. "Exploitation" includes borrowing, taking or using personal property from a client with or without the client's permission.

~~(15)~~(16) "Forensic Division" means the inpatient facility at Dorothea Dix Hospital which serves clients who are:

- (A) admitted for the purpose of evaluation for capacity to proceed to trial;
- (B) found not guilty by reason of insanity;
- (C) determined incapable of proceeding to trial; or
- (D) deemed to require a more secure environment to protect the health, safety and welfare of clients, staff and the general public.

~~(16)~~(17) "Grievance" means a formal written complaint by or on behalf of a client concerning a circumstance would usually but not necessarily follow a complaint.

~~(17)~~(18) "Human Rights Committee" means a committee, appointed by the Secretary, to act

- in a capacity regarding the protection of client rights.
- ~~(18)~~(19) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, or be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- ~~(19)~~(20) "Interpreter services" means specialized communication services provided for the hearing impaired by ~~certified interpreters~~ interpreters certified by the National Registry of Interpreters for the Deaf or the National Association of the Deaf.
- ~~(20)~~(21) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- ~~(21)~~(22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.
- ~~(22)~~(23) "Major physical injury" means damage caused to the body resulting in ~~substantial profuse~~ bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- ~~(23)~~(24) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.
- ~~(24)~~(25) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- ~~(25)~~(26) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- ~~(26)~~(27) "Neglect" means the failure to provide care or services necessary to maintain the mental health, physical health and well-being of the client.
- ~~(27)~~(28) "Neuroleptic medication" means a category of psychotropic drugs used to treat schizophrenia and related disorders. Neuroleptics are the only category of psychotropic drugs with long-term side effects of major consequence (e.g., tardive dyskinesia). Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.
- ~~(28)~~(29) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- ~~(29)~~(30) "Paraprofessional" within the DMH/DD/SAS system of care means an individual who has:  
(A) a GED or high school diploma; or  
(B) no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service; and  
(C) upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- ~~(30)~~(31) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- ~~(31)~~(32) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement, or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical

guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.

~~(30)~~(33) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with ~~major~~ physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 14J, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 14J.

~~(31)~~(34) "Psychosurgery" means surgical procedures for the intervention in or alteration of a mental, emotional or behavior disorder.

~~(32)~~(35) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, anti-depressants, minor tranquilizers and lithium.

(33) ~~"Qualified professional" means any person with appropriate training or experience in the professional fields of mental health care, mental illness, mental retardation, or substance abuse, including but not limited to, physicians, psychologists, social workers, registered nurses, qualified mental retardation professionals and qualified alcoholism or drug abuse professionals, as these terms are defined in 10 NCAC 14K .0103, "Licensure Rules for Mental Health, Mental Retardation and Other Developmental Disabilities, and Substance Abuse Facilities", division publication APSM 40-2. In addition, qualified professionals shall include special education instructors, physical therapists, occupational therapists, speech therapists and any other recognized professional group designated by the State Facility Director~~

~~(36)~~ "Qualified professional" means, within the MH/DD/SAS system of care, an individual serving in the following categories:

~~(A) Independent Practitioner. An independent practitioner is an individual who holds an unrestricted license, certificate, registration issued by the board regulating the profession in the following disciplines: Ph.D. Psychologist, Psychiatrist, Certified Clinical Social Worker, Clinical Nurse Specialist certified in Psychiatric Mental Health Advanced Practice Nursing, Licensed Clinical Social Worker, Licensed Occupational, Physical and Speech Therapists who provide and bill mh/dd/sa services under their own provider number and through employment or contract with an area program or other billing provider; or~~  
~~(B) Independent Practitioner Provisional. An independent practitioner provisional has a limited, provisional and temporary license, certificate, registration or permit in the disciplines as specified in Paragraph (b)(36)(A) of this Rule issued by the governing board regulating the profession and requires clinical supervision by an independent practitioner and provides and bills mh/dd/sa services under their own provider number and through employment or contract with an area program or other billing provider; or~~

~~(C) Qualified Professional of MH/DD/SA Services:~~

- ~~(i) a graduate of a college or university with a Masters degree in a related human service field and has one year of full-time, post-graduate accumulated mh/dd/sa experience with the population served, and a substance abuse professional shall have two years of full-time, post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or~~
- ~~(ii) a graduate of a college or university with a baccalaureate degree in a related human service field and has two years of full-time, post-baccalaureate accumulated mh/dd/sa experience with the population served, and a~~

- substance abuse professional shall have two years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling; or
- (iii) a graduate of a college or university with a baccalaureate degree in a field not related to human services and has four years of full-time, post-baccalaureate accumulated mh/dd/sa experience with the population served, and a substance abuse professional shall have four years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling; or
- (iv) a substance abuse professional who has a counseling certification by the North Carolina Substance Abuse Professional Certification Board; or
- (v) a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has four years of full-time accumulated experience in psychiatric mental health nursing.
- (34)(37) "Regional alcoholic rehabilitation center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).
- (35)(38) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).
- (36)(39) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).
- (37)(40) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.
- (38)(41) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.
- (39)(42) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.
- (40)(43) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph ~~(b)(32) in (b)(36)~~ of this Rule.
- (41) ~~"Restraint" means the limitation of one's freedom of movement. In accordance with G.S. 122C-60, restraint includes the following:~~
- ~~(A) mechanical restraint which is restraining a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets or restraining shirts. This does not include handcuffs used for the purpose of escorting forensic clients;~~
- ~~(B) physical restraint which is restraining a client by physically holding or subduing the client until he is calm.~~
- (42)(44) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior, except that in the Forensic Division at Dorothea Dix Hospital, seclusion shall not include the routine use of locked rooms, isolation of clients admitted for evaluation of capacity to proceed to trial who are considered to be an escape risk, or separation of juveniles requiring separation from adult clients.
- (43)(45) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.
- (44)(46) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (45)(47) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (46)(48) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (47)(49) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.
- (48)(50) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of the client.
- (49)(51) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been clearly assigned



to a director, supervisor, administrator, or manager.

~~(50)~~(52) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147.

**SUBCHAPTER 14V - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

**SECTION .0100 - GENERAL INFORMATION**

**10 NCAC 14V .0104 STAFF DEFINITIONS**

The following credentials and qualifications apply to staff described in this Subchapter:

~~(1)~~ "Associate Professional (AP)" within the DMH/DD/SAS system of care means an individual who is a:

~~(a)~~ graduate of a college or university with a Masters degree in a related human service field with less than one year of full-time, post-graduate accumulated mh/dd/sa experience with the population served, and a substance abuse professional with less than one year of full-time, post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or

~~(b)~~ graduate of a college or university with a baccalaureate degree in a related human service field with less than two years of full-time, post-baccalaureate accumulated mh/dd/sa experience with the population served, and a substance abuse professional with less than two years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or

~~(c)~~ graduate of a college or university with a baccalaureate degree in a field not related to human services with less than four years of full-time, post-baccalaureate accumulated mh/dd/sa

experience with the population served, and a substance abuse professional with less than four years of full-time, post-baccalaureate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or

~~(d)~~ registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has less than four years of full-time accumulated experience in psychiatric mental health nursing.

~~(1)~~(2) "Certified counselor" means a counselor who is certified as such by the North Carolina Counseling Association as a Licensed Professional Counselor (LPC).

~~(2)~~(3) "Certified alcoholism counselor (CAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

~~(3)~~(4) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

~~(4)~~(5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.

~~(5)~~(6) "Clinical" means having to do with the active direct treatment/habilitation of a client.

~~(6)~~(7) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.

~~(7)~~(8) "Clinical/professional supervision" means regularly scheduled assistance by a qualified mental health professional, a qualified substance abuse professional or a qualified developmental disabilities professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.

~~(8)~~(9) "Clinical social worker" means a social worker who is licensed as such by the N.C. Board of Social Work.

~~(10)~~ "Director" means the individual who is responsible for the operation of the facility.

~~(9)~~(11) "Licensed Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina.

~~(10)~~(12) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.

(13) "Paraprofessional" within the DMH/DD/SAS system of care means an individual who has:  
(a) a GED or high school diploma; or  
(b) no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service; and  
(c) upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.

~~(14)~~ "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.

~~(12)~~(14) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience.

~~(13)~~(15) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.

~~(14)~~ "Qualified alcoholism professional" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.

~~(15)~~(16) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.

(17) "Qualified professional" means, within the MH/DD/SAS system of care, an individual serving in the following categories:

(a) Independent Practitioner. An independent practitioner is an individual who holds an unrestricted license, certificate, registration, issued by the board regulating the

profession in question, in the following disciplines: Ph.D. Psychologist, Psychiatrist, Certified Clinical Social Worker, Clinical Nurse Specialist certified in Psychiatric Mental Health Advanced Practice Nursing, Licensed Clinical Social Worker, Licensed Occupational, Physical and Speech Therapist and who provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or

(b) Independent Practitioner Provisional. An independent practitioner provisional has a limited, provisional and temporary license, certificate, registration or permit in the disciplines listed above issued by the governing board regulating the profession and requires clinical supervision by a qualified independent practitioner and provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or

(c) Qualified Professional of MH/DD/SA Services:

(i) a graduate of a college or university with a Masters degree in a related human service field and has one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have one year of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

(ii) a graduate of a college or university with a baccalaureate degree in a related human service field and has two years of full-time, post- baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

- (iii) ~~a graduate of a college or university with a baccalaureate degree in a field not related to human services and has four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have four years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or~~
  - (iv) ~~a substance abuse professional who has a counseling certification by the North Carolina Substance Abuse Professional Certification Board; or~~
  - (v) ~~a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing and has four years of full-time accumulated experience in psychiatric mental health nursing.~~
- (16) ~~"Qualified developmental disabilities professional" means an individual who is:~~
- (a) ~~a graduate of a college or university with a baccalaureate degree in a discipline related to developmental disabilities and at least one year of supervised habilitative experience in working with individuals with developmental disabilities;~~
  - (b) ~~a graduate of a college or university with a baccalaureate degree in a human service related field and at least two years of supervised habilitative experience in working with individuals with developmental disabilities; or~~
  - (c) ~~a graduate of a college or university with a baccalaureate degree in a field other than one related to developmental disabilities and at least three years of supervised habilitative experience in working with individuals with developmental disabilities.~~
- (17) ~~"Qualified drug abuse professional" means an individual who is:~~
- (a) ~~certified as such by the North Carolina Substance Abuse Professional Certification Board;~~
  - (b) ~~a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of drug abuse counseling; or~~
  - (c) ~~a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of drug abuse counseling.~~
- (18) ~~"Qualified mental health professional" means an individual who is:~~
- (a) ~~a psychiatrist, psychiatric nurse, licensed psychologist, or a psychiatric social worker;~~
  - (b) ~~graduate of a college or university with an advanced degree in a related human service field and two years of supervised clinical experience in mental health services; or~~
  - (c) ~~a graduate of a college or university with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.~~
- (19) ~~"Qualified substance abuse professional" means an individual who is:~~
- (a) ~~certified as such by the North Carolina Substance Abuse Professional Certification Board; or~~
  - (b) ~~a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of alcoholism and drug abuse Counseling; or~~
  - (c) ~~a graduate of a college or university with a baccalaureate degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.~~

Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147.

**SECTION .0200 - OPERATION AND MANAGEMENT RULES**

**10 NCAC 14V .0202 PERSONNEL REQUIREMENTS**

(a) All facilities shall have a written job description for the director and each staff position which:

- (1) specifies the minimum level of education, competency, work experience and other qualifications for the position;
- (2) specifies the duties and responsibilities of the position;

- (3) is signed by the staff member and the supervisor; and
  - (4) is retained in the staff member's file.
- (b) All facilities shall ensure that the director, each staff member or any other person who provides care or services to clients on behalf of the facility:
- (1) is at least 18 years of age;
  - (2) is able to read, write, understand and follow directions;
  - (3) meets the minimum level of education, competency, work experience, skills and other qualifications for the position; and
  - (4) has no substantiated findings of abuse or neglect listed on the North Carolina Health Care Personnel Registry.

~~(a)(c)~~ All facilities or services shall require that all applicants for employment disclose any criminal conviction. The impact of this information on a decision regarding employment shall be based upon the offense in relationship to the job for which the applicant is applying.

~~(b)(d)~~ Staff of a facility or a service shall be currently licensed, registered or certified in accordance with applicable state ~~laws, as appropriate laws~~ for the services provided.

~~(e)(e)~~ A ~~personnel record file~~ shall be maintained for each individual employed indicating the training, ~~experience, experience~~ and other qualifications for the position, including verification ~~appropriate to of~~ licensure, registration or certification.

~~(d)(f)~~ Continuing education shall be documented.

~~(e)(g)~~ ~~Orientation programs shall be provided. Employee training programs shall be provided and, at a minimum, shall consist of the following:~~

- (1) general organizational orientation;
- (2) training on client rights and confidentiality;
- (3) training to assist clients with mh/dd/sa needs or clients with dual diagnoses; and
- (4) training in infectious diseases and bloodborne pathogens.

~~(f)~~ ~~Staff training including training in infectious diseases and blood-borne pathogens.~~

~~(g)(h)~~ Except as permitted under 10 NCAC 14V .5602(b) of this Subchapter, at least one staff member shall be available in a the facility at all times when a client is present. That staff member shall be who is trained in basic first aid including seizure management, currently trained to provide cardiopulmonary resuscitation, resuscitation seizure management, and trained in the Heimlich maneuver or other approved Red Cross First Aid first aid techniques such as those provided by Red Cross, the American Heart Association or their equivalence for relieving airway obstruction shall be available at all times. obstruction.

~~(h)(i)~~ The governing body shall develop and implement policies and procedures for identifying, reporting, investigating and controlling infectious and communicable diseases of personnel and clients. may require medical statements from all direct care providers except those in facilities that provide only periodic services. When, in these Rules, a medical statement is required, the following shall apply:

- (1) ~~The staff member shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed~~

~~physician, nurse practitioner, or physician's assistant.~~

~~(2)~~ ~~The medical statement may be in any written form but shall be signed by the physician, nurse practitioner, or physician's assistant and indicate the general good physical and mental health of the individual, the evidence of the absence of any indication of active tuberculosis and communicable diseases, or any other condition that poses a threat to clients.~~

~~(3)~~ ~~The facility or program shall keep the most recent medical statement on file.~~

Authority G.S. 122C-26.

**10 NCAC 14V .0203 COMPETENCIES OF QUALIFIED PROFESSIONALS AND ASSOCIATE PROFESSIONALS**

(a) Qualified professionals and associate professionals shall demonstrate knowledge, skills and abilities required to serve the client based on the individualized treatment/habilitation plan.

(b) The governing body for each facility shall develop and implement policies and procedures for the initiation of an individualized supervision plan upon hiring each associate professional.

(c) The associate professional shall be supervised by a qualified professional with the population served for the period of time as specified in Rule .0104 of this Subchapter.

Authority G.S. 122C-26.

**10 NCAC 14V .0204 COMPETENCIES AND SUPERVISION OF PARAPROFESSIONALS**

There shall be no privileging requirements for paraprofessionals:

(1) Paraprofessionals shall be supervised by an associate professional or by a qualified professional as specified in Rule .0104 of this Subchapter.

(2) Paraprofessionals shall demonstrate knowledge, skills and abilities required to serve the client based on the individualized treatment/habilitation plan.

Authority G.S. 122C-26.

---

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 18C .1510. Notice of Rule-making Proceedings was published in the Register on January 15, 2002.*

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**  
**Date:** August 7, 2002  
**Time:** 2:00 p.m.

PROPOSED RULES

Location: 1330 St. Mary's Street, Conference Room G1-B, Raleigh, NC

Reason for Proposed Action: In order to meet the conditions of the primacy agreement with the US Environmental Protection Agency, North Carolina's rules must be no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulations: Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring was promulgated on January 22, 2002. This federal rule is applicable to community and non-transient non-community water systems and lowers the existing maximum contaminant level (MCL) for arsenic from .05 mg/L to 0.01mg/L. The effective date of the federal rule is January 23, 2006. North Carolina has already amended its existing State rule (15A NCAC 18C .1510) as a Temporary Rule and has lowered its MCL for arsenic to .010 mg/L, however, the effective date established for the new MCL was January 1, 2002. The Commission for Health Services approved this amendment to North Carolina's rules on December 11, 2001.

Comment Procedures: Written comments will be accepted through August 14, 2002. Send comments to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or phone (919) 715-3225.

Fiscal Impact

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .1500 - WATER QUALITY STANDARDS

15A NCAC 18C .1510 MAXIMUM CONTAMINANT LEVELS FOR INORGANIC CHEMICALS

(a) The provisions of 40 C.F.R. 141.11 are hereby incorporated by reference, including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, Environment and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from USEPA's homepage at http://www.epa.gov/safewater. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page.

(b) The provisions of 40 C.F.R. 141.62 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, Environment and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street,

2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from USEPA's homepage at http://www.epa.gov/safewater. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page.

(c) Effective January 1, 2002, the maximum contaminant level for arsenic applies to community and non-transient non-community water systems as follows:

- (1) The maximum contaminant level for arsenic is 0.010 milligrams per liter, until such time as the USEPA revises the standard to a level lower than 0.010 milligrams per liter at which time the more stringent level shall apply.
(2) Sampling, analytical requirements, and compliance calculations for arsenic shall be conducted as specified for the contaminants in 15A NCAC 18C .1508.
(3) Certified laboratories must report quantifiable results down to at least 0.005 milligrams per liter for arsenic compliance samples effective January 1, 2002.
(4) Water systems with arsenic in excess of the maximum contaminant level from the latest compliance sample must submit by January 1, 2005 a compliance schedule to the Division of Environmental Health, Public Water Supply Section stating the alternative solution that has been selected, the actions to be taken, and the deadline for those actions in order to meet the revised standard by the compliance date. The system must be in compliance with the MCL by January 23, 2006. In the interim period, the water system shall provide public notice pursuant to 15A NCAC 18C .1523. Exceedence of the maximum contaminant level shall be reported in the Consumer Confidence Report pursuant to 15A NCAC 18C.1538.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

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 adopt the rules cited as 19A NCAC 02F .0101-.0103. Notice of Rule-making Proceedings was published in the Register on February 15, 2002.

Proposed Effective Date: April 1, 2003 (Temporary Rules Eff. January 11, 2002)

Public Hearing:

Date: August 5, 2002

Time: 2:00 p.m.

**Location:** Room 150, Transportation Building, 1 South Wilmington Street, Raleigh, NC

**Reason for Proposed Action:** *These rules are proposed for adoption pursuant to the authority granted by the NC General Assembly in Section 27.22 of Session Law 2001-424. Temporary rules were published in the November 1, 2001 NC Register. Comments were received through the Clearinghouse and revised temporary rules were published in the February 15, 2002 NC Register. Additional Clearinghouse comments were received through April, 2002. Proposed rules were subsequently published in the June 3, 2002 NC Register but changes approved by the Clearinghouse and by the Board of Transportation on May 2, 2002 were not incorporated. These rules reflect text approved by the DOT in May. The rules are necessary to set environmental minimum criteria conditions under which highway projects may be constructed.*

**Comment Procedures:** *Any interested person may comment by submitting written comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699, by August 16, 2002.*

**Fiscal Impact**

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

**CHAPTER 02 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 02F - DEPARTMENT OF TRANSPORTATION'S MINIMUM CRITERIA**

**SECTION .0100 - MINIMUM CRITERIA**

**19A NCAC 02F .0101 PURPOSE**

This Section establishes minimum criteria to be used in determining when the preparation of environmental documents pursuant to the North Carolina Environmental Policy Act (NCEPA) is not required.

*Authority G.S. 113A-11; 143B-10.*

**19A NCAC 02F .0102 MINIMUM CRITERIA**

The following minimum criteria are established as an indicator of the types and classes of thresholds of activities at and below which environmental documentation under the NCEPA is not required:

- (1) Approval of:
  - (a) installation of utilities along or across a transportation facility;
  - (b) grade separated crossings of highways by railroads or highway; or
  - (c) grading, commercial driveways, and other encroachments on the highway right-of-way;
- (2) Construction of bicycle and pedestrian lanes, paths, and facilities;
- (3) Construction of safety projects such as guardrails, grooving, glare screen, safety barriers, and energy attenuators;

- (4) Installation of noise barriers or alterations to existing public buildings to provide for noise reduction;
- (5) Landscaping of highway, railroad, and rest area projects;
- (6) Installation of fencing, signs, pavement markings, small passenger shelters, lighting, traffic signals, and railroad signal systems and warning devices;
- (7) Repair, rehabilitation, or replacement of a highway or railway facility in general conformance with the original design and alignment, which is commenced immediately after the occurrence of a natural disaster or catastrophic failure, to restore the highway or the health, welfare, and safety of the public;
- (8) Highway or railway modernization by means of the following activities, which involves less than a total of 10 cumulative acres of ground surface previously undisturbed by highway or railway construction, limited to a single project, noncontiguous to any other project making use of this provision:
  - (a) resurfacing, restoration, or reconstruction;
  - (b) adding lanes for travel, parking, weaving, turning, or climbing;
  - (c) correcting substandard curves and intersections;
  - (d) adding shoulders or minor widening;
  - (e) adding or extending passing sidings;
  - (f) lengthening of railway spirals; or
  - (g) flattening of railway curves;
- (9) Reconstruction of existing crossroad or railroad separations and existing stream crossings, including, but not limited to, pipes, culverts, and bridges;
- (10) Approval of oversized and overweight permits;
- (11) Approval of outdoor advertising permits;
- (12) Maintenance or repair of the state highway or railway system to include work such as:
  - (a) Grading and stabilizing unpaved roads;
  - (b) Maintaining unpaved shoulders;
  - (c) Cleaning ditches and culverts;
  - (d) Patching paved surfaces;
  - (e) Maintaining bridges;
  - (f) Removing snow and ice;
  - (g) Controlling erosion and vegetation growth;
  - (h) Manufacturing and stockpiling material;
  - (i) Paving secondary roads; and
  - (j) Timber and surfacing of rail lines;
- (13) Assumption of maintenance of roads constructed by others;
- (14) Making capital improvements constructed at an existing DOT facility that:
  - (a) Require less than one acre of exposed, erodible ground surface; and

- (b) Require the use of structures which do not involve handling or storing hazardous materials which exceed the threshold planning limits of Title 3 of the Superfund Amendments and Reauthorization Act of 1986;
- (15) Construction of a new two-lane highway in accordance with accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, noncontiguous to any other project making use of this provision;
- (16) Reconstructing, rehabilitating, resurfacing, or maintaining existing runways, taxiways, aircraft aprons, access roads, and automobile parking lots;
- (17) Constructing, reconstructing, rehabilitating, or upgrading of lighting associated with runways, taxiways, and apron edges; visual approach aids; instrument approach aids; wind indicators; rotating beacons; obstruction lights; area lights; security lights; and the electrical distribution systems and control systems for such facilities;
- (18) Construction of terminal buildings, railway stations, maintenance buildings, and hangars involving less than five acres of previously undisturbed ground;
- (19) Acquiring property to meet Federal or State standards, requirements, or recommendations directly relating to aviation safety;
- (20) Acquiring 10 acres or less of property for future airport development or future railroad development;
- (21) Construction on existing airport property which has previously been disturbed by clearing, grubbing, or grading on land involving less than 10 acres of exposed, erodible ground surface;
- (22) Planning airport projects to include master plans, noise and compatibility plans, preliminary construction project plans, and special planning studies such as economic impact studies;
- (23) Rehabilitating, maintaining, and improving airport drainage systems on airport property to include landscaping and erosion control facilities involving less than five acres of previously undisturbed ground;
- (24) Purchasing vehicles for mass transportation purposes;
- (25) Maintaining and improving railroad track and bed in the existing right of way;
- (26) Implementation of any project which qualifies as a "categorical exclusion" under the National Environmental Policy Act by one of the Agencies of the U.S. Department of Transportation;

- (27) Acquisition and construction of wetland, stream, and endangered species mitigation sites;
- (28) Remedial activities involving the removal, treatment or monitoring of soil or groundwater contamination pursuant to state or federal remediation guidelines; and
- (29) Other activities, not specifically described above, involving maintenance or repair needed to maintain the original function of an existing project or facility without expansion or change in use; sampling, monitoring, and related data-gathering activities; and minor construction or land-disturbing activities that impact less than five acres.

*Authority G.S. 113A-9; 113A-11; 143B-10(j).*

**19A NCAC 02F .0103      EXCEPTIONS TO MINIMUM CRITERIA**

Any activity falling within the parameters of the minimum criteria set out in Rule .0102 of this Section shall not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of Transportation or his designee shall determine if environmental documents are required in any case where a Division Director or Branch Manager makes one of the following findings as to a proposed activity:

- (1) The proposed activity may have significant adverse effects on wetlands; surface waters such as rivers, streams, and estuaries; parklands, prime or unique agricultural lands; or areas of recognized scenic, recreational, archaeological, or historical value; or would endanger the existence of a species identified on the Department of Interior's threatened and endangered species list.
- (2) The proposed activity could cause changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create significant adverse water quality, air quality, or ground water impacts; or have a significant adverse effect on long-term recreational benefits or shellfish, finfish, wildlife, or their natural habitats.
- (3) The secondary or cumulative impacts of the proposed activity, which are not generally covered in the approval process, may result in a significant adverse impact to human health or the environment.
- (4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

*Authority G.S. 113A-9; 113A-11; 143B-10(j).*

**CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Physical Therapy Examiners intends to amend the rule cited as 21 NCAC 48C .0101. Notice of Rule-making Proceedings was published in the Register on May 15, 2002.*

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**

**Date:** August 13, 2002

**Time:** 12:00-12:30 p.m.

**Location:** Siena Hotel, Lombardi Room, 1505 East Franklin St., Chapel Hill, NC

**Reason for Proposed Action:** The purpose of this Rule change will be to clarify the scope of physical therapy practice.

**Comment Procedures:** Comments will be accepted through August 14, 2002. Letters must be legible and signed and include a phone number. Please send comments to Ben F. Massey, Jr., P.T., Executive Director, NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 140, Durham, NC 27705. If you have questions, please do not hesitate to call Mr. Massey at 919-490-6393 or 800-800-8982, fax 919-490-5106, email ncptboard@mindspring.com.

**Fiscal Impact**

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

**SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE**

**SECTION .0100 – PHYSICAL THERAPISTS**

**21 NCAC 48C .0101 PERMITTED PRACTICE**

(a) Physical therapy is presumed to include any acts, tests, procedures, treatments or modalities that are routinely taught in educational programs or in continuing education programs for physical therapists and are routinely performed in practice settings.

(b) A physical therapist who employs acts, tests, procedures and modalities in which professional training has been received through education or experience is considered to be engaged in the practice of physical therapy.

(c) A physical therapist must supervise physical therapist assistants, physical therapy aides, PT students and PTA students to the extent required under the Physical Therapy Practice Act and these Rules. Physical therapy aides include all non licensed individuals aiding in the provision of physical therapy services.

~~(d) Physical therapy, which is the care and services provided by or under the direction and supervision of a physical therapist, includes:~~

- ~~(1) examining (history, system review and tests and measures) individuals in order to determine a diagnosis, prognosis, and~~

~~intervention; tests and measures may include, but are not limited to, the following:~~

- ~~(A) aerobic capacity and endurance;~~
- ~~(B) anthropometric characteristics;~~
- ~~(C) arousal, attention, and cognition;~~
- ~~(D) assistive and adaptive devices;~~
- ~~(E) community and work (job/school/play) integration or reintegration;~~
- ~~(F) cranial nerve integrity;~~
- ~~(G) environmental, home, and work (job/school/play) barriers;~~
- ~~(H) ergonomics and body mechanics;~~
- ~~(I) gait, locomotion, and balance;~~
- ~~(J) integumentary integrity;~~
- ~~(K) joint integrity and mobility;~~
- ~~(L) motor function;~~
- ~~(M) muscle performance;~~
- ~~(N) neuromotor development and sensory integration;~~
- ~~(O) orthotic, protective and supportive devices;~~
- ~~(P) pain;~~
- ~~(Q) posture;~~
- ~~(R) prosthetic requirements;~~
- ~~(S) range of motion;~~
- ~~(T) reflex integrity;~~
- ~~(U) self care and home management;~~
- ~~(V) sensory integrity; and~~
- ~~(X) ventilation, respiration, and circulation.~~

~~(2) alleviating impairment and functional limitation by designing, implementing, and modifying therapeutic interventions may include, but are not limited to the following:~~

- ~~(A) coordination, communication and documentation;~~
- ~~(B) patient/client related instruction;~~
- ~~(C) therapeutic exercise (including aerobic conditioning);~~
- ~~(D) functional training in self care and home management (including activities of daily living and instrumental activities of daily living);~~
- ~~(E) functional training in community and work (jobs/school/play) integration or reintegration activities (including instrumental activities of daily living, work hardening, and work conditioning);~~
- ~~(F) manual therapy techniques (including mobilization and manipulation);~~
- ~~(G) prescription, application, and fabrication of assistive, adaptive, orthotic, protective, supportive, and prosthetic devices and equipment that is within the scope of practice of physical therapy;~~
- ~~(H) airway clearance techniques;~~
- ~~(I) wound management;~~



- ~~(J) electrotherapeutic modalities; and~~
- ~~(K) physical agents and mechanical modalities.~~

- ~~(3) preventing injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations.~~

~~(e)(d)~~ The practice of physical therapy is the application of a broad range of evaluation and treatment procedures related to abnormality of human sensorimotor performance. It includes, but is not limited to, tests of joint motion, muscle length and strength, posture and gait, limb length and circumference, activities of daily living, pulmonary function, cardio-vascular function, nerve and muscle electrical properties, orthotic and prosthetic fit and function, sensation and sensory perception, reflexes and muscle tone, and sensorimotor and other skilled performances; treatment procedures such as hydrotherapy, shortwave or microwave diathermy, ultrasound, infra-red and ultraviolet radiation, cryotherapy, electrical stimulation including transcutaneous electrical neuromuscular stimulation, massage, debridement, intermittent vascular compression, iontophoresis, machine and manual traction of the cervical and lumbar spine, joint mobilization, machine and manual therapeutic exercise including isokinetics and biofeedback, and training in the use of orthotic, prosthetic and other assistive devices including crutches, canes and wheelchairs. ~~Physical therapy, which is the care and services provided by or under the direction and supervision of a physical therapist, includes: Physical therapy further includes, but is not limited to:~~

- ~~(1) examining (history, system review and tests and measures) individuals in order to determine a diagnosis, prognosis, and intervention [within the physical therapist's scope of practice]; tests and measures may include, but are not limited to, the following:~~
  - ~~(A) aerobic capacity and endurance;~~
  - ~~(B) anthropometric characteristics;~~
  - ~~(C) arousal, attention, and cognition;~~
  - ~~(D) assistive and adaptive devices;~~
  - ~~(E) community and work (job/school/play) integration or reintegration;~~
  - ~~(F) cranial nerve integrity;~~
  - ~~(G) environmental, home, and work (job/school/play) barriers;~~
  - ~~(H) ergonomics and body mechanics;~~
  - ~~(I) gait, locomotion, and balance;~~
  - ~~(J) integumentary integrity;~~
  - ~~(K) joint integrity and mobility;~~
  - ~~(L) motor function;~~
  - ~~(M) muscle performance;~~
  - ~~(N) neuromotor development and sensory integration;~~

- ~~(O) orthotic, protective and supportive devices;~~
- ~~(P) pain;~~
- ~~(Q) posture;~~
- ~~(R) prosthetic requirements;~~
- ~~(S) range of motion;~~
- ~~(T) reflex integrity;~~
- ~~(U) self-care and home management;~~
- ~~(V) sensory integrity; and~~
- ~~(X) ventilation, respiration, and circulation.~~

- ~~(2) alleviating impairment and functional limitation by designing, implementing, and modifying therapeutic interventions may include, but are not limited to the following:~~
  - ~~(A) coordination, communication and documentation;~~
  - ~~(B) patient/client-related instruction;~~
  - ~~(C) therapeutic exercise (including aerobic conditioning);~~
  - ~~(D) functional training in self-care and home management (including activities of daily living and instrumental activities of daily living);~~
  - ~~(E) functional training in community and work (jobs/school/play) integration or reintegration activities (including instrumental activities of daily living, work hardening, and work conditioning);~~
  - ~~(F) manual therapy techniques (including mobilization and manipulation);~~
  - ~~(G) prescription, application, and fabrication of assistive, adaptive, orthotic, protective, supportive, and prosthetic devices and equipment that is within the scope of practice of physical therapy;~~
  - ~~(H) airway clearance techniques;~~
  - ~~(I) wound management;~~
  - ~~(J) electrotherapeutic modalities; and~~
  - ~~(K) physical agents and mechanical modalities.~~
- ~~(3) preventing injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations.~~

Authority G.S. 90-270.24; 90-270.26.

**RULES REVIEW COMMISSION**

*This Section contains information for the meeting of the Rules Review Commission on Thursday, July 18, 2002, 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. 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**

Thomas Hilliard, III  
Robert Saunders  
Laura Devan  
Jim Funderburke  
David Twiddy

**Appointed by House**

Paul Powell - Chairman  
Jennie J. Hayman Vice - Chairman  
Dr. Walter Futch  
Jeffrey P. Gray  
Dr. John Tart

**RULES REVIEW COMMISSION MEETING DATES**

July 18, 2002

**Commission Review/Administrative Rules**

*Log of Filings (Log #187)*

*April 20, 2002 through June 20, 2002*

**DEPARTMENT OF ADMINISTRATION**

Purpose	1 NCAC 40 .0104	Adopt
Organization	1 NCAC 40 .0105	Adopt
Definitions	1 NCAC 40 .0106	Adopt
Definitions	1 NCAC 40 .0205	Adopt
Issuance of Driving Eligibility Certificates	1 NCAC 40 .0206	Adopt
Revocation of Driving Eligibility Certificates	1 NCAC 40 .0207	Adopt
Student Appeals Process	1 NCAC 40 .0208	Adopt

**CULTURAL RESOURCES, DEPARTMENT OF/US NORTH CAROLINA BATTLESHIP COMMISSION**

Admission Prices	7 NCAC 5 .0203	Amend
------------------	----------------	-------

**DHHS/DIVISION OF FACILITY SERVICES**

Criteria and Standards for Nursing Facility or	10 NCAC 03R .1125	Amend
Required Performance Standards	10 NCAC 03R .1126	Amend

**DHHS/COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & SUBSTANCE ABUSE SERVICES**

Scope Outpatient Opioid	10 NCAC 14V .3601	Amend
Definitions Outpatient Opioid	10 NCAC 14V .3602	Amend
Operations Outpatient Opioid	10 NCAC 14V .3604	Amend
Scope Residential Recovery	10 NCAC 14V .4101	Amend
Staff Residential Recovery	10 NCAC 14V .4102	Amend
Operations Residential	10 NCAC 14V .4103	Amend

**DHHS/COMMISSION FOR MH/DD/SAS**

Schedule IV Controlled Substance	10 NCAC 45H .0205	Amend
----------------------------------	-------------------	-------

**DEPARTMENT OF INSURANCE**

Deviations from Rates of the North Carolina Rate	11 NCAC 10 .1106	Amend
--	------------------	-------

**DEPARTMENT OF INSURANCE**

Purpose and Definitions	11 NCAC 12 .0815	Amend
Minimum Benefit Standards for Before January 1 1992	11 NCAC 12 .0820	Amend
Minimum Benefit Standards January 1 1992	11 NCAC 12 .0835	Amend
Guaranteed Issue for Eligible Persons	11 NCAC 12 .0842	Amend

**DENR/ENVIRONMENTAL MANAGEMENT COMMISSION**

Form and Contents of Petition	15A NCAC 02I .0501	Adopt
-------------------------------	--------------------	-------

**RULES REVIEW COMMISSION**

---

Review by a Committee of the Commission	15A NCAC 02I .0502	Adopt
Presentation to the Commission	15A NCAC 02I .0503	Adopt
Recourse to Denial of Petition	15A NCAC 02I .0504	Adopt
<b>DENR/MARINE FISHERIES COMMISSION</b>		
Definitions	15A NCAC 03I .0101	Amend
Possession or Transportation	15A NCAC 03I .0120	Amend
Fyke or Hoop Nets	15A NCAC 03J .0111	Amend
Prohibited Shellfish	15A NCAC 03K .0101	Amend
Shellfish or Seed Management	15A NCAC 03K .0103	Amend
Permits for Planting Shellfish from Prohibited	15A NCAC 03K .0104	Amend
Depuration of Shellfish	15A NCAC 03K .0107	Amend
Marketing Oysters Taken from Private Shellfish	15A NCAC 03K .0205	Amend
Oyster Size and Harvest Limit Exemption	15A NCAC 03K .0207	Amend
Mechanical Harvest Season	15A NCAC 03K .0302	Amend
Snapper Grouper	15A NCAC 03M .0506	Amend
Bluefish	15A NCAC 03M .0511	Amend
Standards for Shellfish Bottom and Water Column	15A NCAC 03O .0201	Amend
Cancellation	15A NCAC 03O .0208	Amend
Procedures and Requirements to Obtain Permits	15A NCAC 03O .0501	Amend
<b>DENR/SOIL AND WATER CONSERVATION COMMISSION</b>		
Purpose	15A NCAC 06H .0101	Adopt
Definitions	15A NCAC 06H .0102	Adopt
Approval of Best Management Practices (PMPs)	15A NCAC 06H .0103	Adopt
Approval of Water Quality Technical Specialists	15A NCAC 06H .0104	Adopt
Application of BMP Approval and Technical Special	15A NCAC 06H .0105	Adopt
<b>DENR/COMMISSION FOR HEALTH SERVICES</b>		
STDS for the MGMT of Specific HW/Types HWM Facility	15A NCAC 13A .0111	Amend
Definitions	15A NCAC 13A .1801	Amend
<b>OCCUPATIONAL LICENSING BOARDS/NC BOARD OF NURSING</b>		
License By Examination	21 NCAC 36 .0211	Amend
Licensure Without Examination (By Endorsement)	21 NCAC 36 .0218	Amend
<b>NC STATE BOARD OF COMMUNITY COLLEGES</b>		
Education Services for Minors	23 NCAC 02C .0305	Amend
Fee Waivers for the Human Resources	23 NCAC 02D .0319	Amend
Budget FTE Funding	23 NCAC 02D .0326	Amend
Program Classification	23 NCAC 02E .0101	Amend
Work Station Occupational Skills Training	23 NCAC 02E .0402	Amend
Instruction to Captive or Co-Opted Groups	23 NCAC 02E .0403	Amend
Assistance for Economic Development	23 NCAC 02E .0404	Adopt

---

**AGENDA  
RULES REVIEW COMMISSION**

July 18, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
  - A. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0206 Objection 04/18/02 (Bryan)
  - B. NC Medical Board – 21 NCAC 32B .0101; .0104; .0105; .0106 Objection 04/18/02 (Bryan)
  - C. NC Medical Board – 21 NCAC 32M .0112 Objection 04/18/02 (Bryan)
- IV. Commission Business
- V. Next meeting:

## 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. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Hattie Holt v. NC Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Linda Hawley v. NC Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Unieca Richardson v. NC DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
<b><u>JUSTICE</u></b>				
<b><i>Alarm Systems Licensing Board</i></b>				
Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02	
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02	
<b><i>Private Protective Services Board</i></b>				
Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02	
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02	
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02	
<b><i>Sheriffs' Education &amp; Training Standards Commission</i></b>				
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02	
<b><u>ENVIRONMENT AND NATURAL RESOURCES</u></b>				
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02	
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02	
<b><u>ENGINEERS AND LAND SURVEYORS</u></b>				
NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02	
<b><u>OFFICE OF STATE PERSONNEL</u></b>				
Andre Foster v. Winston-Salem State University	00 OSP 1216 <sup>1</sup>	Mann	06/03/02	17:01 NCR 93
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02	
Andre Foster v. Winston-Salem State University	01 OSP 1388 <sup>1</sup>	Mann	06/03/02	17:01 NCR 93
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR 103
Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02	
Mark Wayne Faircloth v. NC Forest Service	01 OSP 2374	Conner	06/20/02	
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02	

1 Combined Cases

**CONTESTED CASE DECISIONS**

---

Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02

**SUBSTANCE ABUSE PROFESSIONAL BOARD**

NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02
--	-------------	-------	----------