

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 17, Issue 20
Pages 1746 - 1828

April 15, 2003

This issue contains documents officially filed through March 25, 2003.

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I. EXECUTIVE ORDER

Executive Order No. 48 1746

II. RULE-MAKING PROCEEDINGS

Environment and Natural Resources

Environmental Management..... 1747 - 1748

III. PROPOSED RULES

Environment and Natural Resources

Environmental Management..... 1766 - 1767

Justice

Criminal Justice Education and Training

Standards Commission..... 1749 - 1766

Licensing Boards

Dental Examiners, Board of 1771 - 1785

Transportation

Highways, Division of 1768 - 1771

IV. TEMPORARY RULES

Health and Human Services

Medical Care Commission..... 1786 - 1808

Justice

Criminal Justice Education and Training

Standards Commission..... 1808 - 1816

Licensing Boards

Dental Examiners, Board of 1816 - 1817

Locksmith Licensing Board 1817 - 1818

V. RULES REVIEW COMMISSION 1819 - 1822

VI. CONTESTED CASE DECISIONS

Index to ALJ Decisions 1823 - 1828

For the **CUMULATIVE INDEX** to the NC Register go to:

<http://oahnt.oah.state.nc.us/register/CI.pdf>

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

| TITLE | DEPARTMENT | LICENSING BOARDS | CHAPTER |
|--------------|--|--|----------------|
| 1 | Administration | Acupuncture | 1 |
| 2 | Agriculture | Architecture | 2 |
| 3 | Auditor | Athletic Trainer Examiners | 3 |
| 4 | Commerce | Auctioneers | 4 |
| 5 | Correction | Barber Examiners | 6 |
| 6 | Council of State | Certified Public Accountant Examiners | 8 |
| 7 | Cultural Resources | Chiropractic Examiners | 10 |
| 8 | Elections | Employee Assistance Professionals | 11 |
| 9 | Governor | General Contractors | 12 |
| 10 | Health and Human Services | Cosmetic Art Examiners | 14 |
| 11 | Insurance | Dental Examiners | 16 |
| 12 | Justice | Dietetics/Nutrition | 17 |
| 13 | Labor | Electrical Contractors | 18 |
| 14A | Crime Control & Public Safety | Electrolysis | 19 |
| 15A | Environment and Natural Resources | Foresters | 20 |
| 16 | Public Education | Geologists | 21 |
| 17 | Revenue | Hearing Aid Dealers and Fitters | 22 |
| 18 | Secretary of State | Landscape Architects | 26 |
| 19A | Transportation | Landscape Contractors | 28 |
| 20 | Treasurer | Locksmith Licensing Board | 29 |
| *21 | Occupational Licensing Boards | Massage & Bodywork Therapy | 30 |
| 22 | Administrative Procedures (Repealed) | Marital and Family Therapy | 31 |
| 23 | Community Colleges | Medical Examiners | 32 |
| 24 | Independent Agencies | Midwifery Joint Committee | 33 |
| 25 | State Personnel | Mortuary Science | 34 |
| 26 | Administrative Hearings | Nursing | 36 |
| 27 | NC State Bar | Nursing Home Administrators | 37 |
| 28 | Juvenile Justice and Delinquency Prevention | Occupational Therapists | 38 |
| | | Opticians | 40 |
| | | 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 2003 – December 2003

| Filing Deadlines | | | Notice of Rule-Making Proceedings | Notice of Text | | | | | | | Temporary Rule |
|-----------------------|------------|---------------------|---|----------------------------------|---------------------------------|--|---|--------------------------------|--|---|---------------------------------------|
| volume & issue number | issue date | last day for filing | earliest register issue for publication of text | earliest date for public hearing | non-substantial economic impact | | | substantial economic impact | | | 270 th day from issue date |
| | | | | | end of required comment period | deadline to submit to RRC for review at next meeting | first legislative day of the next regular session | end of required comment period | deadline to submit to RRC for review at next meeting | first legislative day of the next regular session | |
| 17:13 | 01/02/03 | 12/06/02 | 03/03/03 | 01/17/03 | 02/03/03 | 02/20/03 | 05/00/04 | 03/03/03 | 03/20/03 | 05/00/04 | 09/29/03 |
| 17:14 | 01/15/03 | 12/19/02 | 03/17/03 | 01/30/03 | 02/14/03 | 02/20/03 | 05/00/04 | 03/17/03 | 03/20/03 | 05/00/04 | 10/12/03 |
| 17:15 | 02/03/03 | 01/10/03 | 04/15/03 | 02/18/03 | 03/05/03 | 03/20/03 | 05/00/04 | 04/04/03 | 04/21/03 | 05/00/04 | 10/31/03 |
| 17:16 | 02/17/03 | 01/27/03 | 05/01/03 | 03/04/03 | 03/19/03 | 03/20/03 | 05/00/04 | 04/21/03 | 04/21/03 | 05/00/04 | 11/14/03 |
| 17:17 | 03/03/03 | 02/10/03 | 05/15/03 | 03/18/03 | 04/02/03 | 04/21/03 | 05/00/04 | 05/02/03 | 05/20/03 | 05/00/04 | 11/28/03 |
| 17:18 | 03/17/03 | 02/24/03 | 06/02/03 | 04/01/03 | 04/16/03 | 04/21/03 | 05/00/04 | 05/16/03 | 05/20/03 | 05/00/04 | 12/12/03 |
| 17:19 | 04/01/03 | 03/11/03 | 06/02/03 | 04/16/03 | 05/01/03 | 05/20/03 | 05/00/04 | 06/02/03 | 06/20/03 | 05/00/04 | 12/27/03 |
| 17:20 | 04/15/03 | 03/25/03 | 06/16/03 | 04/30/03 | 05/15/03 | 05/20/03 | 05/00/04 | 06/16/03 | 06/20/03 | 05/00/04 | 01/10/04 |
| 17:21 | 05/01/03 | 04/09/03 | 07/01/03 | 05/16/03 | 06/02/03 | 06/20/03 | 05/00/04 | 06/30/03 | 07/21/03 | 05/00/04 | 01/26/04 |
| 17:22 | 05/15/03 | 04/24/03 | 07/15/03 | 05/30/03 | 06/16/03 | 06/20/03 | 05/00/04 | 07/14/03 | 07/21/03 | 05/00/04 | 02/09/04 |
| 17:23 | 06/02/03 | 05/09/03 | 08/01/03 | 06/17/03 | 07/02/03 | 07/21/03 | 05/00/04 | 08/01/03 | 08/20/03 | 05/00/04 | 02/27/04 |
| 17:24 | 06/16/03 | 05/23/03 | 08/15/03 | 07/01/03 | 07/16/03 | 07/21/03 | 05/00/04 | 08/15/03 | 08/20/03 | 05/00/04 | 03/12/04 |
| 18:01 | 07/01/03 | 06/10/03 | 09/02/03 | 07/16/03 | 07/31/03 | 08/20/03 | 05/00/04 | 09/02/03 | 09/22/03 | 05/00/04 | 03/27/04 |
| 18:02 | 07/15/03 | 06/23/03 | 09/15/03 | 07/30/03 | 08/14/03 | 08/20/03 | 05/00/04 | 09/15/03 | 09/22/03 | 05/00/04 | 04/10/04 |
| 18:03 | 08/01/03 | 07/11/03 | 10/01/03 | 08/16/03 | 09/02/03 | 09/22/03 | 05/00/04 | 09/30/03 | 10/20/03 | 05/00/04 | 04/27/04 |
| 18:04 | 08/15/03 | 07/25/03 | 10/15/03 | 08/30/03 | 09/15/03 | 09/22/03 | 05/00/04 | 10/14/03 | 10/20/03 | 05/00/04 | 05/11/04 |
| 18:05 | 09/02/03 | 08/11/03 | 11/03/03 | 09/17/03 | 10/02/03 | 10/20/03 | 05/00/04 | 11/03/03 | 11/20/03 | 05/00/04 | 05/29/04 |
| 18:06 | 09/15/03 | 08/22/03 | 11/17/03 | 09/30/03 | 10/15/03 | 10/20/03 | 05/00/04 | 11/14/03 | 11/20/03 | 05/00/04 | 06/11/04 |
| 18:07 | 10/01/03 | 09/10/03 | 12/01/03 | 10/16/03 | 10/31/03 | 11/20/03 | 05/00/04 | 12/01/03 | 12/22/03 | 05/00/04 | 06/27/04 |
| 18:08 | 10/15/03 | 09/24/03 | 12/15/03 | 10/30/03 | 11/14/03 | 11/20/03 | 05/00/04 | 12/15/03 | 12/22/03 | 05/00/04 | 07/11/04 |
| 18:09 | 11/03/03 | 10/13/03 | 01/02/04 | 11/18/03 | 12/03/03 | 12/22/03 | 05/00/04 | 01/02/04 | 01/20/04 | 05/00/04 | 07/30/04 |
| 18:10 | 11/17/03 | 10/24/03 | 02/02/04 | 12/02/03 | 12/17/03 | 12/22/03 | 05/00/04 | 01/16/04 | 01/20/04 | 05/00/04 | 08/13/04 |
| 18:11 | 12/01/03 | 11/05/03 | 02/02/04 | 12/16/03 | 12/31/03 | 01/20/04 | 05/00/04 | 01/30/04 | 02/20/04 | 05/00/04 | 08/27/04 |
| 18:12 | 12/15/03 | 11/20/03 | 02/16/04 | 12/30/03 | 01/14/04 | 01/20/04 | 05/00/04 | 02/13/04 | 02/20/04 | 05/00/04 | 09/10/04 |

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

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

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

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

EXECUTIVE ORDER NO. 48
JUVENILE JUSTICE PLANNING
COMMITTEE

WHEREAS, the Executive Organization Act of 1973 established the Governor’s Crime Commission; and,

WHEREAS, North Carolina General Statute § 143B-480, creates the Juvenile Justice Planning Committee as an adjunct committee to advise the Governor’s Crime Commission on matters referred to it which are relevant to juvenile justice; and,

WHEREAS, pursuant to North Carolina General Statute § 143B-480, the composition of the Juvenile Justice Planning Committee shall be designated by the Governor through executive order; and,

WHEREAS, the federal Juvenile Justice and Delinquency Act of 1974, as amended, requires states to establish advisory boards to administer juvenile justice and delinquency prevention grants from the United States Department of Justice; and,

WHEREAS, the Juvenile Justice Planning Committee is ideally suited to serve as such an advisory board consistent with federal law.

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

Section 1. Membership Composition

The Juvenile Justice Planning Committee shall consist of no less than 15 and no more than 33 members each appointed by the Governor and each having training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice.

The majority of the members, as well as the chair, shall not be full-time employees of federal, state or local government. At least one-fifth of the members shall be under the age of twenty-four at the time of appointment and at least three members shall be currently or have been under the jurisdiction of the juvenile justice system.

The Governor shall appoint at least one representative from the following:

- a. Elected officials representing general purpose local government.
- b. Representatives of law enforcement and juvenile justice agencies, which may include: a juvenile or family court judge, a juvenile or local prosecutor, a counsel for children and youth or a probation worker.
- c. Representatives of public agencies concerned with delinquency prevention, which may include: a social services agency, a mental

health agency, a state education agency, a special education program, a recreation program, or a youth services agency.

- d. Private non-profit agencies working with children.
- e. Volunteers who work with delinquents or potential delinquents.
- f. Youth workers in alternative programs.
- g. Programs providing alternatives to suspension and expulsion.
- h. Persons with special experience relating to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence.
- i. State or local police departments.
- j. Local sheriff’s departments.
- k. Private non-profit, victim’s advocacy organizations (guardian ad litem).
- l. Non-profit religious or community groups.

Section 2. Terms of Service

The terms of service for the members shall be for two-years provided, however, that the Governor may remove any member at any time for misfeasance, malfeasance or nonfeasance if necessary and to ensure continued compliance with federal requirements.

Section 3. Chair

The chair of the Juvenile Justice Planning Committee shall be designated by, and shall serve at the pleasure of, the chair of the Governor’s Crime Commission.

Section 4. Meetings

The Juvenile Justice Planning Committee shall meet upon the call of the chair or upon written request of one-third of its membership. A majority of the committee shall constitute a quorum for the transaction of business.

Section 5. Administration of Federal Grants

The Juvenile Justice Planning Committee shall serve as North Carolina’s advisory board for purposes of administering juvenile justice and delinquency prevention grants from the Department of Justice.

Section 6. Duration

This executive order rescinds Governor Hunt’s executive order number 116, and shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 20th day of March, 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by Environmental Management 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: 15A NCAC 02D .0606, .0608, .0800, .0803, .1404; 02Q .0102, .0105, .0600, .0701-.0702, .0706, .0709, .0711, .0810, .0900. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5),(7),(10); 143-215.108; 143-215.109; 143B-282; 150B-19(5)

Statement of the Subject Matter:

15A NCAC 02D .0606, .0608 – To allow the use of alternative monitoring procedures in 15A NCAC 02D .0606, Sources Covered by Appendix P of 40 CFR Part 51, and .0608 Other Large Coal or Residual Oil Burners.

15A NCAC 02D .0800; 02Q .0600 – To clarify that rules in 15A NCAC 02D .0800, Transportation Facilities, and 02Q .0600, Transportation Source Procedures apply only to carbon monoxide.

15A NCAC 02D .0803 – To repeal this rule as an unnecessary rule.

15A NCAC 02D .1404 – To provide an option for satisfying missing data requirement in this rule for sources not required to use continuous monitors that comply with 40 CFR Part 75 to satisfy missing data requirements in lieu of the procedures in 40 CFR Part 75.

15A NCAC 02Q .0102, .0900 – To reduce the number of permits for portable crushers.

15A NCAC 02Q .0105 – To change address in this rule where permit applications and permits may be reviewed.

15A NCAC 02Q .0701, .0709 – To clarify when conditions in the air toxics portion of a permit needs to be revised because of a change in an acceptable ambient level.

15A NCAC 02Q .0702 – To exempt wastewater treatment systems at pulp and paper mills from the air toxic rules.

15A NCAC 02Q .0706 – To clarify when a modification made pursuant to this rule must be in compliance with the air toxic rules.

15A NCAC 02Q .0711 – To correct and clarify calculation of emissions to determine if emissions of 10 acute irritant toxic air pollutants qualify for exemption from permitting.

15A NCAC 02Q .0810 – To adopt a new rule to define certain air curtain burners as small for permitting purposes based on amount of material burned.

Reason for Proposed Action:

15A NCAC 02D .0606, .0608 – These rules require certain large combustion sources to monitor opacity and the emissions of sulfur dioxide and nitrogen oxides with continuous monitors. These rules also set out the procedures to use for monitoring. In some situations, the specified procedures will give erroneous or invalid results. To alleviate such problems, these rules need to be revised to allow the use of alternative methods. One possibility is to incorporate by reference the alternative monitoring procedures in 40 CFR Part 51, Appendix P, 3.9 or 40 CFR 60.13(i).

15A NCAC 02D .0800; 02Q .0600 – Most of the rules in 15A 02D .0800 and 02Q .0600 are written such that they could be interpreted to apply to ozone, nitrogen oxides, sulfur dioxide, and particulates, as well as to carbon monoxide. In developing these rules, only carbon monoxide was considered. Historically, these rules have only been applied to carbon monoxide. They have never been applied to any other pollutant. Rules in these two sections will be revised to clarify that they apply only to carbon monoxide. When these rules were first developed and adopted, they were developed and adopted to meet a federal requirement, which has since been removed. EPA's purpose for requiring these rules was to prevent violations of the carbon monoxide standard. Its guidance for developing these rules was based on carbon monoxide. Thus, the State provided EPA a demonstration that these rules would protect the ambient standard for carbon monoxide. Carbon monoxide emissions are generally localized. Mobile sources account for about 90 percent of the carbon monoxide emissions in most areas. Ozone is more of a regional issue, and contribution of emissions from mobile sources to ozone can only be determined through complex regional models that include emissions from numerous and various types of sources of nitrogen oxides and volatile organic compounds. Ozone and particulates from mobile sources are covered under the conformity rules in Section 15A NCAC 02D .1600, General Conformity, and .2000, Transportation Conformity.

15A NCAC 02D .0803 – In the 30 years that this rule has been in effect, it has never been applied to any highway project. Emissions from highway projects in areas of concern are now effectively covered under Section 15A NCAC 02D .2000, Transportation Conformity. Furthermore, nearly all highway projects of any significance, i.e., any project large enough to be covered under this rule, are covered under the National Environmental Policy Act or the North Carolina Environmental Policy Act. A requirement of these acts is a showing that the project will not cause any ambient air quality standard to be violated.

15A NCAC 02D .1404 – For sources not required to use a Part 75 monitor (a monitor that complies with the requirements of 40

CFR Part 75), Rule 15A NCAC 02D .1404 requires the continuous emission monitors to measure emissions for at least 95 percent of the time that the source operates. If data are not available for at least 95 percent of the time, then the missing data shall be supplied using the procedures in 40 CFR Part 75. These procedures can be burdensome. To alleviate these potential problems, an alternative approach is being considered. One possible approach is to allow the source to document that the control device was being properly operated when the monitor measurements were missing.

15A NCAC 02Q .0102, .0900 – A number of portable crushers exist in the State. These crushers are used on a temporary basis at construction sites to crush concrete, asphalt, and stone. They move from site to site with little notice and are generally at one location for only a few days to a few months. They vary in size and age, and most of them are covered under the New Source Performance Standard (NSPS) Subpart OOO, nonmetallic mineral processing plants. Many of these crushers and their associated diesel-powered generators emit less than five tons of each pollutant per year per site. Portable crushers covered under NSPS are required to have a permit. Because of the mobile nature of these crushers, requiring them to obtain an air permit before moving to a new location is cumbersome and creates compliance problems for the crushers and the Division of Air Quality. To address the aforementioned problem, several possible rule changes are being considered. One possible change is to amend 15A NCAC 02Q .0102, Activities Exempted from Permit Requirements, to make portable crushers eligible for a permit exemption. Thus, crushers that are at a site less than 12 months, crush less than 300,000 tons of material, and burn less than 17,000 gallons of fuel would be eligible for exemption from permitting. Another option is to adopt a new rule for portable crushers that details the specific requirements for them – permit by rule, and exempt portable crusher from permitting.

15A NCAC 02Q .0105 – This rule gives the location where the public may review permit applications and permits. The address currently in the rule is for the Archdale Building. However, permit applications and permits are now housed at the Parker Lincoln Building. Thus, the address in this rule needs to be corrected.

15A NCAC 02Q .0701, .0709 – Currently, it is not clear when conditions placed in a permit to protect an acceptable ambient level for a toxic air pollutant should be revised when the acceptable ambient level changes. Traditionally, once conditions are put in a permit to protect an acceptable ambient level, they remained fixed even if the acceptable ambient level later changes. These conditions are not revised for a change in an acceptable ambient level until such time as the facility makes a modification that results in a net increase of a toxic air pollutant whose acceptable ambient level has changed. At that time, new conditions would be written into the permit based on the new evaluation and new acceptable ambient level. Either this approach or a different one should be written into the rule to clarify the effects of a changed acceptable ambient level. Furthermore, the rules allow facilities subject to maximum achievable control technology (MACT) to make modifications after an evaluation for five years before another evaluation is required. The presumption has been that the five-year re-evaluation would be for all toxic air pollutants whose emissions have changed as result of modifications using the latest

acceptable ambient level. Language should be added to the rule to make this presumption clear. To make these clarifications, these rules Applicability, would need amending.

15A NCAC 02Q .0702 – This rule may be amended to exempt, at least temporarily, wastewater treatment systems at pulp and paper mills from the air toxic rules. Consideration is being given to exempting this source category because of the high cost of meeting the acceptable ambient level for hydrogen sulfide. Only recently has industry and DAQ discovered that the majority of hydrogen sulfide emissions from paper mills are released from wastewater treatment operations. DAQ has learned that it is common practice for the paper industry throughout the U.S. not to report hydrogen sulfide emissions from wastewater treatment operations. In addition, the U.S. EPA, DAQ, or the paper industry do not know and understood enough about the extent and control of H₂S emissions from wastewater treatment operations to make a huge commitment in significantly reducing hydrogen sulfide emissions from said operations. Until more information is available, DAQ and the Air Quality Commission would prefer to handle waste water treatment operations at paper mills with an exemption.

15A NCAC 02Q .0706 – It is unclear exactly when a source that is involved in an air toxic evaluation, but is not the source being modified, must be in compliance with the air toxic rules. The presumption has been that it would have to be in compliance before the modified source begins operating. However, this rule does not clearly state when such a source needs to be in compliance. This Rule needs to be amended to clarify when such a source would have to be in compliance.

15A NCAC 02Q .0711 – When the averaging time for acute irritants was changed from 15 minutes to one hour, the Scientific Advisory Board recommended using the peak 15-minute emission rate for compliance purposes. (The 10 pollutants are acetaldehyde, acetic acid, acrolein, ammonia, bromine, chlorine, formaldehyde, hydrogen chloride, hydrogen fluoride, and nitric acid.) This recommendation is incorporated into 15A NCAC 02D .1106, Determination of Ambient Air Concentration, which requires the use of the highest emissions occurring in any single 15-minute period. A similar provision should have been incorporated in this rule but was not. For the aforementioned 10 pollutants, the proposed rule amendment would require using the peak 15-minute emission rate. Thus, the highest emission rate occurring in any single 15-minute period would be multiplied by four and the resulting product would be compared to the value in the table to decide if the emissions need to be permitted.

15A NCAC 02Q .0810 – A new rule would be adopted to define air curtain burners that burned less than a certain amount of waste as a small facility for permitting purposes. This rule would keep the facility from having to have conditions put in its permit to avoid the Title V permitting procedures. Air curtain burners should qualify for an exclusionary rule because they operate intermittently and are not capable of operating at maximum capacity continuously for 8760 hours per year.

Comment Procedures: Written comments should be submitted to Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641. Phone (919) 733-1489, fax: (919) 715-7475, email: thom.allen@ncmail.net.

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 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 09E .0108 and amend the rules cited as 12 NCAC 09B .0201, .0228, .0301, .0305; 09C .0401; 09E .0102-.0107; 09G .0102, .0202-.0206, .0301-.0304, .0306, .0310, .0315, .0411-.0413, .0415-.0416, .0504, .0602. Notice of Rule-making Proceedings was published in the Register on February 3, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: May 7, 2003

Time: 10:00 a.m.

Location: Dept. of Correction Office of Staff Development and Training, Apex, NC

Reason for Proposed Action:

12 NCAC 09B .0201 – *The deleted material will be placed in the Course Management Guide. This change will allow the Commission to make changes to the Course Management Guide when necessary to comply with other State standards. This change will also allow the Commission to add, delete, or modify language in a timely manner when it is of vital necessity to ensure the safety of course participants.*

12 NCAC 09B .0228 – *The training hours for the motorboat laws block of instruction needs to be increased due to the enactment of new laws governing the operation of boats. The training hours for the radiological monitoring block of instruction needs to be decreased because some of the equipment used during training is obsolete and no longer used, thereby decreasing the amount of time necessary for this block of instruction.*

12 NCAC 09B .0301, .0305 – *The Commission wishes to implement a stricter policy that will hold criminal justice instructors responsible for maintaining competency in specialized areas of instruction. This change would require instructors to attend and successfully complete instructor updates issued by the Commission.*

12 NCAC 09C .0401 – *This change will clarify the procedures necessary to accredit a criminal justice school.*

12 NCAC 09E .0102-.0108 – *The Commission wishes to expand the mandatory program of annual in-service training for all law enforcement officers. This change would require all law enforcement agencies to provide officers with a minimum of 24 hours of in-service training each year, to include firearms training, legal updates, hazardous materials, bloodborne pathogens, juvenile minority sensitivity training (currently state mandated), ethical awareness, and a department topic of choice. The amended rules outline the requirements for the in-service training and the penalties for failure to complete such training each calendar year.*

12 NCAC 09G .0102, .0202-.0206, .0301-.0304, .0306, .0415, .0504, .0602 – *The Department of Correction has changed the position title from Probation/Parole Officer-Surveillance to Probation/Parole Officer-Intermediate. The proposed amendments reflect that change in the rules.*

12 NCAC 09G .0310, .0315, .0411-.0412, .0416 – *The Department of Correction has changed the course title from Unarmed Self Defense to Controls, Restraints, and Defensive Techniques. The address of the Department of Correction, Office of Staff Development and Training has changed.*

12 NCAC 09G .0413 – *An error was made when this rule was amended and temporarily adopted January 1, 2001. The requirement that all Probation/Parole Officers-Intermediate take the 160 hour Basic Training Course for Probation/Parole Officers was inadvertently omitted. The 82 hour supplemental course for Probation/Parole Officers-Intermediate has been changed to 80 hours, with the two-hour block of instruction on how to complete DOC paperwork related to course expenses omitted from the lesson plan. The mailing address of the Department of Correction, Office of Staff Development and Training has changed.*

Comment Procedures: *Comments from the public shall be directed to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton, St., Raleigh, NC 27602, phone (919) 716-6473, fax (919) 716-6752, and email tmarrella@mail.jus.state.nc.us. Comments shall be received through May 28, 2003.*

Fiscal Impact

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

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0201 ADMINISTRATION OF CRIMINAL JUSTICE SCHOOLS

(a) The executive officer or officers of the institution or agency sponsoring any criminal justice training program or course of instruction shall have primary responsibility for implementation of these Rules and standards and for administration of the school. The executive officer or officers of the institution or

agency shall secure School Accreditation pursuant to 12 NCAC 09C .0401 prior to offering any criminal justice training course.

(b) The executive officers shall designate not more than one compensated staff member for each commission-accredited program for which the institution or agency has been granted accreditation. Such staff member shall be certified by the Commission under Section .0500 of this Subchapter to be the criminal justice School Director. The School Director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored accredited criminal justice training course. If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited basic recruit training course, a qualified assistant must be designated to assist the School Director in the administration of the course. This person must be selected by the School Director and must attend a course orientation conducted by Standards Division staff and attend the annual School Directors' Conference.

(c) The School Director shall permanently maintain records of all criminal justice training courses sponsored or delivered by the school, reflecting:

- (1) course title;
- (2) delivery hours of course;
- (3) course delivery dates;
- (4) names and addresses of instructors utilized within designated subject-matter areas;
- (5) a roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful;
- (6) copies of all rules, regulations and guidelines developed by the School Director;
- (7) documentation of any changes in the initial course outline, including substitution of instructors; and
- (8) documentation of make-up work achieved by each individual trainee, including test scores and methods.

(d) The executive officers of the accredited institution or agency ~~offeringsponsoring~~ any criminal justice training program or course of instruction shall meet or exceed the following specifications:

- (1) acquire and allocate sufficient financial resources to provide commission certified instructors and to meet other necessary program expenses;
- (2) provide one designated clerical support person to assist the School Director in maintaining required records, complete reports, and provide other clerical needs as required by the School Director;
- (3) ~~provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, specifically including the following:~~
 - (A) ~~a comfortable, well lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees; specifically:~~

- (i) ~~provide a minimum of 24 square feet of floor space per trainee;~~
- (ii) ~~provide over head lighting measuring at a minimum, 70 foot candles at desk level;~~
- (iii) ~~provide an adult size table and chair for each trainee;~~
- (B) ~~audio visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;~~
- (C) ~~a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access;~~
- (D) ~~a firearms firing range designed for eriminal justice firearms instruction to conduct the basic recruit firearms course, with the following specifications:~~
 - (i) ~~an operational public address system of sufficient volume to be audible to persons wearing ear plugs or other hearing protection while firearms are being discharged;~~
 - (ii) ~~an emergency first aid kit;~~
 - (iii) ~~access limited to criminal justice trainees, criminal justice instructors, and personnel authorized by the School Director when firearms are being discharged;~~
 - (iv) ~~warning signs posted at all access points which clearly identify the area as a eriminal justice firing range;~~
 - (v) ~~restrooms, drinking water and a rain resistant shelter for personnel engaged in training; and~~
 - (vi) ~~telephone or radio communications immediately available to range instructors;~~
- (E) ~~a driving range designated for eriminal justice training, adequate in size and design to safely conduct the law enforcement basic recruit driving course, with the following specifications:~~
 - (i) ~~secured by barriers from through traffic while training is being conducted on the range;~~
 - (ii) ~~warning signs posted at all vehicle access points that~~

~~shall clearly identify the area as a law enforcement training driving range and limit access to criminal justice trainees, criminal justice instructors, and personnel authorized by the School Director;~~

- ~~(iii) an emergency first aid kit;~~
- ~~(iv) access to at least two automobiles designed and equipped for criminal justice driver training;~~
- ~~(v) restrooms and drinking water for personnel engaged in training; and~~
- ~~(vi) telephone or radio communications immediately available to range instructors;~~

~~(F) a suitable area designated for subject control/arrest techniques instruction which enables the safe execution of this topical area, with the following specifications:~~

- ~~(i) permanent or portable cushioned floor matting;~~
- ~~(ii) an emergency first aid kit; and~~
- ~~(iii) telephone or radio communications immediately available to the instructors;~~

~~(G) a suitable area for the conducting of physical fitness training, with the following specifications:~~

- ~~(i) an obstacle course designed and constructed according to specifications outlined in the Basic Law Enforcement Training Course Management Guide as referenced in 12 NCAC 9B .0205(d);~~
- ~~(ii) appropriate space for running, weight training, calisthenics; and aerobics;~~
- ~~(iii) restrooms and drinking water for personnel engaged in training;~~
- ~~(iv) shower facilities, if physical fitness training is conducted prior to classroom training.~~

(e) In the event ~~that an accredited~~ institution or agency does not own all facilities required for training delivery, a required facility, written agreements between entities involved shall be in place in order to ensure access to and use of with other entities must be made to assure use of and timely access to such facilities. A copy of such agreement must be on file for review by Standards Division staff.

(f) Each institution or agency accredited to deliver basic recruit training shall provide access to supplies and equipment for ~~trainee~~ trainees are utilized use during course delivery as specified in the Basic Law Enforcement Training Course Management Guide as referenced in 12 NCAC 9B .0205(d).

Authority G.S. 17C-6.

12 NCAC 09B .0228 BASIC TRAINING - WILDLIFE ENFORCEMENT OFFICERS

(a) The basic training course for wildlife enforcement officers appointed by the Wildlife Resources Commission as authorized under G.S. 113-136 shall consist of a minimum of 662 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a wildlife enforcement officer.

(b) Each basic training course for wildlife enforcement officers shall include the following identified topical areas and minimum instructional hours for each area:

- | | | |
|------|---|--------------|
| (1) | Course Orientation | 4 Hours |
| (2) | Arrest Search & Seizure/Constitutional Law | 28 Hours |
| (3) | Law Enforcement Communications and Information System | 8 Hours |
| (4) | Elements of Criminal Law | 24 Hours |
| (5) | Subject Control/Arrest Techniques | 48 Hours |
| (6) | Juvenile Law and Procedures | 8 Hours |
| (7) | First Responder | 40 Hours |
| (8) | Firearms | 60 Hours |
| (9) | Hunter Safety | 12 Hours |
| (10) | Patrol Techniques | 16 Hours |
| (11) | Field Notetaking and Report Writing | 12 Hours |
| (12) | Domestic Violence Response | 12 Hours |
| (13) | Criminal Investigation | 12 Hours |
| (14) | Field & Custodial Interviews | 16 Hours |
| (15) | Controlled Substances | 10 Hours |
| (16) | ABC Laws and Procedures | 4 Hours |
| (17) | Explosives & Hazardous Materials | 12 Hours |
| (18) | Law Enforcement Drivers Training | 48 Hours |
| (19) | Preparing for Court and Testifying in Court | 12 Hours |
| (20) | Game and Fish Laws | 36 Hours |
| (21) | Motorboat Laws | 12 1/2 Hours |
| (22) | Boating Procedures & Small Boat Handling | 20 Hours |
| (23) | Dealing with Problem Animal Situations | 4 Hours |
| (24) | Basic Field Identification of Fishes | 6 Hours |
| (25) | Basic Field Identification of Game Animals, Game Birds and Non-Game Animals | 2 Hours |
| (26) | Identification of Migratory Waterfowl | 12 Hours |
| (27) | Endangered Species | 2 Hours |
| (28) | Trapping | 8 Hours |
| (29) | Water Safety and Swimming | 16 Hours |
| (30) | Knotsmanship, A Practical Use of Rope | 2 Hours |
| (31) | Wildlife Law Enforcement and the | |

| | | |
|------|--------------------------------------|-----------------------|
| | Media | 8 Hours |
| (32) | Motorboat Accident Investigation | 12 Hours |
| (33) | Crowd Management | 12 Hours |
| (34) | Radiological Monitoring | 12 8 Hours |
| (35) | Covert Activities | 2 Hours |
| (36) | Basic Photography | 4 Hours |
| (37) | Motor Vehicle Laws | 20 Hours |
| (38) | Physical Training | 60 Hours |
| (39) | Standardized Field Sobriety Training | 32 Hours |
| (40) | Ethics | 4 Hours |

(c) The "Wildlife Basic Training Manual" as published by the North Carolina Wildlife Resources Commission shall be used as the basic curriculum for delivery of wildlife enforcement officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Division of Enforcement Training Office
North Carolina Wildlife Resources Commission
512 North Salisbury Street
Raleigh, North Carolina 27604

and may be obtained from the Wildlife Resources Commission for ninety-five dollars (\$95.00) per copy.

(d) Commission-accredited schools that are accredited to offer the "Basic Training: Wildlife Enforcement Officers" course are: The Division of Enforcement Training Office of the North Carolina Wildlife Resources Commission.

Authority G.S. 17C-6; 17C-10.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) Any person participating in a commission-accredited criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, ~~Specialized~~ Specific Instructor Certification or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Such instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-accredited course shall remain competent in his/her ~~specific or specialty~~ specialized areas. Such competence includes remaining current in the instructors area of expertise, which ~~may shall~~ be demonstrated by attending and successfully completing any instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209; or
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; or
- (8) has failed to meet or maintain good moral character as required to effectively discharge the duties of a criminal justice instructor.

Authority G.S. 17C-6.

12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification. The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) The terms of certification as a specialized instructor will be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certification for both general probationary instructor and Specialized Instructor Certification is issued on the same date, the instructor will only be required to satisfy the teaching requirement for the general probationary instructor certification. The

instructor may satisfy the teaching requirement for the general probationary instructor certification by teaching any specialized topic for which certification has been issued;

- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the general certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes ~~current~~ concurrent with an existing 24 month period of General Instructor Certification, the instructor must teach a minimum of eight hours for each specialized topic for which certification has been issued.

(c) The term of certification as a specialized instructor shall not exceed the 24 month period of full General Instructor Certification. The certification may subsequently be renewed by the Commission at the time of renewal of the full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two-year period preceding application for renewal, instructed at least eight hours in each of the topics for which Specialized Instructor Certification was granted and such instruction must be in a Commission-accredited training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors and written certification from a School Director; and ~~either~~
- (2) proof that the applicant has, within the two-year period preceding application for renewal, attended and successfully completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or copies of certificates of completion issued by the institution which provided the instructor updates; and

- ~~(2)~~(3) a favorable written recommendation from a School Director accompanied by certification that the instructor successfully taught at least eight hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-accredited training course or a Commission-recognized in-service training course during the two-year period of Specialized Instructor Certification; or

~~(3)~~(4) a favorable evaluation by a commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited training course or a Commission-recognized in-service training course, during the two-year period of Specialized Instructor Certification. In addition, instructors evaluated by a Commission or staff member must also teach at least eight hours in each of the topics for which Specialized Instructor Certification was granted.

(d) Certification as a specialized instructor in the First Responder, Physical Fitness, Electrical and Hazardous Materials, and ~~State Youth Services-Juvenile Justice~~ Medical Emergencies topical areas as outlined in Rules .0304(d)(1), (e)(2), (f)(1), and (g) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 24 months from the date of issuance. During the 24 month term all non-Commission certificates required in Rules .0304(d)(1), (e)(2), (f)(1), and (g) for specialized instructor certification in the First Responder, Physical Fitness, Electrical and Hazardous Materials, and ~~State Youth Services-Juvenile Justice~~ Medical Emergencies topical areas must be maintained

(e) All instructors shall remain active during their period of certification. If an instructor does not teach at least eight hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to successfully teach. Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not successfully teach at least eight hours in each of the specialized topics during the two-year period of which certification was granted. Upon application for re-certification, such applicants shall be required to meet the minimum requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" is permissible. However, such guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

Authority G.S. 17C-6.

SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0400 - ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS AND TRAINING COURSES

12 NCAC 09C .0401 ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS

(a) The Commission shall establish a standing subcommittee of the Education and Training Committee for the purposes of evaluating Request for School Accreditation applications and making recommendations to the Education and Training committee on the granting of accreditation to institutions and agencies. The Accreditation Committee shall be comprised of

two members appointed by the School Directors' Advisory Committee and two members who shall be commission members to include the North Carolina Department of Community Colleges' representative to the Commission. The Chairman of the Commission shall appoint the Chairman of the Accreditation Committee.

(b) Any existing Commission-issued accreditations issued and valid on January 1, 1996 are automatically extended with an expiration date of December 31, 1996. Previously issued accreditations with established expiration dates extending beyond December 31, 1996 are declared to be terminated and void on and after December 31, 1996. All new applicants for school accreditation shall meet the requirements of this section after January 1, 1996.

(c) Any school ~~requesting accreditation meeting the minimum requirements contained in 12 NCAC 9B .0200~~ must submit a properly completed Request for School Accreditation application. Upon receipt of a properly completed Request for School Accreditation application;

- (1) The Standards Division staff shall review the application for any omissions and clarifications and conduct a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) The applying institution or agency shall be contacted concerning deficiencies and assistance shall be given on correcting problem areas;
- (3) When the accredited institution has satisfied the minimum requirements outlined in 12 NCAC 09B .0200, a recommendation will be made by staff to the Accreditation Committee;
- ~~(4)(3)~~ The application and staff reports are submitted to the Accreditation Committee for review;
- ~~(5)(4)~~ A recommendation shall then be submitted by the Accreditation Committee to the Education and Training Committee on the approval or denial of the application; and
- ~~(6)(5)~~ The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

(d) Accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for just cause.

(e) The identity of those schools accredited under this Rule shall be published and distributed annually by the Standards Division together with the name and business address of the school director and the schedule of criminal justice training courses planned for delivery during the succeeding year.

(f) A school may apply for reaccreditation to the Commission by submitting a properly completed Request for School Accreditation application. The application for reaccreditation shall contain information on major changes in facilities, equipment, and staffing. Upon receipt of a properly completed application;

- (1) The Standards Division staff shall review the application for any omissions and clarification;

- (2) Copies of the site visits conducted during the last period of certification shall be attached to the application;
- (3) The application and staff reports shall be submitted to the Accreditation Committee for review;
- (4) A recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application;
- (5) The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation of the applicant institution or agency.

(g) In instances where accredited schools have been found to be in compliance with 12 NCAC 09B .0200 through favorable site visit reports, Standards Division staff shall be authorized to reaccredit on behalf of the Commission. Such action shall be reported to the Commission through the Accreditation Committee and the Education and Training Committee at its next scheduled meeting.

(h) The Commission may suspend or revoke a school's accreditation when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course accreditation.

Authority G.S. 17C-6.

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S ANNUAL IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- | | |
|--|------|
| (1) Firearms Training and Qualification | (8); |
| (2) <u>Legal Update</u> | (4); |
| (3) <u>Hazardous Materials</u> | (2); |
| (4) <u>Bloodborne Pathogens</u> | (2); |
| (5) <u>Juvenile Minority Sensitivity</u> | (2); |
| (6) <u>Ethical Awareness</u> | (2); |
| (7) <u>Department Topic of Choice</u> | (4). |

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0103 DEPARTMENT HEAD RESPONSIBILITIES: ANNUAL IN-SERVICE TRAINING

The Department head is responsible for ensuring that the annual in-service ~~firearms~~ training is conducted according to minimum specifications as outlined in Rules 09E .0105 and 09E .0106. In addition, the Department head or designated representative:

- (1) shall review departmental policies regarding the use of force during the agency's annual in-service ~~firearms~~ training program. The Department head or designated representative shall certify that this review has been

- (2) completed by submitting a ~~commission-Commission-~~ approved form to the Criminal Justice Standards Division; and shall report to the Criminal Justice Standards Division once each calendar year a roster of all law enforcement officers who fail to successfully complete the annual ~~in-service~~ ~~in-service~~ ~~firearms~~ training and ~~firearms~~ qualification and shall certify that all law enforcement officers in the agency not listed did successfully complete the training. This roster shall reflect the annual in-service ~~firearms~~ training and ~~firearms~~ qualification status of all law enforcement officers employed by the agency as of December 31 of each calendar year and shall be received by the Criminal Justice Standards Division no later than the following January 15th; and
- (3) shall maintain in each officer's file documentation on a ~~commission-Commission-~~ approved form that the officer has completed the minimum annual in-service ~~firearms~~ training requirement; and
- (4) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 09E .0106(a) and (b), prohibit access to such weapon(s) until such time as the officer obtains qualification; and
- (5) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 09E .0106(d), prohibit the possession of such weapon(s) while on duty or when acting in the discharge of that agency's official duties, and shall deny the officer authorization to carry such weapon(s) concealed when off-duty, except when the officer is on his own premises; and
- (6) shall, where the officer has access to any specialized or tactical weapon(s) not specifically covered in Rule 09E .0106(a) and (b), use normally accepted practices and procedures to ensure that officers authorized to use such weapon(s) are qualified. Where the officer fails to qualify, the agency head or designated representative shall restrict access to such weapon(s).

NOTE: ~~Although not presently required by these Rules, the~~ The Commission recommends, supports and encourages the Department heads of law enforcement agencies to provide annual in-service training to all officers above and beyond that required in these Rules.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program. ~~program for firearms training and qualification:~~

- (1) The instructor shall hold "General Instructor Certification" or "Professional Lecturer Certification" issued by the Commission. For Hazardous Materials in-service training, the instructor shall hold "Specialized Instructor Certification – Electrical and Hazardous Materials Emergencies" issued by the Commission. For Firearms in-service training and qualification, the instructor shall hold "Specific Specialized Instructor Certification – Firearms" issued by the Commission. In addition, each instructor certified by the Commission to teach in a Commission-accredited course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing any instructor updates issued by the Commission.
- (2) The instructor shall deliver the training consistent with the minimum specifications as established in Rules 09E .0105 and .0106.
- (3) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department head. Such reporting shall be on a ~~commission-Commission-~~ approved form.
- (4) Where the officer fails to successfully qualify with any weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a ~~commission-Commission-~~ approved form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

At a minimum, the following specifications shall be incorporated in the agency's annual in-service firearms training and qualification course:

- (1) Firearms
- (~~1~~)(a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials.
- (~~2~~)(b) Safety:
 - (~~a~~)(i) range rules and regulations;
 - (~~b~~)(ii) handling of a firearm;
 - (~~c~~)(iii) malfunctions.
- (~~3~~)(c) Review of Basic Marksmanship Fundamentals:

PROPOSED RULES

- ~~(a)(i)~~ grip, stance, breath control and trigger squeeze;
- ~~(b)(ii)~~ sight and alignment/sight picture;
- ~~(c)(iii)~~ nomenclature.
- (4)(d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy is to be applied as a minimum guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina -27602

- (2) Legal Update;
- (3) Hazardous Materials ;
- (4) Bloodborne Pathogens;
- (5) Juvenile Minority Sensitivity;
- (6) Ethical Awareness;
- (7) Department Topic of Choice: Departments may develop their own curriculum in accordance with ISD methodology. Said lesson plans must be kept on file by each department for audit purposes. Additionally, the North Carolina Justice Academy will develop two lesson plans annually for optional use and delivery by departments; and
- (8) With the exceptions of Hazardous Materials, Bloodborne Pathogens, and the Department Topic of Choice, the In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemburg, North Carolina 28385

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0106 ANNUAL IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS

(a) All certified law enforcement officers shall be required to qualify both day and night with their individual and department-approved service handgun(s) a minimum of once each calendar year. For the purpose of this specification, service handgun shall

include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule 09E .0105 of this Subchapter, the course of fire shall not be less stringent than the "Basic Training - Law Enforcement Officers" course requirements for firearms qualification.

(b) All certified law enforcement officers who are issued or authorized to use a shotgun, rifle or automatic weapon shall be required to qualify with each weapon respectively a minimum of once each calendar year.

(c) Qualification shall be completed with duty equipment and duty ammunition for all weapons.

(d) All certified law enforcement officers who are authorized to carry an off-duty handgun(s) shall be required to qualify with each such handgun consistent with the specifications as outlined in Rules 09E .0105(a) and .0106(a) and (g) of this Section.

(e) To satisfy the minimum training requirements for all in-service firearms qualifications, an officer shall attain a minimum of 70 percent accuracy with each weapon.

(f) Qualification must be achieved at least once in no more than three attempts in a single day for all courses of fire and for all weapons for which qualification is required. Individuals not qualifying in a single day shall be deemed as having failed and 12 NCAC 09E Rule .0103(4) and (5) shall apply.

(g) The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy is to be applied as a minimum guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0107 FAILURE TO QUALIFY: ANNUAL IN-SERVICE FIREARMS TRAINING

(a) Where an officer is employed with an agency that establishes a higher standard for annual in-service firearms training than the minimum specified in this Subchapter and the officer has failed to meet the requirements of the employing agency as of December 31 of each calendar year, such officer shall be required to meet the requirements of this Rule and the higher standard of the employing agency for continued employment. Prior to transfer to another agency, the officer shall be required to meet the requirements of this Rule and the requirements of the subsequent agency, if the subsequent agency requires a higher standard for annual in-service firearms training than the minimum required in Rule 09E .0105(a) and .0106.

(b) Upon notification that an officer has failed to meet the requirements for in-service firearms training and qualification as specified in Rule 09E .0106(a) of this Subchapter, the law enforcement officer's certification shall be suspended.

(c) The suspended officer may request authorization for limited enrollment in a presentation of the "Basic Law Enforcement Training" course to complete the ~~minimum 40-hour~~ firearms training topic.

(d) Such enrollment and successful completion must occur within the 12 month period following suspension of law enforcement officer certification.

(e) Failure to enroll and successfully complete the ~~minimum 40-hour~~ firearms training topic in a "Basic Law Enforcement Training" course within the prescribed 12 month period will subject the officer to training evaluation as specified in Rule 09B .0403.

(f) No officer suspended under Paragraph (b) of this Rule may work as a certified law enforcement officer until:

- (1) the department head or designated representative forwards to the Commission documentary evidence verifying that the officer has complied with the requirements for reinstatement of certification as specified in this subsection; and
- (2) the department head or designated representative and the officer receive from the Commission documentation that the Commission has terminated the suspension and reissued law enforcement certification to the suspended officer.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0108 FAILURE TO COMPLETE ANNUAL IN-SERVICE TRAINING

(a) Failure to successfully complete the annual in-service training topics within the prescribed 12 month period will result in suspension of the law enforcement officer's certification.

(b) Upon notification that a law enforcement officer who has been continuously employed with an agency during the 12 month calendar year has failed to meet the requirements for in-service training as specified in Rule .0105 of this Section, the officer's certification shall be suspended.

(c) No officer suspended under Paragraph (b) of this Rule may work as a certified law enforcement officer until:

- (1) the department head or designated representative forwards to the Commission documentary evidence verifying that the officer has complied with the requirements for reinstatement of certification as specified in this Subsection; and
- (2) the department head or designated representative and the officer receive from the Commission documentation that the Commission has terminated the suspension and reissued law enforcement certification to the suspended officer.

(d) If an officer has separated from an agency during the 12 month calendar year and has not completed all in-service training topics, upon application for re-certification the officer shall be placed on probationary status for a maximum of 12 months, during which time in-service training must be completed.

Authority G.S. 17C-6; 17C-10.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0100 - SCOPE, APPLICABILITY, AND DEFINITIONS

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- (2) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (3) "Convicted" or "Conviction" means and includes, for purposes of this Subchapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (4) "Correctional Officer" means an employee of the North Carolina Department of Correction, Division of Prisons, responsible for the custody of inmates or offenders.
- (5) "Corrections Officer" means any or all of the three classes of officers employed by the North Carolina Department of Correction: correctional officer; probation/parole officer; and probation/parole officer-intermediate surveillance.
- (6) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Correction.
- (7) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (8) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (9) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

PROPOSED RULES

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| <p>(10) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as follows:</p> <p>(a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)</p> <p>(b) 14-27.7 Intercourse and sexual offenses with certain victims (If definition is school personnel other than a teacher, school administrator, student teacher or coach)</p> <p>(c) 14-32.1(f) Assault on handicapped persons</p> <p>(d) 14-32.2(b)(4) Patient abuse and neglect, punishments</p> <p>(e) 14-32.3(c) Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of <one thousand dollars (\$1000)</p> <p>(f) 14-33(b)(9) Assault, battery against sports official</p> <p>(g) 14-33(c) Assault, battery with circumstances</p> <p>(h) 14-34 Assault by pointing a gun</p> <p>(i) 14-34.6(a) Assault on Emergency Personnel</p> <p>(j) 14-54 B or E into buildings generally (14-54(b))</p> <p>(k) 14-72 Larceny of prop./rec'g. stolen goods etc.; <one thousand dollars (\$1000.00) (14-72(a))14-72.1 Concealment of merchandise (14-72.1(e); 3rd offense)</p> <p>(l) 14-76 Larceny, mutilation, or destruction of public records/papers</p> <p>(m) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)</p> <p>(n) CH 14 Art. 19B Financial transaction card crime (14-113.17(a))</p> <p>(o) 14-114(a) Fraudulent disposal of prop./security interest</p> <p>(p) 14-118 Blackmailing</p> <p>(q) 14-118.2Obtaining academic credit by fraudulent means (14-118.2(b))</p> <p>(r) 14-122.1Falsifying documents issued by a school (14-122.1(c))</p> <p>(s) 14-127 Willful and wanton injury to real property</p> <p>(t) 14-160 Willful and wanton injury to personal property > two hundred dollars (\$200.00) (14-160(b))</p> <p>(u) 14-190.5Preparation of obscene photographs</p> <p>(v) 14-190.9Indecent Exposure</p> <p>(w) 14-190.14 Displaying material harmful to minors (14-190.14(b))</p> | <p>(x) 14-190.15 Disseminating harmful material to minors (14-190.15(d))</p> <p>(y) 14-202.2Indecent liberties between children</p> <p>(z) 14-202.4Taking indecent liberties with a student</p> <p>(aa) 14-204 Prostitution (14-207;14-208)</p> <p>(bb) 14-223 Resisting officers</p> <p>(cc) 14-225 False, etc., reports to law enforcement agencies or officers</p> <p>(dd) 14-230 Willfully failing to discharge duties</p> <p>(ee) 14-231 Failing to make reports and discharge other duties</p> <p>(ff) 14-232 Swearing falsely to official records</p> <p>(gg) 14-239 Allowing prisoners to escape punishment</p> <p>(hh) 14-255 Escape of working prisoners from custody</p> <p>(ii) 14-256 Prison breach and escape</p> <p>(jj) 14-258.1(b) Furnishing certain contraband to inmates</p> <p>(kk) 14-259 Harboring or aiding certain persons</p> <p>(ll) CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268)</p> <p>(mm) 14-269.2Weapons on campus or other educational property (14-269.2(d), (e) & (f))</p> <p>(nn) 14-269.3(a) Weapons where alcoholic beverages are sold and consumed</p> <p>(oo) 14-269.4Weapons on state property and in courthouses</p> <p>(pp) 14-269.6Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))</p> <p>(qq) 14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1)& (e))</p> <p>(rr) 14-277.2(a) Weapons at parades, etc., prohibited</p> <p>(ss) 14-277.3Stalking (14-277.3(b))</p> <p>(tt) CH 14 Art. 36A Riot (14-288.2(b))</p> <p>(uu) CH 14 Art. 36A Inciting to riot (14-288.2(d))</p> <p>(vv) CH 14 Art. 36A Looting; trespassing during emergency (14-288.6(a))</p> <p>(ww) CH 14 Art. 36A Transporting weapon or substance during emergency (14-288.7(c))</p> |
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PROPOSED RULES

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| (xx) | CH 14 Art. 36A Assault on emergency personnel; punishments (14-288.9(c)) | (yyy) | 58-81-5 Careless or negligent setting of fires |
| (yy) | 14-315(a) Selling or giving weapons to minors | (zzz) | 62A-12 Misuse of 911 system |
| (zz) | 14-315.1 Storage of firearms to protect minors | (aaaa) | 90-95(d)(2) Possession of schedule II, III, IV |
| (aaa) | 14-316.1 Contributing to delinquency | (bbbb) | 90-95(d)(3) Possession of Schedule V |
| (bbb) | 14-318.2 Child abuse | (cccc) | 90-95(d)(4) Possession of Schedule VI (when punishable as Class 1 misdemeanor) |
| (ccc) | 14-360 Cruelty to animals | (dddd) | 90-95(e)(4) Conviction of 2 or more violations of Art. 5 |
| (ddd) | 14-361 Instigating or promoting cruelty to animals | (eeee) | 90-95(e)(7) Conviction of 2 or more violations of Art. 5 |
| (eee) | 14-401.14 Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b)) | (ffff) | 90-113.22 Possession of drug paraphernalia (90-113.22(b)) |
| (fff) | 14-454(a) or (b) Accessing computers | (gggg) | 90-113.23 Manufacture or delivery of drug paraphernalia (90-113.23(c)) |
| (ggg) | 14-458 Computer trespass (Damage <two thousand five hundred dollars (\$2500.00)) | (hhhh) | 97-88.2(a) Misrepresentation to get worker's compensation payment |
| (hhh) | 15A-266.11 Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b)) | (iiii) | 108A-39(a) Fraudulent misrepresentation of public assistance |
| (iii) | 15A-287 Interception and disclosure of wire etc. communications | (jjjj) | 108A-53 Fraudulent misrepresentation of foster care and adoption assistance payments |
| (jjj) | 15B-7(b) Filing false or fraudulent application for compensation award | (kkkk) | 108A-64(a) Medical assistance recipient fraud; <four hundred dollars (\$400.00) (108-64(c)(2)) |
| (kkk) | 18B-902(c) False statements in application for ABC permit (18B-102(b)) | (llll) | 108A-80 Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b)) |
| (lll) | 20-37.8 Fraudulent use of a fictitious name for a special identification card (20-37.8(b)) | (mmmm) | 108A-80 Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c)) |
| (mmm) | 20-102.1 False report of theft or conversion of a motor vehicle | (nnnn) | 113-290.1(a)(2) Criminally negligent hunting; no bodily disfigurement |
| (nnn) | 20-111(5) Fictitious name or address in application for registration | (oooo) | 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement |
| (ooo) | 20-130.1 Use of red or blue lights on vehicles prohibited (20-130.1(e)) | (pppp) | 113-290.1(a)(4) Criminally negligent hunting; death results |
| (ppp) | 20-137.2 Operation of vehicles resembling law-enforcement vehicles (20-137.2(b)) | (qqqq) | 113-290.1(d) Criminally negligent hunting; person convicted/suspended license |
| (qqq) | 20-138.1 Driving while impaired (punishment level 1; 20-179(g) or 2 (20-179(h)) | (rrrr) | 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c)) |
| (rrr) | 20-138.2 Impaired driving in commercial vehicle (20-138.2(e)) | (ssss) | 147C-3 Aiding escapes from an institution or youth services |
| (sss) | 20-141.5(a) Speeding to elude arrest | (tttt) | 148-45(d) Aiding escape or attempted escape from prison |
| (ttt) | 20-166(b) Duty to stop in event of accident or collision | (uuuu) | 162-55 Injury to prisoner by jailer |
| (uuu) | 20-166(c) Duty to stop in event of accident or collision | (vvvv) | Common-Law misdemeanors: |
| (vvv) | 20-166(c1) Duty to stop in event of accident or collision | | |
| (www) | 50B-4.1 Knowingly violating valid protective order | | |
| (xxx) | 58-33-105 False statement in applications for insurance | | |

- (i) Going Armed to the Terror of the People
 - (ii) Common-Law Mayhem
 - (iii) False Imprisonment
 - (iv) Common-Law Robbery
 - (v) Common-Law Forgery
 - (vi) Common-Law Uttering of Forged paper
 - (vii) Forcible Trespass
 - (viii) Unlawful Assembly
 - (ix) Common-Law Obstruction of Justice
- (www) Those offenses occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (vvv) of this Rule.
- (11) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with 12 NCAC 09G .0404.
 - (12) "Probation/Parole Officer" means an employee of the North Carolina Department of Correction, Division of Community Corrections, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Community Corrections.
 - (13) "Probation/Parole Officer-~~Intermediate~~ Surveillance" means an employee of the North Carolina Department of Correction, Division of Community Corrections, other than a regular probation/parole officer who is trained in corrections techniques, and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Community Corrections, whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation, parole, or post release supervision program operated by the Division of Community Corrections.
 - (14) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
 - (15) "School" means an institution, college, university, academy, or agency which offers penal or corrections training for correctional officers, probation/parole officers, or probation/parole officers-surveillance. "School" includes the corrections training course curricula, instructors, and facilities.

- (16) "School Director" means the person designated by the sponsoring institution or agency to administer the "School."
- (17) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (18) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. 20 classroom hours of Commission-approved corrections training equals one State Corrections training point.

Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

SECTION .0200 - MINIMUM STANDARDS FOR CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0202 CITIZENSHIP

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ by the North Carolina Department of Correction shall be a citizen of the United States.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0203 AGE

(a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ by the North Carolina Department of Correction shall be at least 20 years of age.

(b) Candidates shall document age through documents issued by any county, State, or federal government agency.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0204 EDUCATION

(a) Every person employed as a correctional officer by the North Carolina Department of Correction shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.

(b) Every person employed as a probation/parole officer by the North Carolina Department of Correction shall be a graduate of a regionally accredited college or university and have attained at least the baccalaureate degree.

(c) Every person employed as a probation/parole officer-~~intermediate surveillance~~ by the North Carolina Department of Correction shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.

(d) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Correction documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.

- (1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas

received from a recognized public school or an approved private school which, in either case, meet the approval guidelines of the North Carolina Department of Public Instruction or comparable out-of-state agency. The Director of the Standards Division shall determine whether other types of documentation will be permitted in specific cases. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.

- (2) Documentary evidence of completion of the General Educational Development "GED" Test shall be satisfied by a certified copy of GED test results showing successful completion. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

- (d) Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; submitting to a background investigation consisting of:
 - (1) verification of age;
 - (2) verification of education;
 - (3) criminal history check of local, state, and national files;
- (e) being truthful in providing all required information as prescribed by the application process.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ by the North Carolina Department of Correction shall have been examined and certified by a licensed physician, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ by the North Carolina Department of Correction shall have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina within one year prior to employment with the North Carolina Department of Correction to determine the officer's mental and emotional suitability to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to:

- (a) not having been convicted of a felony for 10 years since the date of conviction or the completion of any corrections supervision imposed by the courts whichever is later;
- (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(10) for three years since the date of conviction or the completion of any corrections supervision imposed by the courts whichever is later;
- (c) having submitted to and produced a negative result on a drug test which meets the certification standards of the Department of

Authority G.S. 17C-6; 17C-10.

SECTION .0300 - CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, PROBATION/PAROLE OFFICERS-INTERMEDIATE, AND INSTRUCTORS

12 NCAC 09G .0301 CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-INTERMEDIATE

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ shall be certified as prescribed by these Rules. The Commission shall certify an officer as either a probationary officer or general officer based on the officer's qualifications and experience.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS

(a) Every person employed and certified as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ shall notify the Standards Division of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. Criminal offenses shall include all felony offenses and shall specifically include those misdemeanor offenses delineated in 12 NCAC 09G .0102.

(b) The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of arrest or criminal charge, the final disposition and the date thereof. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court.

(c) The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification.

(d) Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the

date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrest(s), or criminal charge(s), and final disposition(s), shall also notify the Standards Division of all arrests or criminal convictions within 30 days of the date of the arrest and within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Subparagraph.

Authority G.S. 17C-6.

12 NCAC 09G .0303 PROBATIONARY CERTIFICATION

- (a) A prospective employee may commence active service as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~ at the time of employment.
- (b) Within 90 days of appointment, the North Carolina Department of Correction shall submit a completed Report of Appointment/Application for Certification to the Standards Division.
- (c) The Commission shall certify as a probationary officer a person meeting the minimum standards for certification when the North Carolina Department of Correction submits a completed Report of Appointment/Application for Certification to the Standards Division.
- (d) The Standards Division shall issue the person's Probationary Certification to the North Carolina Department of Correction.
- (e) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner terminated for cause or the officer has attained General Certification.
- (f) Documentation of Probationary Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission,

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0304 GENERAL CERTIFICATION

- (a) The Commission shall grant an officer General Certification when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0400 within the officer's probationary period and the officer has met all other requirements for General Certification.
- (b) General Certification is continuous from the date of issuance, so long as:
 - (1) The certified officer remains continuously employed as a correctional officer, probation/parole officer, or probation/parole officer-~~intermediate surveillance~~—in good standing with the North Carolina Department of Correction and the certification has not been terminated for cause; or
 - (2) The certified officer, having separated in good standing with the North Carolina Department of Correction, is re-employed within two years, and the certification has not been terminated for cause.
- (c) Certified officers who, through promotional opportunities, move into non-certified positions within the Department, may

have their certification reinstated without re-completion of the basic training requirements of 12 NCAC 09G .0400 and are exempted from reverification of employment standards of 12 NCAC 09G .0202-.0206 when returning to a position requiring certification if they have maintained continuous employment within the Department.

(d) Documentation of General Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission.

(e) Upon transfer of a certified officer from one type of corrections officer to another, the North Carolina Department of Correction shall submit a Notice of Transfer to the Standards Division.

- (1) Upon receipt of the Notice of Transfer, the Standards Division shall cancel the officer's current General Certification and upon receipt of documentary evidence that the officer has met the requisite standards for the specified type of corrections officer certification, the Commission shall issue Probationary Certification reflecting the officer's new corrections position.
- (2) The Commission shall grant an officer General Certification as the new type of corrections officer when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0400 within the officer's probationary period and the officer has met all other requirements for General Certification.

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION

(a) The North Carolina Department of Correction shall place in the officer's certification file the official notification from the Commission of either Probationary or General Certification for each correctional officer, probation/parole officer, and probation/parole officer-~~intermediate surveillance~~—employed or appointed by the North Carolina Department of Correction. The certification file shall also contain:

- (1) the officer's Report of Appointment/Application for Certification including the State Personnel Application;
- (2) the officer's Medical History Statement and Medical Examination Report to be maintained at the officer's local unit;
- (3) documentation of the officer's drug screening results;
- (4) documentation of the officer's educational achievements;
- (5) documentation of all corrections training completed by the officer;
- (6) documentation of the officer's psychological examination results;
- (7) documentation and verification of the officer's age;
- (8) documentation and verification of the officer's citizenship;

- (9) documentation of any prior criminal record; and
- (10) miscellaneous documents to include, but not limited to, letters, investigative reports, and subsequent charges and convictions.

(b) All files and documents relating to an officer's certification shall be available for examination and utilization at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. These records shall be maintained in compliance with the North Carolina Department of Correction's approved Records Retention Schedule, and as agreed upon by the Commission.

Authority 17C-2; 17C-6.

12 NCAC 09G .0310 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Firearms (DOC);
- (2) Controls, Restraints, and Defensive Techniques ~~Unarmed Self-Defense~~ (DOC).

(b) To qualify for Specialized Instructor Certification, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09G .0309 of this Section;
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-recognized School Director.

(c) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing.

Authority G.S. 17C-6.

12 NCAC 09G .0315 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Specialized Firearms Instructor Training" and "Specialized Controls, Restraints, and Defensive Techniques ~~Unarmed Self-Defense~~ Instructor Training" course in its entirety, the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

(c) The Commission's representative shall submit to the School Director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(e) A trainee who fails to achieve the minimum score of 75 percent on the Commission's comprehensive written examination shall not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor training course in its entirety before further examination may be permitted.

Authority G.S. 17C-6; 17C-10.

SECTION .0400 - MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0411 BASIC TRAINING FOR CORRECTIONAL OFFICERS

(a) The basic training course for correctional officers shall consist of a minimum of 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a correctional officer. The instructional components of this course must be listed in the "Basic Correctional Officer Training Manual," and shall include, at a minimum: firearms training; ~~unarmed self-defense~~ controls, restraints, and defensive techniques; legal issues for correctional supervision; emergency procedures; Division of Prisons operational processes such as classification, search and seizure, health services, and contemporary correctional theory.

(b) The "Basic Correctional Officer Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of correctional officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Correction
 2211 Schieffelin Road ~~4001 Montford Avenue~~
 Apex, North Carolina 27502 ~~Raleigh, North Carolina 27626-~~
 0540

With mailing address:
 MSC 4213

Raleigh, North Carolina 27699-4213

and may be obtained at cost from the Department of Correction.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0412 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS

(a) The basic training course for probation/parole officers shall consist of a minimum of 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer. The instructional components of this course must be listed in the "Basic Probation/Parole Officer Training Manual," and shall include, at a minimum: controls, restraints, and defensive techniques; ~~unarmed self-defense~~; court processes; case processing and management; arrest procedures; basic life support; physical fitness; and contemporary correctional theory.

(b) The "Basic Probation/Parole Officer Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of probation/parole officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
North Carolina Department of Correction
2211 Schieffelin Road 1001 Montford Avenue
Apex, North Carolina 27502 Raleigh, North Carolina 27626-0540

With mailing address:
MSC 4213

Raleigh, North Carolina 27699-4213

and may be obtained at cost from the Department of Correction.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0413 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS-INTERMEDIATE

(a) ~~In addition to the requirements for Basic Training for Probation/Parole Officers contained in Rule .0412 of this Section, every~~ The basic training course for probation/parole officer-intermediate officers-surveillance shall complete a supplemental course which shall consist of a minimum of 460 80 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer-~~intermediate-surveillance~~. The instructional components of this course must be listed in the "Basic Probation/Parole Officer-~~Intermediate Surveillance~~-Training Manual," and shall include, at a minimum: firearms training; controls, restraints and defensive techniques; officer/offender relationships; advanced arrest, search and seizure; DCC specialized equipment operations; and administrative matters, review, and testing unarmed self-defense; court processes; case processing and management; arrest procedures; basic life support; physical fitness; and contemporary correctional theory.

(b) The "Basic Probation/Parole Officer- ~~Intermediate Surveillance~~-Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of probation/parole officer- ~~intermediate surveillance~~-basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
North Carolina Department of Correction
2211 Schieffelin Road 1001 Montford Avenue
Apex, North Carolina 27502 Raleigh, North Carolina 27626-0540

With mailing address:
MSC 4213

Raleigh, North Carolina 27699-4213

and may be obtained at cost from the Department of Correction.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0415 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - FIREARMS

(a) The instructor training course requirement for corrections specialized firearms instructor certification shall consist of a minimum of 80 hours of instruction presented during a

continuous period of not more than two weeks or as approved by the Standards Division.

(b) Each corrections specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections firearms instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer-~~Intermediate Surveillance~~" course, and in-service training courses for correctional officers, PERT teams, and probation/parole officers-~~intermediate-surveillance~~.

(c) Each corrections specialized firearms instructor training course shall include as a minimum the following topical areas:

- (1) Overview;
- (2) Legal Considerations for Firearms Instructors;
- (3) Firearms Safety;
- (4) Range Operations;
- (5) Range Medical Emergencies;
- (6) Revolver - Operation, Use, and Maintenance;
- (7) Advanced Revolver Training;
- (8) Revolver Night Firing;
- (9) Rifle Training and Qualification;
- (10) Shotgun Training and Qualification;
- (11) Maintenance and Repair of Rifles and Shotguns;
- (12) Special Techniques, Training Aids, and Methods;
- (13) Chemical Weapons;
- (14) Situational Use of Firearms;
- (15) Day and Night Practical Courses of Fire; and
- (16) Administrative Matters, Testing, and Evaluation.

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training - Firearms" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

Authority 17C-6.

12 NCAC 09G .0416 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - CONTROLS, RESTRAINTS, AND DEFENSIVE TECHNIQUES

(a) The instructor training course requirement for corrections specialized controls, restraints, and defensive techniques~~unarmed self-defense~~ instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.

(b) Each corrections specialized controls, restraints, and defensive techniques~~unarmed self-defense~~ instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections controls, restraints, and defensive techniques~~unarmed self-defense~~ instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, "Basic Training-Probation/Parole Officer-~~Intermediate Surveillance~~" course, and in-service training courses for correctional officers, PERT teams, probation/parole officer-~~intermediate-surveillance~~, and all Department of Juvenile Justice and Delinquency Prevention controls, restraints, and defensive techniques~~unarmed self-defense~~ courses.

PROPOSED RULES

(c) Each corrections specialized controls, restraints, and defensive techniques ~~unarmed self-defense~~ instructor training course shall include, as a minimum, the following topical areas and minimum instructional hours for each area:

- (1) Introduction to Controls, Restraints, and Defensive Techniques; ~~Unarmed Self-Defense~~;
- (2) Basic Exercises, Techniques and Methods;
- (3) Basic Come-A-Longs and Control Techniques;
- (4) Restraint Application;
- (5) Instructional Methods/Techniques; and
- (6) Program Evaluation.

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training-Controls, Restraints, and Defensive Techniques" ~~Training/Unarmed Self-Defense~~" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

Authority G.S. 17C-6.

SECTION .0500 - ENFORCEMENT OF RULES

12 NCAC 09G .0504 SUSPENSION; REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer- ~~intermediate surveillance~~—when the Commission finds that the officer has committed or been convicted of a felony offense.

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

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a corrections officer;

- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) has refused to submit to an applicant drug screen as required by these Rules;
- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(c), where the positive result cannot be explained to the Commission's satisfaction; or
- (13) has been denied certification or had such certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a corrections officer and the person may not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

Authority G.S. 17C-6; 17C-10.

SECTION .0600 - PROFESSIONAL CERTIFICATE PROGRAM

12 NCAC 09G .0602 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, an officer shall first meet the following preliminary qualifications, except as provided for in 12 NCAC 09G .0602(a)(4):

- (1) The officer shall presently hold general corrections officer certification. A person serving under a probationary certification is not eligible for consideration.
- (2) The officer shall hold general certification with the Commission in one of the following categories:
 - (A) correctional officer;
 - (B) probation/parole officer; or

PROPOSED RULES

(C) probation/parole officer-intermediate surveillance.

(3) The officer shall be a permanent, full-time, paid employee of the North Carolina Department of Correction.

(4) Permanent, paid employees of the Department of Correction who have successfully completed a Commission-accredited corrections officer basic training program and have previously held general certification as specified in 12 NCAC 09G .0602(a)(1) and 12 NCAC 09G .0602(a)(2), but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the Department of Correction from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Awards are based upon a formula which combines formal education, corrections training, and actual experience as a corrections officer. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) 20 classroom hours of Commission-approved corrections training shall equal one point;
- (3) only experience as a permanent, paid employee of the North Carolina Department of Correction or the equivalent experience as determined by the Commission shall be acceptable of consideration.

(c) Certificates will be awarded in an officer's area of expertise only. The State Corrections Certificate is appropriate for permanent, paid corrections employees employed by the North Carolina Department of Correction.

Authority G.S. 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02I .0601-.0603. Notice of Rule-making Proceedings was published in the Register on January 15, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: May 21, 2003

Time: 1:00 p.m.

Location: 512 N. Salisbury St., Raleigh, NC (Ground Floor Hearing Room of Archdale Building)

Reason for Proposed Action: *The Administrative Procedure Act, G.S. 150B-4, requires the Environmental Management Commission to set forth in its rules the procedures to be followed by persons requesting declaratory rulings, and the procedures to follow for considering such requests. The proposed rules describe such procedures and will be applicable to rules of the Division of Air Quality, Water Quality, and Water Resources within the Department of Environment and Natural Resources.*

Comment Procedures: *Comments from the public shall be directed to Jeff Manning, 1617 Mail Service Center, DWQ Planning Branch, Raleigh, NC 27699, phone (919) 733-5083, x. 579, and email Jeff.Manning@ncmail.net. Comments shall be received through May 23, 2003.*

Fiscal Impact

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02I – HEARINGS

SECTION .0600 – DECLARATORY RULINGS

15A NCAC 02I .0601 ISSUANCE OF DECLARATORY RULING

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Environmental Management Commission may issue a declaratory ruling as provided in G.S. 150B-4.

Authority G.S. 150B-4.

15A NCAC 02I .0602 PROCEDURE FOR SUBMISSION OF PETITION

(a) All requests for a declaratory ruling shall be filed with the Director of the appropriate Division of the Department of Environment and Natural Resources, and 25 complete copies shall also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

Director
Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617

Director
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611

EMC Recording Clerk
1617 Mail Service Center
Raleigh, NC 27699-1617

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute to a given factual situation;
- (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order, or statute must include a statement of the specific facts to a given factual situation and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of declaratory rulings in a single request.

(d) A person may petition to become a party-intervenor to the request for declaratory ruling by filing a motion to intervene in the manner provided in G.S. 150B-23(d). A motion to intervene in a request for a declaratory ruling on the applicability a rule, order, or statute, must contain a statement of agreement with the given state of facts agreed upon by the parties. The motion to intervene shall be determined by the Chairman.

Authority G.S. 150B-4.

15A NCAC 02I .0603 DISPOSITION OF REQUEST

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of this Section, and he shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department staff or any other person; and
- (3) hear oral arguments from the petitioner(s) and Department staff or their legal counsel.

(c) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the party requesting the declaratory ruling, any person allowed to intervene, and the Department may be allowed to present oral arguments to the Commission at a regularly scheduled meeting. No party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the given state of facts agreed upon by the parties.

(d) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable, the

Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.

(e) For purposes of Paragraph (d) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

- (1) the facts are in dispute;
- (2) there has been a similar determination in a previous contested case or declaratory ruling;
- (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented;
- (5) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record; or
- (6) other good cause exists for declining to issue the requested ruling.

(f) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:

- (1) the request for a ruling;
- (2) any written submissions by the parties;
- (3) the given state of facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(g) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is amended or repealed;
- (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) the Commission changes the declaratory ruling prospectively for good reasons; or,
- (4) any court sets aside the declaratory ruling in litigation between the Commission of Department of Environment and Natural Resources and the party requesting the ruling.

(h) The requesting party may agree to allow the Commission to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.

(i) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

Authority G.S. 150B-4.

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 02E .1101 - .1108, .1201 - .1205. Notice of Rule-making Proceedings was published in the Register on January 15, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: May 6, 2003

Time: 2:00 p.m. – 19A NCAC 02E .1101 - .1108

Time: 3:00 p.m. – 19A NCAC 02E .1201 - .1205

Location: Room 150 – Highway Building, 1 S. Wilmington St., Raleigh, NC

Reason for Proposed Action:

19A NCAC 02E .1101 - .1108 - Senate Bill 206, S.L. 2001 – 383, ratified August 26, 2001, and effective January 1, 2002, directed NC DOT to promulgate rules, set fees, & establish sign standards to implement the Tourist Oriented Directional Sign Program (TODS). The DOT adopted temporary rules effective January 1, 2003 which allow the Department to proceed with legislative intent. The TODS signs will be placed on primary U.S. and NC highways and state secondary roads to provide motorists with directional information to tourist-oriented businesses and facilities.

19A NCAC 02E .1201 - .1205 – Senate Bill 438, S.L. 12001-441, ratified October 4, 2001, amended G.S. 20-4.01(32) and directed the Department of Transportation to promulgate rules for public vehicular area registration, serve as registry for the designations, and charge a fee of \$500 or less per designation. These rules are proposed in response to the legislation. The legislation and rules allow property owners to identify public vehicular areas and enforce DWI laws on private property.

Comment Procedures: Written comments should be submitted to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501. Phone: (919) 733-2520, fax: (919) 733-9150, email: elee@dot.state.nc.us. Comments should be submitted by May 16, 2003.

Fiscal Impact

- State 19A NCAC 02E .1203 - .1205
Local
Substantive (>=\$5,000,000)
None 19A NCAC 02E .1101 - .1108; .1201 - .1202

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .1100 - TOURIST-ORIENTED DIRECTION SIGN PROGRAM

19A NCAC 02E.1101 TOURIST-ORIENTED

DIRECTIONAL SIGN (TODS) PROGRAM

(a) The Tourist-Oriented Directional Sign Program, hereinafter "Program," offered by the North Carolina Department of Transportation, hereinafter "Department," provides directional signing for eligible tourist attractions located off the state non-freeway system which is located within the right-of-way at intersections as specified in the Manual on Uniform Traffic Control Devices (MUTCD).

(b) Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, 1592 Mail Service Center, Raleigh, North Carolina 27699-1592.

(c) The Division Engineer in which the attraction is located or his designee shall accept applications for participation in the Program.

Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E .1102 DEFINITIONS

For purposes of these Rules, the following definitions shall apply:

- (1) Panel - A TODS for the purpose of displaying the business identification of and directional information for eligible attractions.
(2) Trailblazer – Additional TODS for the purpose of guiding tourists from the mainline intersection to the attraction.
(3) Attraction – Classes of businesses or facilities as described in G.S. 136-140.15(b)(2) and (3) which are of significant interest to tourists. When used in this Rule, the term "attraction" means either a tourist-oriented business or a tourist-oriented facility.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E .1103 LOCATION OF TODS

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

- (1) The Department shall limit the placement of TODS panels to highways other than fully controlled access highways that are either in rural unincorporated areas or in towns or cities with a population of less than 40,000. TODS panels shall not be placed on highways that are in towns or cities with a population equal to or greater than 40,000.
(2) The Department may only erect panels at intersections (at-grade). Trailblazers may be installed when further direction is needed to guide the tourist from the intersection to the attraction.
(3) Panels shall be fabricated and located as detailed on the signing plans for the intersections and shall be located in a manner to take advantage of natural terrain and to have the least impact on the scenic environment.

- (4) A separate sign panel shall be provided on the intersection approach for each qualified attraction. Panels shall be allowed in each direction only when lateral spacing is available. The number of TODS panels shall not exceed a total of six per approach with only one attraction name on each TODS panel.
- (5) The center of the mainline TODS intersection shall not be more than five driving miles from the qualified attraction and shall not be placed where prohibited by local ordinance.
- (6) If an attraction is not directly on a State highway, it is eligible for TODS panels only if both of the following requirements are met:
 - (a) It is located on a street that directly connects with a state maintained road; and
 - (b) It is located so that only one TODS Trailblazer, placed on a state maintained road, will lead the tourist to the attraction.
- (7) Sign panels shall not be placed immediately in advance of the attraction if its on-premise advertising signs are readily visible from the highway.
- (8) TODS panels shall be located at least 200 feet in advance of the main intersection. Signs shall be spaced at least 200 feet apart and at least 200 feet from other traffic control devices. TODS panels shall not be located more than one-half (0.5) mile from the center of the main intersection and shall not be placed in the signing sequence for any other prior intersections.
- (9) Existing warning, regulatory, guide or other official highway signs shall take precedence over TODS.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);

19A NCAC 02E.1104 ELIGIBILITY FOR PROGRAM

An attraction is eligible to participate in the Program if it meets all of the following conditions:

- (1) It meets the criteria in G.S. 136-140.16; and
- (2) The maximum distance that an attraction shall be located from the intersection containing TODS panels shall not exceed five miles. Said distance shall be measured from the center of the intersection coincident with the centerline of a non-controlled access highway route or its median, along the roadways to the respective attraction. The point to be measured to for each attraction is a point on the roadway that leads to the main entrance to the attraction that is perpendicular to the corner of the nearest wall of the attraction to the intersection. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate

restrooms,) whether or not attached to the main building shall not be used for the purposes of measuring. If the office (main building) of an attraction is located more than two-tenths (0.2) mile from a public road on a private road or drive, the distance to the office along the said drive or road shall be included in the overall distance measured to determine whether or not the attraction qualifies for TODS signing. The office shall be presumed to be at the place where the services are provided.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E .1105 COMPOSITION OF SIGNS

- (a) No TODS panel shall be displayed which would mislead or misinform the traveling public.
- (b) Any messages that interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or similar device are prohibited.
- (c) Each specific TODS panel shall include only information that is related to that specific attraction.
- (d) TODS panel and trailblazer designs shall be in conformance with the standards as specified in the MUTCD and approved by the Department prior to fabrication and shipment.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E .1106 FEES

The Department shall set fees to cover the initial costs of signs, sign maintenance, and administering the program.

- (1) The fees for participation in the program are as follows:
 - (a) Non-refundable application fee of one hundred seventy-five dollars (\$175.00) per contract shall be prepaid prior to field investigation.
 - (b) Initial construction fee of three hundred twenty-five (\$325.00) per each sign.
 - (c) Annual maintenance fee of three hundred dollars (\$300.00) for each contract shall be renewed annually each July 1.
 - (d) Prorated Fee is a prorated portion of the maintenance fee. This fee shall be charged for that period of time between acceptance and placement of the TODS panel by the Department and the following July 1. This TODS prorated fee shall be charged on the first July 1 of the contract.
 - (e) Service Charge Fee of one hundred sixty dollars (\$160.00) per each TODS panel, each additional masking and unmasking, shall be charged

when an attraction requests replacement of a sign, or when the Department performs replacement due to damages to the TODS panel caused by acts of vandalism, accidents, or natural causes including natural deterioration. The attraction shall provide a new or renovated TODS panel with the service charge fee per each TODS panel to the Department.

(f) All participating attractions shall prepay all associated costs for the installation and maintenance of the TODS panel(s).

(2) Fees may be paid by check or money order and are due in advance of the period of service covered by said fee. Failure to pay a charge when due is grounds for removal of the TODS panel and termination of the contract.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-348; 143B-350(f).

19A NCAC 02E .1107 CONTRACTS WITH THE DEPARTMENT

(a) The Department shall perform all required installation, maintenance, removal and replacement of all TODS panel(s).

(b) Applications shall be submitted to the Division Engineer for the Division in which the attraction is located, and must include a layout of the proposed TODS, and the initial application fee.

(c) Upon approval of the application for participation in the TODS program, the applicant must agree to submit the required program fees within 30 days of notification.

(d) No TODS panel shall be displayed which, in the opinion of the Department, is unsightly, badly faded, or in a state of dilapidation. The Department shall remove, replace, or mask any such TODS panel at the expense of the business. Ordinary maintenance services shall be performed by the Department at such necessary times upon payment of the annual renewal fee, and removal shall be performed upon failure to pay any fee or for violation of any provision of the rules in this Section and the TODS panel shall be removed.

(e) When a TODS panel is removed, it shall be taken to the Division Traffic Services Shop of the Division in which the attraction is located. The participant shall be notified in writing of such removal and given 30 days in which to retrieve his sign. After 30 days, the TODS panel shall become the property of the Department and shall be disposed of as the Department shall see fit.

(f) Should the Department determine that trailblazing to an attraction is desirable as described in Rule .1103(6) of this Section, it shall be done in conformance with the standards for a TODS trailblazer as defined in Rule .1102(2) of this Section. The participant shall furnish trailblazing signs required and deemed necessary by the Department. In such trailblazer installations, only one TODS trailblazer shall be used per each TODS intersection signed.

(g) Should an attraction qualify for TODS signage at two intersections, the TODS panel shall be erected at the nearest intersection. If the participant desires signing at the second

intersection also, it may be so signed provided it does not prevent another attraction from being signed.

(h) An attraction under construction shall not be allowed to apply for participation in the program if its participation would prevent an existing open attraction applicant from participating, unless the open attraction has turned down a previous opportunity offered by the Department to participate in the program as provided in the program. After approval of an application, an attraction under construction shall be allowed priority participation over another qualifying attraction that opens for business prior to the time specified for opening in the application by the attraction under construction.

(i) The closest interested eligible attractions at an intersection up to a total of six TODS panels per approach to submit signed contracts shall be allowed TODS panels at that approach. Should the number of attractions at an approach increase to more than the maximum number of TODS panels allowed at that approach and a closer interested eligible participant requests installation of its TODS panels, the farthest qualifying participant shall be removed at the renewal date. Program participants may renew their respective contracts annually provided the attraction maintains program eligibility. An attraction with more than one sign displayed on any intersection approach leg shall have the additional sign(s) removed at the end of a contract period when other qualifying attractions apply for space on that approach.

(j) An attraction which has been closed for remodeling or repair shall be granted one year to complete the construction, renovation, or restoration, provided all TODS fees are maintained and the same type of qualifying service is provided after reopening, even if under a different business name as set out in G.S. 136-140.18(b). The signs shall then be reinstalled upon payment of a service charge fee per each TODS as described in Rule .1106 of this Section. The attraction shall be granted one year to complete the construction, renovation, or restoration, provided all TODS fees are maintained and the same type of qualifying service is provided after reopening, even if under a different business name. The signs shall then be reinstalled upon payment of a Service Charge fee as described in Rule .1106(1)(d) of this Section per each TODS panel.

(k) Should a participating attraction cease to be in compliance with G.S. 136-140.16 and the rules in this Section, the Division Engineer shall notify the participant that it shall be given 30 days to bring the attraction into compliance or its TODS panel(s) shall be removed. If the attraction is removed and later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant. When a participating attraction is determined not to be in compliance with G.S. 136-140.16 and the rules in this Section for a second time within two years of the first determination of non-compliance, its TODS panel(s) shall be permanently removed. If an attraction under construction is not open on the specified date in the agreement, the participant shall be given 30 days notification to request the TODS panel installation or forfeit its panel. Future applications shall be treated in the same manner as a new applicant.

(l) The transfer of ownership of an attraction for which an agreement has been lawfully executed shall not affect the validity of the agreement for the TODS agreement provided that the appropriate Division Engineer is given notice in writing of the transfer of ownership within 30 days of the actual transfer and the application is updated.

(m) No new contracts shall be accepted by the Department during the month of June. The renewal date for all contracts shall be on July 1.

(n) The Department shall not maintain waiting lists for the program.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E .1108 APPEAL OF DECISION

(a) Any applicant who applies to participate in the program and is refused, or any attraction participating in the program has its contract terminated and signs removed, believes that the program is not being administered in accord with the rules in this Section may appeal the decision of the Division Engineer to the Secretary of the Department of Transportation. The decision of the Secretary is final.

(b) The applicant or participant shall so notify the appropriate Division Engineer of his decision to appeal by certified mail, return receipt requested, within 10 days of the receipt of the decision.

(c) Within 20 days from the time of submitting his notice of appeal, the applicant or participant shall submit to the Secretary a written appeal setting forth with particularity the facts upon which its appeal is based.

(d) Within 30 days from the receipt of the said written appeal or within such additional time as may be agreed to between the Secretary and the appealing party, the Secretary shall make an investigation of the said appeal. The Secretary shall then make findings of fact and conclusions pertaining to the appeal on behalf of the Department and the findings and conclusions shall be served upon the appealing party by certified mail, return receipt requested.

Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f).

SECTION .1200 - PRIVATE PROPERTY OWNERS

19A NCAC 02E.1201 PURPOSE

The North Carolina Department of Transportation's Public Vehicular Area designation exists to allow private property to be designated as a public vehicular area by the private property owner.

Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E.1202 DEFINITIONS

For the purposes of the rules in this Section, the following definitions shall apply:

- (1) "Department" shall mean the North Carolina Department of Transportation.
- (2) "Participants" shall mean the private property owners who have registered property as a Public Vehicular Area.

Authority G.S. 20-4.01(32); 02-219.4; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E.1203 PARTICIPATION

(a) The Division Engineer or his designee shall acknowledge receipt and registration of applications from participants applying to participate in designating a Public Vehicular Area.

(b) By certified check or money order, each participant shall pay a one time non-refundable, transferable fee of two hundred dollars (\$200.00) for each registration. This registration fee shall cover the cost of one certified copy of the registration of the Public Vehicular Area. Requests for additional certified copies shall be submitted to the Division Engineer in writing along with a check or money order for five dollars (\$5.00) per copy.

(c) All applications shall be submitted on a form furnished by the Department.

Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E.1204 RESPONSIBILITIES OF PARTICIPANTS AND DEPARTMENT

(a) The Department shall provide a copy of the official design of the signs that shall state "Public Vehicular Area G.S. 20-219.4."

(b) Any participant shall:

- (1) Locate signs in a manner that does not inhibit sight distance or create a safety hazard;
- (2) Fabricate, install, and maintain signs in accordance with the Manual on Uniform Traffic Control Devices; and
- (3) Erect signs so as to provide reasonable notice to the motorist. Signs indicating Public Vehicular Area shall be placed at the driveway entrances to the area or outside of right-of-way for areas with adjacent non-public vehicular areas.

Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f).

19A NCAC 02E.1205 TERMINATION OF THE AGREEMENT

(a) Any participant may choose to cancel the agreement by notifying the Department. No prorated refund shall be given to the participant due to cancellation of agreement.

(b) A participant may choose to modify the agreement by resubmitting an application and two hundred dollars (\$200.00) fee for each registration.

Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16B .0401, .0501, .0601; 16C .0401; 16Q .0401-.0403 and amend the rules cited as 21 NCAC

PROPOSED RULES

16A .0101; 16B .0304; 16C .0304; 16D .0104; 16E .0103; 16M .0101-.0102; 16Q .0101, .0201, .0301-.0303, .0501, .0503, .0602; 16Y .0102. Notice of Rule-making Proceedings was published in the Register on October 1, 2002 and February 3, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: May 9, 2003

Time: 8:00 a.m.

Location: Office of the North Carolina State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC

Reason for Proposed Action: (1) The purpose of this rulemaking is to make the temporary rules numbered 21 NCAC 16A .0101; 16B .0401, .0501, .0601; 16C .0401; 16M .0101-.0102 permanent. The reason for these rules is to increase the number of qualified dental practitioners in North Carolina and to encourage the recruitment of qualified dental personnel to work in dental health professional shortage areas; thereby, allowing for greater access to dental care by the public. Another reason for these rules is to ensure that only qualified dental professionals practice dentistry and dental hygiene in North Carolina. (2) The purpose of this rulemaking is to make the temporary rules numbered 21 NCAC 16B .0304; 16C .0304; 16D .0104; 16E .0103; 16Y .0102 permanent rules. The reason for these rules is to protect the public by conducting a criminal history check for each applicant for licensure to ensure that only qualified individuals are granted a license by the Board. (3) The purpose of this rulemaking is to make the temporary rules numbered 21 NCAC 16Q .0101, .0201, .0301-.0303, .0401-.0403, .0501, .0503, .0602 permanent. The reason for these rules is to require reasonable education, training, and equipment standards for the safe administration and monitoring of enteral sedation for outpatients in the dental setting. Monitoring of the administration of enteral sedation in the dental setting is necessary to protect the public health, safety, and welfare. The existing rules were amended by temporary amendment to distinguish between the different types of permits issued by the Board regarding general anesthesia and sedation.

Comment Procedures: Comments from the public shall be directed to Lisa Thompson, North Carolina State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513, phone (919) 678-8223, fax (919) 678-8472, and email lthompson@ncdentalboard.org. Comments shall be received through June 16, 2003.

Fiscal Impact

- State** 21 NCAC 16B .0601; 16Q .0401-.0402, .0501
- Local** 21 NCAC 16Q .0401-.0402, .0501
- Substantive** (≥\$5,000,000) 21 NCAC 16Q .0401-.0402, .0501
- None** 21 NCAC 16A .0101; 16B .0304, .0401, .0501; 16C .0304, .0401; 16D .0104; 16E .0103; 16M .0101-.0102; 16Q .0101, .0201, .0301-.0303, .0403, .0503, .0602; 16Y .0102

SUBCHAPTER 16A – ORGANIZATION

21 NCAC 16A .0101 DEFINITIONS

As used in this Chapter:

- (1) "Applicant" means a person applying for a dental license, a dental hygiene license or a dental intern permit; license, dental licensure by credentials, dental hygiene licensure by credentials, a limited volunteer dental license, an instructor's license, a provisional license, or an intern permit;
- (2) "Board" means the North Carolina State Board of Dental Examiners; ~~and~~
- (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry or dental hygiene in North Carolina-Carolina; and
- (4) "Unrestricted license" means a license which is not under suspension or inactivation, or subject to the terms of a consent order or other disciplinary action imposed by the jurisdiction that issued the license, or limited by supervision, or location requirements.

Authority G.S. 90-26; 90-28; 90-29(a); 90-29.3; 90-29.4; 90-29.5; 90-30; 90-37.1; 90-43; 90-48; 90-224; 90-224.1; 90-226.

SUBCHAPTER 16B – LICENSURE: DENTISTS

SECTION .0300 - APPLICATION

21 NCAC 16B .0304 OTHER REQUIREMENTS

(a) Applicants who are licensed in other states shall furnish verification of licensure from the secretary of the dental board of each state in which they are licensed. Letters of recommendation must be received in the Board's office before the application is considered complete. A photograph, taken within six months prior to the date of the application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application to be used as part of the identification badge.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

Authority G.S. 90-28; 90-30; 90-48; 90-41.

SECTION .0400 – LICENSURE BY CREDENTIALS

21 NCAC 16B .0401 DENTAL LICENSURE BY CREDENTIALS

(a) An applicant for a dental license by credentials shall submit to the Board:

- (1) a completed, notarized application, on a form provided by the Board;
- (2) the licensure by credentials fee;
- (3) verification that the applicant has successfully completed with a passing score the Dental National Board Part I and Part II written examination administered by the Joint

PROPOSED RULES

Commission on National Dental Examinations;

- (4) verification that the applicant has successfully completed with a passing score, the licensure examination in general dentistry conducted by a regional testing agency or independent state licensure examination substantially equivalent to the clinical licensure examination required in North Carolina;
 - (5) verification that the applicant holds a valid, current and unrestricted general dental or dental specialty license issued by a state, U.S. territory or the District of Columbia;
 - (6) verification that the applicant has been subject to a state, U.S. territory, or federal dental regulatory authority during the five years immediately preceding the application;
 - (7) verification of all dental or professional licenses held;
 - (8) an affidavit from the applicant stating for the five years immediately preceding application:
 - (A) the dates that and locations where the applicant has practiced dentistry; and
 - (B) that the applicant has been in continuous active clinical practice averaging at least 1000 hours per year in clinical direct patient care dentistry, during the five years immediately preceding application, not including post graduate training, residency programs or an internship;
 - (9) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, patient complaints or state or federal agency complaints, judgments, settlements, or criminal charges;
 - (10) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program; and
 - (11) verification that the applicant holds a current certification in cardiopulmonary resuscitation.
- (b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental license by credentials shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:
- (1) official transcripts and a certificate from the dean verifying that the applicant has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association from the dental school;
 - (2) if the applicant is or has ever been employed as a dentist by or under contract with a federal agency, verification of the applicant's current

status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;

- (3) if the applicant is or has ever been a member of a state dental society, verification of the applicant's current status and disciplinary history from each state dental society in which the applicant is or has been a member;
- (4) verification of the applicant's registration with the federal Drug Enforcement Administration (DEA), from the DEA, even if the applicant is not currently registered with DEA;
- (5) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other professional license;
- (6) a report from the National Practitioner Databank;
- (7) a report of any pending or final malpractice actions against the applicant and verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his/her current and all previous malpractice insurance carriers; and
- (8) verification from a dental professional regulatory board of a passing score on a clinical licensure examination substantially equivalent to the licensure clinical examination administered by the dental professional regulatory board or its designated agent other than an educational institution. Such verification shall state that the examination included procedures performed on human subjects as part of the assessment of restorative clinical competencies and shall have included evaluations in at least four of the eight following subject areas:
 - (A) periodontics; clinical abilities testing;
 - (B) endodontics; clinical abilities testing;
 - (C) amalgam preparation and restoration;
 - (D) anterior composite preparation and restoration;
 - (E) posterior ceramic or composite preparation and restoration;
 - (F) cast gold; clinical abilities testing;
 - (G) prosthetics; written or clinical abilities testing;
 - (H) oral diagnosis; written or clinical abilities testing; and
 - (I) oral surgery, written or clinical abilities testing.
- (9) In addition to the requirements of Subparagraph (b)(8), after January 1, 1998, to be eligible for consideration for equivalency, the licensure examination shall include:
 - (A) anonymity between candidates and examination raters;

(B) standardization and calibration of raters; and

(C) a mechanism for post exam analysis.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) An applicant for dental licensure by credentials must successfully complete written examinations and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.

(e) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.

(f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

Authority G.S. 90-28; 90-36.

SECTION .0500 – LIMITED VOLUNTEER DENTAL LICENSE

21 NCAC 16B .0501 LIMITED VOLUNTEER DENTAL LICENSE

(a) An applicant for a limited volunteer dental license shall submit to the Board:

(1) a completed, notarized application, on a form provided by the Board;

(2) the limited volunteer dental licensure fee;

(3) verification that the applicant has successfully completed with a passing score the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations;

(4) verification that the applicant has successfully completed with a passing score, the licensure examination in general dentistry conducted by a Board recognized regional testing agency or independent state licensure examination substantially equivalent to the clinical licensure examination required in North Carolina;

(5) verification that the applicant:

(A) has a valid, current and unrestricted general dental or dental specialty license in any state, U.S. territory or the District of Columbia; or

(B) has an expired dental license in this or another state; or

(C) is authorized to treat veterans or personnel enlisted in the United States armed services;

(6) an affidavit from the applicant stating:

(A) for the five years immediately preceding application, the dates that and locations where the applicant has practiced dentistry;

(B) that the applicant has:

(i) been in active clinical practice averaging at least 1000 hours per year in clinical direct patient care dentistry, for a minimum of five years, not including post graduate training, residency programs or an internship; and

(ii) been in active clinical practice averaging at least 500 hours in clinical direct patient care dentistry over the last five years, not including post graduate training, residency programs or an internship;

(7) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program; and

(8) verification that the applicant holds a current certification in cardiopulmonary resuscitation.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a limited volunteer dental license shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:

(1) documentation of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other professional license;

(3) a report from the National Practitioner Databank; and

(4) a report of any pending or final malpractice actions against the applicant and verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his/her current and all previous malpractice insurance carriers.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) An applicant for limited volunteer dental license must successfully complete written examinations and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.

(e) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for a limited volunteer dental license, an additional limited volunteer dental license fee shall be required.

(f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(g) The license may be renewed on an annual basis provided that the licensee provides documentation that he/she has practiced a minimum of 100 hours, completed continuing education requirements and current CPR certification as adopted by the Board.

Authority G.S. 90-28; 90-37.1.

SECTION .0600 – INSTRUCTOR'S LICENSE

21 NCAC 16B .0601 INSTRUCTOR'S LICENSE

(a) An applicant for an instructor's license shall submit to the Board:

- (1) a completed, notarized application, on a form provided by the Board;
- (2) the instructor's licensure fee;
- (3) verification that the applicant holds a valid, current and unrestricted general dental or dental specialty license in any state, territory, country or other jurisdiction where he or she is licensed and verification of all dental or professional licenses held;
- (4) verification from the dean or director that the applicant has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated, and verification that such school or medical center is accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations;
- (5) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, patient complaints or state or federal agency complaints, judgments, settlements, or criminal charges; and
- (6) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired

dentists or other impaired professionals program.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for an instructor's license shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:

- (1) if the applicant is or has ever been employed as a dentist by or under contract with an agency or organization, verification of the applicant's current status and disciplinary history from each agency or organization where the applicant is or has been employed or under contract;
- (2) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other professional license;
- (3) a report from the National Practitioner Databank or its international equivalent, if applicable; and
- (4) a report of any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his/her current and all previous malpractice insurance carriers.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for an instructor's license, an additional instructor's license fee shall be required.

(e) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(f) The license shall be renewed on an annual basis.

Authority G.S. 90-28; 90-29.5.

SUBCHAPTER 16C – LICENSURE: DENTAL HYGIENISTS

SECTION .0300 – APPLICATION

21 NCAC 16C .0304 OTHER REQUIREMENTS

(a) Applicants who are licensed in other states shall furnish verification of licensure from the appropriate regulatory agency of each state in which they are licensed, together with two letters of recommendation, preferably written by dentists. A photograph, taken within six months prior to the date of application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application, to be used as part of the identification badge.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

Authority G.S. 90-223; 90-224; 90-229.

SECTION .0400 – LICENSURE BY CREDENTIALS

21 NCAC 16C .0401 DENTAL HYGIENE LICENSURE BY CREDENTIALS

(a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- (1) a completed, notarized application, on a form provided by the Board;
- (2) the licensure by credentials fee;
- (3) verification that the applicant has successfully completed with a passing score the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations;
- (4) verification that the applicant has successfully completed with a passing score, the licensure examination conducted by a regional testing agency or independent state licensure examination that is substantially equivalent to the clinical licensure examination required in North Carolina;
- (5) verification that the applicant holds a valid, current and unrestricted dental hygiene license issued by a state, U.S. territory or the District of Columbia;
- (6) verification that the applicant has been subject to a state, U.S. territory, or federal dental regulatory authority during the two years immediately preceding the application;
- (7) verification of all dental hygiene or professional licenses held;
- (8) an affidavit from the applicant stating for the two years immediately preceding application:
 - (A) the dates that and locations where the applicant has practiced dental hygiene; and
 - (B) that the applicant has been in continuous active clinical practice averaging at least 1000 hours per year in clinical direct patient care, during the two years immediately preceding application;
- (9) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, patient complaints or state or federal agency complaints, judgments, settlements, or criminal charges;
- (10) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired

dental hygiene or other impaired professionals program; and

- (11) verification that the applicant holds a current certification in cardiopulmonary resuscitation.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:

- (1) official transcripts and a certificate from the dean verifying that the applicant has graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) if the applicant is or has ever been employed as a dentist or dental hygienist by or under contract with a federal agency, verification of the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
- (3) if the applicant is or has ever been a member of a state dental society or dental hygiene association, verification of the applicant's current status and disciplinary history from each state dental society or dental hygiene association in which the applicant is or has been a member;
- (4) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other professional license;
- (5) a report from the National Practitioner Databank, if applicable; and
- (6) a report of any pending or final malpractice actions against the applicant and verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his or her current and all previous malpractice insurance carriers.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) An applicant for dental hygiene licensure by credentials must successfully complete written examinations and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.

(e) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.

PROPOSED RULES

(f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

Authority G.S. 90-223; 90-224.1.

**SUBCHAPTER 16D - PROVISIONAL LICENSURE:
DENTISTS**

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16D .0104 APPLICATION

(a) All applications for provisional licensure shall be submitted upon forms provided by the ~~North Carolina State Board of Dental Examiners, Board,~~ and all information thereon requested shall be provided in detail.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

Authority G.S. 90-29.3; 90-41(a).

**SUBCHAPTER 16E - PROVISIONAL LICENSURE:
DENTAL HYGIENIST**

21 NCAC 16E .0103 APPLICATION

(a) All applications for provisional licensure shall be submitted upon forms provided by the Board and all information thereon requested shall be provided in detail.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

Authority G.S. 90-226; 90-229(a).

SUBCHAPTER 16M - FEES PAYABLE

SECTION .0100 – FEES PAYABLE

21 NCAC 16M .0101 DENTISTS

(a) The following fees shall be payable to the Board:

- (1) Application for general dentistry examination \$ 500.00
- (2) Application for instructor's license or renewal thereof \$ 140.00
- (3) Application for provisional license \$ 100.00
- (4) Application for intern permit or renewal thereof \$ 100.00
- (5) Certificate of license to a resident dentist desiring to change to another state or territory \$ 25.00
- (6) Duplicate license \$ 25.00
- (7) Reinstatement of license after retirement from practice in this State \$ 225.00
- (8) ~~Penalty fee~~ Fee for late renewal of any license or permit \$ 50.00
- (9) Application for license by credentials \$2000.00
- (10) Application for limited volunteer

dental license \$ 100.00

(11) Renewal of limited volunteer dental license \$ 25.00

(b) Each dentist renewing his license to practice dentistry in North Carolina shall be assessed a fee of twenty-five dollars (\$25.00), in addition to the annual renewal fee, to be contributed to the operation of the ~~Caring Dentist Program.~~ North Carolina Caring Dental Professionals.

Authority G.S. 90-28; 90-39; 90-48.

21 NCAC 16M .0102 DENTAL HYGIENISTS

(a) The following fees shall be payable to the Board:

- (1) Application for examination \$125.00
- (2) Reinstatement of license after retirement from practice in this State \$ 60.00
- (3) Application for provisional licensure \$ 60.00
- (4) Certificate to a resident dental hygienist desiring to change to another state or territory \$ 25.00
- (5) Application for license by credentials \$750.00

(b) Each dental hygienist renewing his or her license to practice dental hygiene in North Carolina shall be assessed a fee of fifteen dollars (\$15.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

Authority G.S. 90-232.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0100 – DEFINITIONS

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purposes of these Rules relative to the administration of general ~~anesthesia and sedation,~~ anesthesia, parenteral conscious sedation, and enteral conscious sedation by or under the direction of a dentist, the following definitions shall apply:

- (1) ~~"General anesthesia" is the intended controlled state of depressed consciousness produced by a pharmacologic agent and accompanied by a partial or complete loss of protective reflexes, including the inability to maintain an airway and respond purposefully to physical stimulation or verbal commands.~~
- (2) ~~"Sedation" is the intravenous, intramuscular, subcutaneous, submucosal, or rectal administration of pharmacological agents with the intent to obtain a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.~~
- (1) "Analgesia" - the diminution or elimination of pain.
- (2) "Anti-anxiety sedative" - a sedative agent administered in a dosage intended to reduce

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| <p><u>anxiety without diminishing consciousness or protective reflexes.</u></p> <p>(3) <u>"Anxiolysis" - pharmacological reduction of anxiety through the administration of a minor tranquilizer, which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance.</u></p> <p>(4) <u>"Behavioral management" - the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.</u></p> <p>(5) <u>"Competent" - displaying special skill or knowledge derived from training and experience.</u></p> <p>(6) <u>"Conscious sedation" - a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.</u></p> <p>(7) <u>"Deep sedation" - an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.</u></p> <p>(8) <u>"Direct supervision" - the dentist responsible for the sedation/anesthesia procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.</u></p> <p>(9) <u>"Enteral conscious sedation" is sedation that is achieved by administration of pharmacological agents through the alimentary tract either orally or rectally for conscious sedation administered primarily for behavioral management.</u></p> <p>(10) <u>"Facility" - the office where a permit holder practices dentistry and provides anesthesia/sedation services.</u></p> <p>(11) <u>"Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care; may be required by the Board prior to the issuance of a sedation/anesthesia permit or any time during the term of the permit.</u></p> <p>(12) <u>"General anesthesia" is the intended controlled state of depressed consciousness produced by</u></p> | <p><u>pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.</u></p> <p>(13) <u>"Immediately available" - on-site in the facility and available for immediate use.</u></p> <p>(14) <u>"Local anesthesia" - the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.</u></p> <p>(15) <u>"May" - indicates freedom or liberty to follow a reasonable alternative.</u></p> <p>(16) <u>"Minor psychosedative" - pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patent airway continuously and without assistance and carry a margin of safety wide enough to render unintended loss of consciousness unlikely.</u></p> <p>(17) <u>"Must" or "shall" - indicates an imperative need or duty or both; an essential or indispensable item; mandatory.</u></p> <p>(18) <u>"Parenteral conscious sedation" is the intravenous, intramuscular, subcutaneous, submucosal, intranasal, or transdermal administration of pharmacological agents with the intent to obtain a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.</u></p> <p>(19) <u>"Protective reflexes" - includes the ability to swallow and cough.</u></p> <p>(20) <u>"Vested adult" - a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a minor following the administration of general anesthesia or conscious sedation.</u></p> |
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Authority G.S. 90-28; 90-30.1.

SECTION .0200 - GENERAL ANESTHESIA

21 NCAC 16Q .0201 CREDENTIALS AND PERMIT

(a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit must be renewed ~~annually~~, annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of fifty dollars (\$50.00), and produce evidence showing that he:

- (1) Has completed a minimum of one year of advanced training in anesthesiology and

- (2) related academic subjects (or its equivalent) beyond the undergraduate dental school level; or
- (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or
- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or
- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit is also authorized to administer parenteral or enteral conscious sedation without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

Authority G.S. 90-28; 90-30.1.

SECTION .0300 - PARENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0301 PARENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer parenteral conscious sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist applying for a permit to administer parenteral conscious sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or

- (4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or
- (5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

(c) To be eligible for a parenteral conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel who shall document annual, successful completion of basic life support (BLS) training and be capable of assisting with procedures, problems and emergencies incident thereto.

~~(d) The dentist seeking a permit shall meet one of the following criteria:~~

- ~~(1) document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other Board-approved equivalent course; or~~
- ~~(2) document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:~~
 - ~~(A) sedation;~~
 - ~~(B) medical emergencies;~~
 - ~~(C) monitoring IV sedation and the use of monitoring equipment;~~
 - ~~(D) pharmacology of drugs and agents used in IV sedation;~~
 - ~~(E) physical evaluation, risk assessment, or behavioral management; or~~
 - ~~(F) audit ACLS/PALS courses.~~

~~(e)(d)~~The Board may, based upon formal application, grant a permit authorizing the use of parenteral conscious sedation to a dentist who has been utilizing parenteral conscious sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

(e) A dentist who holds a parenteral conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly unintentionally. A dentist who is qualified to administer parenteral conscious sedation and holds a parenteral conscious sedation permit is also authorized to administer enteral conscious sedation without obtaining a separate enteral conscious sedation permit.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering parenteral conscious sedation is solely responsible for providing that the environment in which the parenteral conscious sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:

PROPOSED RULES

- (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
- (B) A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
- (C) Lighting as necessary for specific procedures; and
- (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction;
- (2) The following equipment is maintained:
- (A) Positive pressure oxygen delivery system, including full face mask for adults and pediatric patients;
- (B) Oral and nasal airways of various sizes;
- (C) Blood pressure monitoring device; and
- (D) Pulse oximeter.
- (3) The following emergency equipment is maintained:
- (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
- (B) Syringes as necessary for specific procedures; and
- (C) Tourniquet & tape;
- (4) The following drugs are maintained with a current shelf life and within easy accessibility from the operatory and recovery ~~room~~-area:
- (A) Epinephrine;
- (B) Atropine;
- ~~(C) Lidocaine;~~
- (C) Antiarrhythmic;
- (D) Narcotic antagonist;
- (E) Antihistamine;
- (F) Corticosteroid;
- (G) Nitroglycerine;
- (H) Bronchial dilator;
- (I) Antiemetic;
- ~~(J) Anectine;~~
- (J) Benzodiazepine antagonist;
- (K) Muscle ~~relaxant;~~ relaxant for intubation; and
- (L) 50% Dextrose;
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies ~~are~~-is provided; and
- (6) The following records are maintained:
- (A) Patient's current written medical history, including known allergies and previous surgery;
- (B) Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;
- (C) A sedation record which shall include:
- (i) blood pressure;
- (ii) pulse rate;
- (iii) respiration;
- (iv) duration of procedure;
- (v) documentation of complications or morbidity; and
- (vi) status of patient upon discharge.
- (b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of conscious sedation while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:
- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression;
- (4) Sterilization;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.
- (c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:
- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.
- (d) A dentist administering parenteral conscious sedation shall ensure that the facility is staffed with auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.
- (e) Upon request, the holder of an anesthesia or parenteral conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide parenteral and enteral conscious sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the office in which the parenteral or enteral conscious sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency

incidents that may occur as a result of the parenteral conscious sedation or secondary to an unexpected medical complication.

Authority G.S. 90-28; 90-30.1; 90-48.

21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Rule .0301 of this Section, he shall be granted temporary approval to continue to administer parenteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months. An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required. The evaluation shall be conducted in accordance with Rules .0202 - .0205 of this Subchapter, except that evaluations of dentists applying for parenteral conscious sedation permits may be conducted by dentists who have been issued parenteral conscious sedation permits by the Board and who have administered parenteral conscious sedation for at least three years. Fees required by Rules .0202-.0205 of this Subchapter shall apply.

(b) An evaluation may be made any time it is deemed necessary by the Board.

(c) Temporary approval shall not be granted to a provisional licensee.

History Note: Authority G.S. 90-28; 90-30.1;

SECTION .0400 - ENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0401 ENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer enteral conscious sedation, he or she shall obtain either a parenteral conscious sedation permit issued by the Board, a general anesthesia permit issued by the Board, or an enteral conscious sedation permit issued by the Board. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain an enteral conscious sedation permit from the Board by submitting the appropriate information on an application form provided by the Board and paying a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder. A dentist who holds an enteral conscious sedation permit shall not administer deep sedation or general anesthesia.

(1) An enteral conscious sedation permit may be obtained by completing an application form approved by the Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of an enteral conscious sedation permit the Board shall require that the applicant undergo a facility inspection or further review of credentials. The Board shall direct an evaluator to assist in this inspection

or review. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall coordinate the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no more than 90 days may be granted if the designated evaluator or applicant requests one.

(4) An applicant for an enteral conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these Rules "good standing" means that a licensee is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing will not be approved.

(b) Educational/Professional Requirements:

(1) The dentist applying for an enteral conscious sedation permit shall meet one of the following criteria:

(A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious sedation in a minimum of five cases;

(B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage enteral conscious sedation;

(C) successful completion of a twelve hour enteral conscious sedation course approved by the Board which affords comprehensive training necessary to administer and manage enteral conscious sedation;

(D) successful completion of an ADA accredited postgraduate program in pediatric dentistry; or

(E) is a North Carolina licensed dentist in good standing who has been utilizing enteral conscious sedation in a competent manner for the five years preceding January 1, 2002, his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (a)(3) of this Rule, and has presented evidence of successful administration of enteral conscious sedation in a minimum of five clinical cases involving the administration of enteral conscious sedation.

(2) Prior to administering enteral conscious sedation to minor children under the age of 13,

a dentist who only qualifies for an enteral conscious sedation permit shall also successfully complete a six hour course in pediatric enteral conscious sedation developed by the Pediatric Dentistry Department at the University of North Carolina or a Board approved equivalent course and submit documentation showing successful completion of such course to the Board. The requirements of this Paragraph shall not apply to Pediatric Dentists who meet the requirements of Paragraph (b)(1)(D) of this Rule nor to those dentists who otherwise meet the requirements of Paragraph (b)(1)(E) of this Rule and in addition have administered enteral conscious sedation to minor children under the age of 13 in a competent manner for the five years preceding January 1, 2002 and have presented evidence of successful administration of enteral conscious sedation in a minimum of five clinical cases involving the administration of enteral conscious sedation to minor children under the age of 13.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0402 PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

(a) Enteral conscious sedation may be induced and maintained by a permitted dentist licensed by the Board and practicing in North Carolina, a physician anesthesiologist licensed by the North Carolina Medical Board, or a Certified Registered Nurse Anesthetist (CRNA) licensed in North Carolina. When a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of enteral conscious sedation by a CRNA shall require the operating dentist to be permitted for its utilization.

(b) Enteral conscious sedation is indicated for use only for conscious sedation as defined in Rule .0101(9) of this Subchapter (relating to Definitions). Enteral conscious sedation is not indicated for use to achieve deep sedation in adults or minor children under the age of 13.

(c) Minor tranquilizers used for anxiolysis may be prescribed for administration outside of the dental office when pre-procedure instructions are likely to be followed. Medications such as chloral hydrate and all drugs included in the Drug Enforcement Administration (DEA) Controlled Substances Schedule II must not be administered outside of the dental office for sedation purposes. Medications other than minor tranquilizers used for anxiolysis administered outside of the office require a permit.

(d) Each dentist shall:

- (1) adhere to the clinical requirements as detailed in Paragraph (e) of this Rule;
- (2) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of enteral conscious sedation or secondary to an unexpected medical complication;

- (3) utilize auxiliary personnel who shall document annual successful completion of basic life support training; and
- (4) not allow an enteral conscious sedation procedure to be performed in his or her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the Board for the procedure being performed. This provision addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.

(e) Each dentist shall meet the following requirements:

- (1) Patient Evaluation. Patients who are administered enteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals Physical Status I, II (ASA I, II, as defined by the American Society of Anesthesiologists), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability Physical Status III (ASA III, as defined by the American Society of Anesthesiologists) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.
- (2) Pre-procedure preparation, informed consent:
 - (A) The patient or guardian must be advised of the procedure associated with the delivery of the enteral conscious sedation.
 - (B) Equipment must be evaluated and maintained for proper operation.
 - (C) Baseline vital signs should be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.
 - (D) Dentists administering enteral conscious sedation shall use sedative agents that he/she is competent to administer and shall administer such agents in a manner that is within the standard of care.

(f) In addition to the dentist, at least one member of the auxiliary personnel shall be present during the administration of enteral conscious sedation.

- (g) (1) Patients who have been administered enteral conscious sedation shall be monitored during waiting periods prior to operative procedures. A responsible adult given appropriate written pre-procedural instruction may provide such monitoring. The patient shall be monitored for alertness, responsiveness, breathing and skin coloration.
- (2) Dentists administering enteral conscious sedation shall maintain direct supervision of the patient during the operative procedure and

PROPOSED RULES

for such a period of time necessary to establish pharmacologic and physiologic vital sign stability.

(A) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry, except as provided in Paragraph (g)(4) of this Rule.

(B) Ventilation. Shall perform observation of chest excursions or auscultation of breath sounds or both.

(C) Circulation. Shall take and record an initial blood pressure and pulse and thereafter as appropriate except as provided in Paragraph (g)(4) of this Rule.

(3) An appropriate time oriented anesthetic record of vital signs shall be maintained in the permanent record including documentation of individual administering the drug(s) and showing the name(s) of drug(s) and dosage(s) used.

(4) If the dentist responsible for administering enteral conscious sedation must deviate from the requirements set out in this Rule, he or she shall document the occurrence of such deviation and the reasons for such deviation.

(h) (1) Following the operative procedure, positive pressure oxygen and suction equipment shall be immediately available in the recovery area or operatory.

(2) Vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation, and circulation are stable and the patient is sufficiently responsive for discharge from the office.

(3) Patients who have unusual reactions to enteral conscious sedation shall be assisted and monitored either in an operatory chair or recovery area until stable for discharge.

(4) Recovery from enteral conscious sedation shall include:

(A) cardiovascular function stable;

(B) airway patency uncompromised;

(C) patient easily arousable and protective reflexes intact;

(D) state of hydration within normal limits;

(E) patient can talk, if applicable;

(F) patient can sit unaided, if applicable;

(G) patient can ambulate, if applicable, with minimal assistance; and

(H) for the child who is very young or disabled, and incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that child should be achieved.

(5) Prior to allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Paragraph (h)(4) of this Rule and the following discharge criteria:

(A) oxygenation, circulation, activity, skin color and level of consciousness are sufficient and stable and have been documented;

(B) explanation and documentation of written postoperative instructions have been provided to the patient or a responsible adult and time of discharge;

(C) responsible individual is available for the patient to transport the patient after discharge

(D) for a patient who must use a child restraint system designed for use in a motor vehicle, a vested adult is available to transport the patient after discharge and an additional responsible individual is available to attend to the patient.

(i) The dentist, personnel and facility shall be prepared to treat emergencies that may arise from the administration of enteral conscious sedation, and shall have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0403 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Rule .0401 of this Section, he or she shall be granted temporary approval to administer enteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months. An on-site inspection of the facilities shall be required prior to the issuance of an enteral conscious sedation permit.

(b) An inspection may be made at any time it is deemed necessary by the Board.

(c) Temporary approval shall not be granted to a provisional licensee.

Authority G.S. 90-28; 90-30.1.

SECTION .0500 - RENEWAL OF PERMITS

21 NCAC 16Q .0401 .0501 ANNUAL RENEWAL REQUIRED

(a) ~~Both general anesthesia and~~ General anesthesia, parenteral conscious sedation, and enteral conscious sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.

(b) ~~Anesthesia and~~ Anesthesia, parenteral conscious sedation, and enteral conscious sedation permits shall be subject

PROPOSED RULES

to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of ~~anesthesia or anesthesia, parenteral conscious sedation sedation, or enteral conscious sedation~~ shall be unlawful and shall subject the dentist to the penalties prescribed by Section ~~.0600 .0700~~ of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0202 are met and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the parenteral conscious sedation permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0302 are met and also meet one of the following criteria:

- (1) document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other equivalent course; or
- (2) document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) audit ACLS/PALS courses.

(e) As a condition for renewal of the enteral conscious sedation permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0402 are met and shall document annual, successful completion of basic life support (BLS) training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;
- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; or
- (6) audit ACLS/PALS courses.

Authority G.S. 90-28; 90-30.1; 90-48.

21 NCAC 16Q ~~.0403-.0503~~ INSPECTION AUTHORIZED

Incident to the renewal of an anesthesia or sedation permit, the Board may, ~~in its discretion, for cause or routinely at reasonable time intervals in order to ensure compliance,~~ require an on-site inspection of the dentist's facility, equipment, personnel and procedures. Such inspection shall be conducted in accordance with Rules .0204, .0205, ~~and .0303-.0303,~~ and .0401 of this Subchapter.

Authority G.S. 90-28; 90-30.1.

SECTION .0600 – REPORTING AND PENALTIES

21 NCAC 16Q ~~.0502-.0602~~ FAILURE TO REPORT

If a dentist fails to report any incident as required by Rule ~~.0504-.0601~~ of this Section, he shall be subject to discipline in accordance with Section ~~.0600 .0700~~ of this Subchapter.

Authority G.S. 90-28; 90-30.1; 90-41.

SUBCHAPTER 16Y - INTERN PERMITTING: DENTISTS

21 NCAC 16Y .0102 APPLICATION

(a) Applicants for intern permit who are graduates of dental schools or programs as set out in Rule .0101(1) above must:

- (1) complete the Application for Intern Permit as furnished by the Board;
- (2) submit an official copy of dental school transcripts;
- (3) forward a letter from a prospective employer;
- (4) submit a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application;
- ~~(4)~~(5) successfully complete written examination(s) administered by the Board; and
- ~~(5)~~(6) pay the one hundred fifty dollar (\$150.00) permit fee.

(b) Applicants for intern permit who are graduates of a dental program as set out in Rule .0101(2) of this Subchapter must:

- (1) submit written confirmation that the applicant has qualified for and is currently enrolled in a graduate, intern, fellowship, or residency program in the North Carolina Dental School or teaching hospital offering programs in dentistry;
- (2) submit written confirmation that an ad hoc committee (consisting of three associate or full professors, only one of whom represents the department in question) has evaluated the applicant's didactic and clinical performance with the point of observation being not less than three months from the applicant's start of the program, and has verified that the applicant is functioning at a professional standard consistent with a dental graduate from an ADA-accredited dental school;
- (3) successfully complete a simulated clinical examination:

PROPOSED RULES

- (4) submit written confirmation that the applicant has successfully completed a program of study at the training facility in:
- (A) clinical pharmacology;
 - (B) prescription writing in compliance with Federal and State laws; and
 - (C) relevant laws and administrative procedures pertaining to the DEA;
- (5) submit a written statement of the total time required to complete the graduate, intern, fellowship, or residency program, and the date that the applicant is scheduled to complete said program;
- (6) submit a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application;
- ~~(6)~~(7) successfully complete written examination(s) administered by the Board; and
- ~~(7)~~(8) pay the one hundred fifty dollar (\$150.00) permit fee.
- (c) In making application, the applicant shall authorize the Board to verify the information contained in the application or documents submitted or to seek such further information pertinent to the applicant's qualifications or character as the Board may deem necessary pursuant to G.S. 90-41.
- (d) The application for renewal of intern permit shall include all information in the original application as set out in this Rule.

Authority G.S.90-28; 90-29.4.

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Editor's Note: *This publication will serve as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).*

Rule-making Agency: *NC Medical Care Commission*

Rule Citation: *10 NCAC 42C .2303, .2506; 42D .1301, .1402-.1403, .1405-.1406, .1415, .1501, .1702-.1705, .1801-.1802, .1809-.1811, .1813-.1814, .1818, .1820-.1821, .1823-.1824, .1826-.1830, .2201-.2203*

Authority for the rulemaking: *S.L. 2002-260*

Reason for Proposed Action: *Session Law 2002-260 (HB 1777) authorizes the NC Medical Care Commission to "adopt temporary rules and permanent rules to amend Subchapter 42C and Subchapter 42D of Title 10 of the North Carolina Administrative Code." Prior to adoption, the legislation requires the Commission to: (a) consult with persons who may be interested in the subject matter of the temporary rule; (b) notify persons on the mailing list of its intent to adopt a temporary rule; (c) publish the proposed text of the temporary rule in the NC Register; (d) hold at least one public hearing; and (e) accept written comments for at least 30 days after the publication of the proposed text. This rule-making action satisfies items (c), (d) and (e) of this Paragraph.*

Comment Procedures: *Comments from the public shall be directed to Mark Benton, Chief of Budget and Planning, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701 and email mark.benton@ncmail.net. Comments shall be received through May 15, 2003.*

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2300 – SERVICES

10 NCAC 42C.230310A NCAC 13G.0904 NUTRITION AND FOOD SERVICE

(a) Preparation and Serving of Food:

- (1) ~~Sufficient staff, space, and equipment must be provided for safe, sanitary food preparation and service, including individual assistance to residents as needed;~~
- (2) ~~The kitchen, dining, and food storage areas must be clean, orderly, and protected from possible contamination;~~

- (3) ~~All meat processing must occur at a North Carolina Department of Agriculture approved processing plant;~~
- (4) ~~Table service, which means the place where the resident is served food, must include an appropriate place setting. Typically, the place setting is to include a minimum of a knife, fork, teaspoon, glass, napkin and a plate;~~
- (5) ~~Hot food shall be served hot and cold food served cold and in a consistency to meet individual needs. If residents require assistance in eating, food shall be maintained at serving temperature until assistance is provided.~~

(b) Storage of Food:

- (1) ~~All food being stored, prepared, and served must be protected from contamination;~~
- (2) ~~Any home canning of fruits or vegetables must be processed using the pressure method; and~~
- (3) ~~At least one week's supply of food must be in the home.~~

(c) Menu Planning:

- (1) ~~Menus must be planned in accordance with the requirements cited in Paragraph (d) of this Rule regarding daily service. Menus must be in writing with serving quantities specified. The menus are to be prepared at least one week in advance;~~
- (2) ~~Menus must be dated and posted in the kitchen for the guidance of the food service staff;~~
- (3) ~~Any substitutions made in the menu must be of equal nutritional value and must be recorded before being served to indicate the foods actually served to residents;~~
- (4) ~~Meals shall be planned taking into account the food preferences and customs of the residents. Meat substitutes must be provided to residents who choose to be vegetarians or who by religious or cultural preferences do not eat meat. However, an administrator may not impose vegetarian practices, or other religious or cultural food practices on a resident;~~
- (5) ~~A copy of the NCDA Diet Manual must be in the home for use in its food service. Where there is a cluster of homes, one diet manual may be shared by the homes;~~
- (6) ~~Menus as served and invoices or other appropriate receipts of purchases must be kept on file by the month for a year and are subject to periodic review by the monitoring and licensing agencies.~~

(d) Daily Service:

- (1) ~~Each resident is to be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours~~

between the breakfast and the evening meal. Variations from the required three meals, menus and specified time intervals to meet individualized needs of residents in an HIV-designated facility shall be planned or reviewed by a physician and registered dietitian and documented;

- (2) ~~Suitable foods or liquids (e.g., fruit, milk, juices) must be offered between meals and shown on the menu as a snack;~~
- (3) ~~Daily menus must include the following:~~
 - (A) ~~Homogenized or low fat milk or buttermilk. One cup (8 ounces) must be offered to each resident at least twice a day. Because milk is an important source of calcium and vitamin D, the resident must be encouraged to consume two cups (16 ounces) of milk daily as a beverage or as part of a meal (e.g., with dry cereal). Reconstituted dry milk or diluted evaporated milk may be used only in cooking and not for drinking purposes due to the risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used;~~
 - (B) ~~Fruit. Two one-half cup servings (8 ounces). A one-half cup (4 ounces) of citrus fruit or juice, and a one-half cup (4 ounces) of another variety of fresh, dried, or canned fruit must be served. Citrus fruits include oranges and grapefruits. One orange or one-half grapefruit is considered a serving. One cup of tomato juice or tomatoes may be used instead of citrus. Single strength canned or frozen fruit juices which are vitamin C fortified may be substituted for a citrus fruit or juice if it is noted on the label that there is 100 percent of the recommended dietary allowance of vitamin C in each six ounces of juice;~~
 - (C) ~~Vegetables. Two one-half cup servings (8 ounces). One of these must be a dark green leafy or deep yellow vegetable every other day or three times a week;~~
 - (D) ~~Eggs. At least three times a week unless limited by physician's orders;~~
 - (E) ~~Fats. Include butter, oil, or margarine. Restrict the use of seasoning with meat fats when there are older residents since older people find these difficult to digest;~~
 - (F) ~~Protein. At least two ounces of cooked meat must be served at both the noon and evening meal except a meat substitute equal to two ounces of cooked meat may be served three~~

times a week but not more than once a day. Examples of adequate meat substitutes are two eggs, two ounces of pure cheese, and one cup of dry beans or peas; Note: Bacon is considered a fat instead of a meat.

- (G) ~~Cereals and Breads. At least four servings, whole grain or enriched (such as oatmeal, enriched rice, corn meal, enriched prepared cereals or bread). Examples of one serving of bread are one slice, one biscuit, one roll, and one square of corn bread. One serving of cereal equals one-half cup cooked or three-fourths cup dry cereal. Cereal for the evening meal is not, by itself, acceptable due to the lack of variety and lack of needed nutrients; and~~
- (H) ~~Water and Other Beverages. Water must be offered at each meal in addition to other beverages. Six to eight cups of liquids are needed daily to keep the body functioning properly;~~
- (4) ~~Sandwiches shall not be served alone for any meal; and~~
- (5) ~~Generally the energy intake for persons aged 51-75 should be 2400 calories for males and 1800 calories for females according to the 1980 recommended dietary allowances of the National Research Council, National Academy of Sciences.~~
- (e) ~~Modified Diets:~~
 - (1) ~~All modified diet orders must be in writing from the resident's physician. Modified diet orders must be calorie or gram specific unless standing orders, which include the definition of any modified diets, have been obtained from the physician and are on file in the home.~~
 - (2) ~~Menus for these modified diets must be planned or reviewed and signed (including registration number) by a registered dietitian;~~
 - (3) ~~The administrator is responsible for maintaining an accurate and current listing of residents for whom modified diets have been prescribed and the modified diet ordered, for use by food service personnel;~~
 - (4) ~~The administrator shall ask a physician or registered dietitian for answers to questions about the diets of residents; and~~
 - (5) ~~The administrator is responsible for assisting residents who need modified diets in understanding and accepting these diets.~~
- (a) ~~Food Procurement and Safety:~~
 - (1) ~~The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.~~
 - (2) ~~All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.~~

TEMPORARY RULES

- (3) All meat processing shall occur at a USDA-approved processing plant.
- (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.
- (b) Food Preparation and Service:
- (1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
- (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the resident.
- (3) Hot foods shall be served hot and cold foods shall be served cold.
- (4) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.
- (c) Menus:
- (1) Menus shall be prepared at least one week in advance with serving quantities specified and in accordance with the Daily Food Requirements in Paragraph (d) of this Rule.
- (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
- (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.
- (4) Menus shall be planned to take into account the food preferences and customs of the residents.
- (5) Menus as served and invoices or other appropriate receipts of purchases shall be maintained in the facility for 30 days.
- (6) Menus for all therapeutic diets shall be planned and signed by a registered dietitian with the registered dietitian's registration number included.
- (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.
- (d) Daily Food Requirements:
- (1) Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
- (2) Foods and beverages that are appropriate to residents' diets shall be offered or made available to all residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.
- (3) Daily menus for regular diets shall include the following:
- (A) Milk: One cup (eight ounces) of pasteurized milk at least twice a day. Reconstituted dry milk or diluted evaporated milk may be used in cooking only and not for drinking purposes due to risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used.
- (B) Fruit: One serving of fruit (e.g., six ounces of juice; ½ cup of raw, canned or cooked fruit; one medium-size whole fruit; or ¼ cup dried fruit at least twice a day. One serving shall be a citrus fruit or a single strength juice in which there is 100% of the recommended dietary allowance of vitamin C in each six ounces of juice. The second fruit serving shall be of another variety of fresh, dried or canned fruit.
- (C) Vegetables: One serving of vegetables (e.g., ½ cup of cooked or canned vegetable; six ounces of vegetable juice; or one cup of raw at least three times a day. One of these shall be a dark green, leafy or deep yellow three times a week.
- (D) Eggs: One whole egg or appropriate substitute (e.g., two egg whites or ¼ cup of pasteurized egg product) at least three times a week at breakfast.
- (E) Protein: two-three ounces of pure cooked meat two to three times a day. An appropriate substitute (e.g., four tablespoons of peanut butter, one cup of cooked dried peas or beans or 2 ounces of pure cheese) may be served three times a week but not more than once a day, unless requested by the resident.
- Note: Bacon is considered to be fat and not meat for the purposes of this Rule.
- (F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or grain products a day. Examples of one serving are as follows: one slice of bread; ½ of a bagel, English muffin or hamburger bun; one small muffin, roll, biscuit or piece of cornbread; ½ cup cooked rice or cereal (e.g., oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle, pancake or tortilla that is six inches in diameter. Cereals and breads offered as snacks can be included in meeting this requirement.
- (G) Fats: Include butter, oil, margarine or items consisting primarily of one of these (e.g., icing or gravy).
- (H) Water and Other Beverages: Water shall be offered to each resident at each meal, in addition to other beverages.

(e) Therapeutic Diets:

- (1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician. Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled ADA diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a registered dietitian.
- (2) Physician orders for nutritional supplements shall be in writing from the resident's physician and be brand specific, unless the facility has defined a house supplement in its communication to the physician, and shall specify quantity and frequency.
- (3) The facility shall maintain an accurate and current listing of residents with physician-ordered therapeutic diets for guidance of food service staff.
- (4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as ordered by the resident's physician.

(f) Individual Feeding Assistance:

- (1) Sufficient staff shall be available for individual feeding assistance as needed.
- (2) Residents needing help in eating shall be promptly assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the resident's record.

Authority G.S. 131D-2; 143B-153; S.L. 2002-0160.

SECTION .2500 - DISCHARGE POLICIES

10 NCAC 42C .250610A NCAC 13G.0705 DISCHARGE OF RESIDENTS

(a) ~~A facility shall not initiate and carry out the discharge or transfer of residents except under conditions specified in this Rule. Discharge or transfer involves termination of residency in a facility and taking action to have the resident moved from the facility. The discharge or transfer of a resident by a facility shall meet one of the following conditions:~~

- (1) ~~he discharge or transfer is necessary for the resident's welfare because the resident's needs cannot be met in the facility;~~
- (2) ~~the discharge or transfer is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;~~
- (3) ~~the resident's condition is such that he is a danger to himself or poses a direct threat to his own health or safety;~~
- (4) ~~the safety of individuals in the facility would otherwise be endangered;~~

- (5) ~~the health of individuals in the facility would otherwise be endangered;~~
- (6) ~~the welfare of individuals in the facility would otherwise be endangered;~~
- (7) ~~the resident or responsible person has failed to pay the costs of services and accommodations according to the resident contract;~~
- (8) ~~the transfer or discharge is mandated under state law; or~~
- (9) ~~the facility ceases to operate.~~

(b) ~~If a facility discharges or transfers a resident, the reason for discharge or transfer shall be documented in the resident's record. Documentation shall include, documentation by the resident's physician if discharge or transfer is necessary under conditions specified in Subparagraph (a) Parts (1) and (2) of this Rule or a physician if discharge or transfer is necessary under the condition specified in Paragraph (a), Parts (3) and (5) of this Rule.~~

(c) ~~At least thirty days before discharging or transferring a resident, the following steps shall be taken:~~

- (1) ~~The facility shall notify the resident verbally and in writing and the responsible person or contact person in writing of the facility's decision to discharge or transfer the resident. The Adult Care Home Notice of Transfer/Discharge form shall serve as the written notice of discharge or transfer and be completed by the facility and given to the resident on the same day it is dated. A copy of this notice shall be mailed or sent by facsimile to the responsible person or contact person on the same day it is dated. Failure to use and complete this specific form shall invalidate the notice of discharge or transfer. This form may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505. Failure to use the latest version of this form does not invalidate the transfer or discharge unless the facility has been previously notified of change in the form and been provided a copy of the latest form.~~
- (2) ~~The facility shall notify the resident verbally and in writing and the responsible person or contact person in writing of the resident's right to appeal the facility's action of discharge or transfer to the Division of Medical Assistance. The Adult Care Home Hearing Request Form shall be given to the resident and a copy mailed or sent by facsimile to the responsible person or contact person simultaneously with the Adult Care Home Notice of Transfer/Discharge form as written notice of the right to appeal the facility's action. Failure to include this specific form with the Adult Care Home Notice of Transfer/Discharge form shall invalidate the notice of discharge or transfer. The Hearing Request Form may be obtained at no cost from the Division of Medical Assistance, P.O. Box 29529, Raleigh, NC 27626-0529. Failure to use the latest version of the Hearing Request Form does not~~

invalidate the request for a hearing unless the facility has been previously notified of a change in the form and been provided a copy of the latest form.

(3) In cases where the resident has been adjudicated incompetent, the Adult Care Home Notice of Transfer/Discharge form and the Adult Care Home Hearing Request Form shall be mailed or sent by facsimile to the resident's legal representative on the same day they are dated.

(4) The facility shall maintain a copy of the completed Adult Care Home Notice of Transfer/Discharge form in the resident's record.

(d) Exceptions to the 30 day notice of discharge or transfer required in Paragraph (c) of this Rule are cases in which a resident is being discharged under conditions specified in Parts (1), (3), (4) and (5) of Paragraph (a) of this Rule.

(e) The facility shall assist residents in the discharge or transfer process to ensure safe and orderly discharge or transfer from the facility.

(f) The resident or the resident's responsible person may initiate an appeal of a facility's intent to discharge or transfer the resident by submitting a written request for a hearing to the Hearing Unit which is the Chief Hearing Officer and the Chief Hearing Officer's staff in the Division of Medical Assistance of the Department of Health and Human Services. The request for a hearing shall be submitted by mail, facsimile or hand delivery and must be received by the Hearing Unit within 11 calendar days from the date of the facility's notice of discharge or transfer. If the eleventh day falls on a Saturday, Sunday or legal holiday, the period during which an appeal may be requested shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. Except in cases specified in Paragraph (d) of this Rule, the resident shall not be discharged or transferred before the final decision resulting from the appeal has been rendered.

(g) If an appeal hearing is requested, the following shall apply:

(1) Upon timely receipt of a request for a hearing according to Paragraph (f) of this Rule, the Hearing Unit shall promptly notify the facility in writing of the request.

(2) The facility, the resident and the resident's responsible person or contact person shall be notified by the Hearing Unit of the date, time and place of the hearing. The hearing shall be held within 30 calendar days of the Hearing Unit's receipt of a request for a hearing. If the 30th day falls on a Saturday, Sunday or legal holiday, the period during which a hearing may be held shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina. The hearing may also be conducted by telephone as indicated on the Hearing Request Form.

(3) Each party to an appeal hearing shall provide to all other parties to the hearing and to the Hearing Unit copies of all documents and

records that the party intends to use at the hearing at least five working days prior to the scheduled hearing.

(4) The Hearing Officer, who is the person designated to preside over hearings between residents and adult care home providers regarding discharges and transfers, may:

(A) grant continuances;

(B) dismiss a request for a hearing if the resident or the resident's responsible person or whoever the resident has designated to represent him fails to appear at a scheduled hearing; or

(C) proceed to conduct a scheduled hearing if a facility representative fails to appear at a scheduled hearing.

(5) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by a Division hearing officer unless another specific statute or rule provides otherwise. Division hearings are not hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that Chapter unless otherwise stated in these rules. Parties may be represented by counsel or other representative at the hearing.

(6) The Hearing Officer's final decision shall uphold or reverse the facility's decision. Copies of the final decision shall be mailed by certified mail to the facility and the resident and the resident's responsible person.

(h) If a discharge or transfer is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person prior to the resident leaving the facility. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the facility's resident contract or house rules provided to the resident or responsible person according to Rule .2405 of this Subchapter.

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

Note: The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule would apply.

TEMPORARY RULES

(b) The discharge of a resident shall be based on one of the following reasons:

- (1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (3) the safety of other individuals in the facility is endangered;
- (4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;
- (5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2(a)(1).

(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
- (2) reasons under Subparagraphs (b)(2), (b)(3), (b)(4) and (b)(6) of this Rule exist.

(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

- (1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
- (2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
- (3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or
- (4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a)(1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.

(e) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt

requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.

- (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.
- (3) Failure to use and simultaneously provide the specific forms according to Paragraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.
- (4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.

(f) The facility shall provide assistance in preparing for a safe and orderly discharge as evidenced by:

- (1) notifying staff in the county department of social services responsible for placement services;
- (2) explaining to the resident and responsible person or legal representative why the discharge is necessary;
- (3) informing the resident and responsible person or legal representative about an appropriate discharge destination; and
- (4) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (C) a copy of the resident's current physician orders;
 - (D) a list of the resident's current medications;
 - (E) the resident's current medications; and
 - (F) a record of the resident's vaccinations and TB screening.

(g) If an appeal hearing is requested:

- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit, copies of all documents and records that the facility intends to use at the hearing at least

five working days prior to the scheduled hearing; and

- (2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c)(2) of this Rule.

(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person prior to the resident leaving the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 99-0334; S.L. 2002-0160.

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1300 – MANAGEMENT

~~10 NCAC 42D .1301~~10A NCAC 13F.0601

MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF SEVEN TO THIRTY RESIDENTS

~~(a) The requirements in Paragraphs (a) and (c) of Rule 10 NCAC 42C .1901 shall control for this Subchapter for facilities with a capacity or census of 7 to 30 residents.~~

(a) The administrator is responsible for the total operation of a home and is also responsible to the licensing agency and the monitoring agency for meeting and maintaining the rules of this Subchapter. The co-administrator, when there is one, shares equal responsibility with the administrator for the operation of the home and for meeting and maintaining the rules of this Subchapter. The term administrator also refers to co-administrator where it is used in this Subchapter.

(b) At all times there shall be one administrator or supervisor-in-charge who is directly responsible for assuring that all required duties are carried out in the home and for assuring that at no time is a resident left alone in the home without a staff member. ~~In addition to the requirements in 10 NCAC 42C .1901(a) and (c),~~ one of the following arrangements shall be used to manage a facility with a capacity of 7 to 30 residents:

- (1) The administrator is in the home or within 500 feet of the home and immediately available. To be immediately available, the administrator shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects the licensed home with the private residence of the administrator. The equipment installed shall be in working condition and must be located in the bedroom of the administrator; or
- (2) A supervisor-in-charge is in the home or within 500 feet of the home and is immediately available. The conditions of being "immediately available" cited in Subparagraph (b)(1) of this Rule shall apply to this arrangement; or

- (3) When there is a cluster of licensed homes, each with a capacity of 7 to 12 residents, located adjacently on the same site, there shall be at least one staff member, either live-in or on a shift basis in each of these homes. In addition, there shall be at least one administrator or supervisor-in-charge who is within 500 feet of each home, immediately available, and directly responsible for assuring that all required duties are carried out in each home. To be immediately available, the administrator or supervisor-in-charge shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects these homes with each other and with the residence of the administrator or supervisor-in-charge. The equipment installed shall be in working condition and shall be located in the bedroom of the administrator or supervisor-in-charge.

(c) When the administrator or supervisor-in-charge is absent from the home or not immediately available, the following apply:

- (1) If the administrator or supervisor-in-charge is absent temporarily (not to exceed 24 hours per week), a relief-person-in-charge shall be designated by the administrator to be in the home and in charge of it during the absence. The administrator shall assure that the relief-person-in-charge is prepared to respond appropriately in case of an emergency in the home. The relief-person-in-charge shall be 18 years or older; and
- (2) When the administrator or supervisor-in-charge will be away from the home for an extended absence (more than 24 hours per week), a relief-supervisor-in-charge shall be designated by the administrator to be in charge of the home during the absence. The relief-supervisor-in-charge shall meet all of the qualifications required for the supervisor-in-charge (as specified in Rule .0402 of this Subchapter) with the exception of Paragraph (4), pertaining to the continuing education requirement.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

SECTION .1400 – PERSONNEL

**~~10 NCAC 42D .1402~~10A NCAC 13F .0402
QUALIFICATIONS OF SUPERVISOR-IN- CHARGE IN
FACILITIES WITH A CAPACITY OR CENSUS OF 7 TO
30 RESIDENTS**

Rule 10 NCAC 42C .2002 shall control for this Subchapter for facilities with a capacity or census of seven to thirty residents. The supervisor-in-charge is responsible to the administrator for carrying out the program in the home in the absence of the administrator. All of the following requirements shall be met:

- (1) The applicant shall complete the Application for Supervisor-in-Charge (DSS-1862);
- (2) The qualifications of the administrator and co-administrator referenced in Paragraphs (2), (5), (6), and (7) of Rule 10A NCAC 13G .0401 shall apply to the supervisor-in-charge. The supervisor-in-charge (employed on or after August 1, 1991) shall meet a minimum educational requirement by being at least a high school graduate or certified under the GED Program or by passing an alternative examination established by the Department of Health and Human Services. Documentation that these qualifications have been met shall be on file in the home prior to employing the supervisor-in-charge;
- (3) The supervisor-in-charge shall be willing to work with bonafide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements;
- (4) The supervisor-in-charge shall verify that he earns 12 hours a year of continuing education credits related to the management of adult care homes and care of aged and disabled persons in accordance with procedures established by the Department of Health and Human Services; and
- (5) When there is a break in employment as a supervisor-in-charge of one year or less, the educational qualification under which the person was last employed will apply.

Authority G.S. 131D-2; 143B-153.

**~~10 NCAC 42D .1403~~10A NCAC 13F .0404
QUALIFICATIONS OF ACTIVITIES COORDINATOR**

~~(a) Since activities are a required part of the program of the home for the aged and disabled, there must be a designated activities coordinator.~~

~~(b) Rules contained in 10 NCAC 42C .2006(1) through (3) shall control for this Subchapter.~~

Since activities are a required part of the program of the family care home, there shall be a designated activities coordinator who meets the requirements and qualifications set forth in this Rule.

- (1) The qualifications of the administrator and co-administrator referenced in Paragraphs (2) and (5) of Rule 10A NCAC 13G .0401 shall apply to the activities coordinator. The activities coordinator (employed on or after August 1, 1991) shall meet a minimum educational requirement by being at least a high school graduate or certified under the GED Program or by passing an alternative examination established by the Department of Health & Human Services.
- (2) The activities coordinator shall complete, within 18 months of employment or assignment to this position, the 48-hour course entitled "The Activities Coordinator Program." A person with a degree in recreational

administration or a related field meets this requirement as does a person who completed the required course before the effective date of this Rule.

- (3) The activities coordinator shall be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements.

Authority G.S. 131D-2; 143B-153.

**~~10 NCAC 42D .1405~~10A NCAC 13F .0407 OTHER STAFF
QUALIFICATIONS**

~~The rules stated in 10 NCAC 42C .2005 shall control for this Subchapter.~~

(a) In addition to the personnel requirements set forth in Rules .0401, .0402, and .0404 of this Subchapter, additional competent staff shall be employed, as needed, to assure good housekeeping, supervision and personal care of the residents.

(b) In homes where there are minor children, aged or infirm relatives of the administrator or other management staff residing, the number of extra staff shall be determined by the capacity for which the home is licensed plus the minors and relatives who require care and supervision.

(c) The Division of Facility Services shall make the final determination of the need for additional staff, based on the home's licensed capacity; the number of live-in minors and relatives requiring care; the condition, needs and ambulation capacity of the residents; and the layout of the building.

(d) Each staff member shall have a well-defined job description that reflects actual duties and responsibilities, signed by the administrator and the employee.

(e) Each staff member shall be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents.

(f) Each staff member authorized by the administrator to have access to confidential resident information shall be informed of the confidential nature of the information and shall protect and preserve such information from unauthorized use and disclosure. G.S. 131D-2(b)(4), G.S. 131D-21(6), and G.S. 131D-21.1 govern the disclosure of such information.

(g) Each staff member shall encourage and assist the residents in the exercise of the rights guaranteed under the Adult Care Home Residents' Bill of Rights. No staff member shall hinder or interfere with the proper performance of duty of a lawfully appointed Adult Care Home Community Advisory Committee.

(h) Each staff member left alone with the residents shall be 18 years or older.

(i) By January 1, 2001, each facility shall have at least one staff person on the premises at all times who has successfully completed within the last 24 months a course on cardiopulmonary resuscitation (CPR) and choking management, including Heimlich maneuver, provided by the American Heart Association, the American Red Cross or a trainer with documented certification as a trainer in these procedures unless the only staff person on-site has been deemed physically incapable of performing these procedures by a licensed physician. For the purpose of this Rule, successfully completed means demonstrating competency, as evaluated by the instructor, in performing the Heimlich maneuver and cardiopulmonary

TEMPORARY RULES

resuscitation. Documentation of successful completion of the course shall be on file and available for review in the facility. The facility shall not have a policy prohibiting staff from administering CPR to residents except those residents with physician orders for no resuscitation or no CPR.

(j) Staff who transport residents shall maintain a valid driver's license.

(k) If licensed practical nurses are employed by the facility, there shall be continuous availability of a registered nurse consistent with Rules 21 NCAC 36 .0224(I) and 21 NCAC 36 .0225.

Note: The practice of licensed practical nurses is governed by their occupational licensing laws.

Authority G.S. 131D-2; 131D-4.5; 143B-153; S.L. 1999-0334.

10 NCAC 42D .140610A NCAC 13F .0406 HEALTH REQUIREMENTS

The rules stated in 10 NCAC 42C .2004 shall control for this Subchapter.

(a) The administrator shall be tested for tuberculosis disease within 90 days before employment and annually thereafter. There shall be documentation on file in the home that the administrator is free of tuberculosis disease that poses a direct threat to the health or safety of others.

(b) All other staff and live-in non-residents shall be tested for tuberculosis disease within 90 days before or seven days after employment or living in the home, and annually thereafter. There shall be documentation on file in the home that each person is free of tuberculosis disease that poses a direct threat to the health or safety of others.

(c) Tests for tuberculosis disease shall comply with the control measures adopted by the Commission for Health Services as specified in 15A NCAC 19A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, NC 27699-1902.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .141510A NCAC 13F .0503 MEDICATION ADMINISTRATION COMPETENCY

Rule 10 NCAC 42C .2014 shall control for this Subchapter.(a)

The competency evaluation for medication administration shall consist of a written examination and a clinical skills evaluation to determine competency in the following areas: medical abbreviations and terminology; transcription of medication orders; obtaining and documenting vital signs; procedures and tasks involved with the preparation and administration of oral (including liquid, sublingual and inhaler), topical (including transdermal), ophthalmic, otic, and nasal medications; infection control procedures; documentation of medication administration; monitoring for reactions to medications and procedures to follow when there appears to be a change in the resident's condition or health status based on those reactions; medication storage and disposition; regulations pertaining to medication administration in adult care facilities; and the facility's medication administration policy and procedures.

(b) An individual shall score at least 90% on the written examination which shall be a standardized examination established by the Department.

(c) A certificate of successful completion of the written examination shall be issued to each participant successfully completing the examination. A copy of the certificate shall be maintained and available for review in the facility. The certificate is transferable from one facility to another as proof of successful completion of the written examination. A medication study guide for the written examination is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(d) The clinical skills validation portion of the competency evaluation shall be conducted by a registered nurse or a registered pharmacist consistent with their occupational licensing laws and who has a current unencumbered license in North Carolina. This validation shall be completed for those medication administration tasks to be performed in the facility. Competency validation by a registered nurse is required for unlicensed staff who perform any of the personal care tasks related to medication administration specified in Rule .0903 of this Subchapter.

(e) The Medication Administration Skills Validation Form shall be used to document successful completion of the clinical skills validation portion of the competency evaluation for those medication administration tasks to be performed in the facility employing the medication aide. Copies of this form and instructions for its use may be obtained at no cost by contacting the Adult Care Licensure Section, Division of Facility Services, 2708 Mail Service Center, Raleigh, NC 27699-2708. The completed form shall be maintained and available for review in the facility and is not transferable from one facility to another.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

SECTION .1500 - THE BUILDING

10 NCAC 42D .150110A NCAC 13F .0301 LOCATION

In addition to the requirements in 10 NCAC 42C .2101, the following shall apply:

(a) The home must be in a location approved by local zoning boards and be a safe distance from streets, highways, railroads, open lakes and other hazards. It must be located on a street, road or highway accessible by car.

(b) Plans for the building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.

(1)(c) A home for the aged and disabled-An adult care home may be located in an existing building or in a building newly constructed specifically for that purpose; and purpose.

(2)(d) The building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.

Authority G.S. 131D-2; 143B-153.

SECTION .1700 – SERVICES

10 NCAC 42D .170210A NCAC 13F .0902 HEALTH CARE

The rules stated in 10 NCAC 42C .2302 shall control for this Subchapter.

TEMPORARY RULES

(a) The administrator is responsible for providing occasional or incidental medical care, such as providing therapeutic diets, rotating positions of residents confined to bed, and applying heat pads.

(b) The resident or his responsible person shall be allowed to choose a physician to attend to him.

(c) Immediate arrangements shall be made by the administrator with the resident or his responsible person for the resident to secure another physician when he cannot remain under the care of his own physician. The name, address and telephone number of the resident's physician shall be recorded on the Resident Register.

(d) If a resident is hospitalized, a completed FL-2 or patient transfer form shall be obtained before the resident can be readmitted to the facility.

(e) Between annual medical examinations there may be a need for a physician's care. The resident's health services record is to be used by the physician to report any drugs prescribed and any treatment given or recommended for minor illnesses.

(f) All contacts (office, home or telephone) with the resident's physician shall be recorded on the resident's health services record which is to be retained in the resident's record in the home. The physician's orders shall be included in the resident's health services record including telephone orders initialed by staff and signed by the physician within 15 days from the date the order is given.

(g) Until January 1, 2001, the following restraint requirements shall apply. The use of a physical restraint refers to the application of a mechanical device to a person to limit movement for therapeutic or protective reasons, excluding siderails for safety reasons. Residents shall be physically restrained only as provided for in the Declaration of Residents' Rights, G.S. 131D-21(5), and in accordance with the following:

- (1) The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days;
- (2) In emergency situations the administrator or supervisor-in-charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours;
- (3) The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked, loosened, or removed;
- (4) The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders);
- (5) The physician ordering the physical restraint shall update the restraint order at a minimum of every six months; and
- (6) If the resident's physician changes after admission to the home, the physician who is to

attend the resident shall update and sign the existing restraint order.

(h) Effective January 1, 2001, the following restraint requirements shall apply. The use of physical restraints refers to the application of a physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily which restricts freedom of movement or normal access to one's body and includes bed rails when used to keep the resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Residents shall be physically restrained only in accordance with the following:

- (1) The facility shall prohibit the use of physical restraints for discipline or convenience and limit restraint use to circumstances in which the resident has medical symptoms that warrant the use of restraints. Medical symptoms may include, but are not limited to, the following: confusion with risk of falls; and risk of abusive or injurious behaviors to self or others;
- (2) Alternatives to physical restraints that would provide safety to the resident and prevent a potential for decline in the resident's functioning shall be provided prior to restraining the resident and documented in the medical record. Alternatives may include, but are not limited to, the following: providing restorative care to enhance abilities to stand safely and to walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, providing supportive devices such as wedge cushions, controlling pain and providing a calm relaxing environment with minimal noise and confusion;
- (3) If alternatives to physical restraints have failed and the resident's medical symptoms warrant the use of physical restraints, the facility shall assure that the resident is restrained with the least restrictive restraint that would provide safety;
- (4) When physical restraints are used, the facility shall engage in a systemic and gradual process towards reducing restraint time by using alternatives;
- (5) The administrator shall assure the development and implementation of written policies and procedures in the use of alternatives to physical restraints and in the care of residents who are physically restrained.
 - (A) The administrator shall consult with a registered nurse in developing policies and procedures for alternatives to physical restraints and in the care of residents who are physically restrained.
 - (B) Policies and procedures for alternatives to physical restraints and

the use of physical restraints shall comply with requirements of this Section. Orientation of these policies and procedures shall be provided to staff responsible for the care of residents who are restrained or require alternatives to restraints. This orientation shall be provided as part of the training required prior to staff providing care to residents who are restrained or require alternatives to restraints;

(6) The administrator shall assure that each resident with medical symptoms that warrant the use of physical restraints is assessed and a care plan is developed. This assessment and care planning shall be completed prior to the resident being restrained except in emergency situations. This assessment and care planning shall meet any additional requirements in Section .0800 of this Subchapter.

(A) The assessment shall include consideration of the following:

- (i) Medical symptoms that warrant the use of a physical restraint;
- (ii) How the medical symptoms affect the resident;
- (iii) When the medical symptoms were first observed;
- (iv) How often the medical symptoms occur; and
- (v) Alternatives that have been provided and the resident's response.

(B) The care plan shall be individualized and indicate specific care to be given to the resident. The care plan shall include consideration of the following:

- (i) Alternatives and how the alternatives will be used;
- (ii) The least restrictive type of physical restraint that would provide safety; and
- (iii) Care to be provided to the resident during the time the resident is restrained.

(C) The assessment and care planning shall be completed through a team process. The team shall consist of, but is not limited to, the following: the supervisor or a personal care aide, a registered nurse and the resident's representative. If the resident's representative is not present, there shall be documented evidence that the resident's representative was notified and declined an invitation to attend;

(7) The resident's right to participate in his or her care and to refuse treatment includes the right

to accept or refuse restraints. For the resident to make an informed choice about the use of physical restraints, negative outcomes, benefits and alternatives to restraint use shall be explained to the resident. Potential negative outcomes include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact. In the case of a resident who is incapable of making a decision, the resident's representative shall exercise this right based on the same information that would have been provided to the resident. However, the resident's representative cannot give permission to use restraints for the sake of discipline or staff convenience or when the restraint is not necessary to treat the resident's medical symptoms;

(8) The resident or the resident representative involvement in the restraint decision shall be documented in the resident's medical record.

Documentation shall include the following:

(A) The resident or the resident's representative shall sign and date a statement indicating they have been informed as required in this Rule;

(B) The statement shall indicate the resident's or the resident's representative's decision in restraint use, either consent for or a desire not to use restraints; and

(C) The consent shall include the type of restraint to be used and the medical symptoms for use;

(9) When a physical restraint is warranted and consent has been given, a physician's order shall be written. The following requirements apply to the physician's order:

(A) The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days;

(B) In emergency situations, the administrator or supervisor-in-charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours;

(C) The physician shall specify in the restraint order he medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked and removed;

- (D) The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders);
- (E) The physician ordering the physical restraint shall update the restraint order at a minimum of every three months; and
- (F) If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order;
- (10) The physical restraint shall be applied correctly according to manufacture's instructions and the physician's order;
- (11) The resident shall be checked and released from the physical restraint and care provided as stated in the care plan at least every 15 minutes for checks and at least every two hours for release;
- (12) Alternatives shall be provided in an effort to reduce restraint time;
- (13) All instances of physical restraint use shall be documented and shall include at least the following:
 - (A) Alternatives to physical restraints that were provided and the resident's response;
 - (B) Type of physical restraint that was used;
 - (C) Medical symptoms warranting the use of the physical restraint;
 - (D) Time and duration of the physical restraint;
 - (E) Care that was provided to the resident during the restraint use; and
 - (F) Behaviors of the resident during the restraint use;
- (14) Physical restraints shall be applied only by staff who have received training and who have been validated for competency by a registered nurse on the proper use of restraints. Training and competency validation on restraints shall occur before staff members apply restraints. Competency validation of restraint use by a registered nurse shall be completed annually. This Rule is consistent with the requirements in 10A NCAC 13F .0501, Personal Care Training and Competency and 10A NCAC 13F .0903 Licensed Health Professional Support;
- (15) The administrator shall assure that training in the use of alternatives to physical restraints and in the care of residents who are physically restrained is provided to all staff responsible for caring for residents with medical symptoms that warrant restraints. Training

shall be provided by a registered nurse and shall include the following:

- (A) Alternatives to physical restraints;
- (B) Types of physical restraints;
- (C) Medical symptoms that warrant physical restraints;
- (D) Negative outcomes from using physical restraints;
- (E) Correct application of physical restraints;
- (F) Monitoring and caring for residents who are restrained; and
- (G) Process of reducing restraint time by using alternatives.

(i) The administrator shall have specific written instructions recorded as to what to do in case of sudden illness, accident, or death of a resident.

(j) There shall be an adequate supply of first aid supplies available in the home for immediate use.

(k) The administrator shall make arrangements with the resident, his responsible person, the county department of social services or other appropriate party for appropriate health care as needed to enable the resident to be in the best possible health condition.

Authority G.S. 131D-2; 143B-165; S.L. 99-0334.

10 NCAC 42D .170310A NCAC 13F .0904 NUTRITION AND FOOD SERVICE

(a) ~~The requirements in 10 NCAC 42C .2303 shall control for this Subchapter, except that:~~

- (1) ~~Menus must be prepared at least two weeks in advance; and~~
- (2) ~~Item and quantity must be specified on the invoices or other appropriate receipts of food purchases.~~

(b) ~~In addition to the requirements in 10 NCAC 42C .2303, space must be provided for storage of dry, refrigerated and frozen food items to comply with sanitation regulations.~~

(a) Food Procurement and Safety:

- (1) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.
- (2) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.
- (3) All meat processing shall occur at a USDA-approved processing plant.
- (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.

(b) Food Preparation and Service:

- (1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
- (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on

documented needs or preferences of the resident.

- (3) Hot foods shall be served hot and cold foods shall be served cold.
- (4) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

(c) Menus:

- (1) Menus shall be prepared at least one week in advance with serving quantities specified and in accordance with the Daily Food Requirements in Paragraph (d) of this Rule.
- (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
- (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.
- (4) Menus shall be planned to take into account the food preferences and customs of the residents.
- (5) Menus as served and invoices or other appropriate receipts of purchases shall be maintained in the facility for 30 days.
- (6) Menus for all therapeutic diets shall be planned and signed by a registered dietitian with the registered dietitian's registration number included.
- (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.

(d) Daily Food Requirements:

- (1) Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
- (2) Foods and beverages that are appropriate to residents' diets shall be offered or made available to all residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.
- (3) Daily menus for regular diets shall include the following:
 - (A) Milk: One cup (eight ounces) of pasteurized milk at least twice a day. Reconstituted dry milk or diluted evaporated milk may be used in cooking only and not for drinking purposes due to risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used.
 - (B) Fruit: One serving of fruit (e.g., six ounces of juice: ½ cup of raw, canned or cooked fruit: one medium-size whole fruit; or ¼ cup dried fruit at least twice a day. One serving shall be a citrus fruit or a single strength juice in which there is 100% of the

recommended dietary allowance of vitamin C in each six ounces of juice. The second fruit serving shall be of another variety of fresh, dried or canned fruit.

- (C) Vegetables: One serving of vegetables (e.g., ½ cup of cooked or canned vegetable; six ounces of vegetable juice; or one cup of raw at least three times a day. One of these shall be a dark green, leafy or deep yellow three times a week.
- (D) Eggs: One whole egg or appropriate substitute (e.g., two egg whites or ¼ cup of pasteurized egg product) at least three times a week at breakfast.
- (E) Protein: 2-3 ounces of pure cooked meat two to three times a day. An appropriate substitute (e.g., four tablespoons of peanut butter, 1 cup of cooked dried peas or beans or two ounces of pure cheese) may be served three times a week but not more than once a day, unless requested by the resident.

Note: Bacon is considered to be fat and not meat for the purposes of this Rule.

- (F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or grain products a day. Examples of one serving are as follows: one slice of bread; ½ of a bagel, English muffin or hamburger bun; one small muffin, roll, biscuit or piece of cornbread; ½ cup cooked rice or cereal (e.g., oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle, pancake or tortilla that is six inches in diameter. Cereals and breads offered as snacks can be included in meeting this requirement.
- (G) Fats: Include butter, oil, margarine or items consisting primarily of one of these (e.g., icing or gravy).
- (H) Water and Other Beverages: Water shall be offered to each resident at each meal, in addition to other beverages.

(e) Therapeutic Diets:

- (1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician. Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled ADA diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a registered dietitian.
- (2) Physician orders for nutritional supplements shall be in writing from the resident's

physician and be brand specific, unless the facility has defined a house supplement in its communication to the physician, and shall specify quantity and frequency.

(3) The facility shall maintain an accurate and current listing of residents with physician-ordered therapeutic diets for guidance of food service staff.

(4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as ordered by the resident's physician.

(f) Individual Feeding Assistance:

(1) Sufficient staff shall be available for individual feeding assistance as needed.

(2) Residents needing help in eating shall be promptly assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the resident's record.

Authority G.S. 131D-2; 143B-153; S.L. 2002-0160.

~~10 NCAC 42D .1704~~10A NCAC 13F .0905 ACTIVITIES PROGRAM

The requirements in 10 NCAC 42C .2304 shall control for this Subchapter.

(a) Each home shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community. The program is to provide social, physical, intellectual, and recreational activities in a planned, coordinated, and structured manner, using the Activities Coordinator's Guide, a copy of which each facility is required to have. When there is a cluster of homes, one Activities Coordinator's Guide may be shared by the homes.

(b) The program shall be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his will.

(c) Each home shall assign a person to be the activities coordinator, who meets the qualifications specified in Rule.0404 of this Subchapter. The activities coordinator is responsible for responding to the residents' need and desire for meaningful activities by:

(1) Reviewing upon admission personal information about each resident's interests and capabilities recorded on an individualized index card or the equivalent. This card is to be completed from, at least, the information recorded on the Resident Register, Form DSS-1865. It shall be maintained for use by the activities coordinator for developing activities and is to be updated as needed;

(2) Using the information on the residents' interests and capabilities to arrange for and provide planned individual and group activities for the residents. In addition to individual activities, there shall be a minimum of 10 hours of planned group activities per week. Homes designated for residents with

HIV disease are exempt from the 10-hour requirement as long as the facility can demonstrate each resident's involvement in a structured volunteer program that provides the required range of activities;

(3) Preparing a monthly calendar of planned group activities which is to be in easily readable, large print, posted in a prominent location on the first day of each month, and updated when there are any changes;

(4) Involving community resources, such as recreational, volunteer, religious, aging and developmentally disabled-associated agencies, to enhance the activities available to residents. The coordinator may use the home's aides in carrying out some activities with residents; and

(5) Evaluating and documenting the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program.

(d) A variety of group and individual activities shall be provided. The program is to include, at least, the following types of activities:

(1) Social and Recreational Activities:

(A) Opportunity shall be available for both individual and group social and recreational activities sufficiently diverse to accommodate the residents' varied interests and capabilities. These activities emphasize increasing self-confidence and stimulating interest and friendships;

(B) Individual activity includes one to one interactions in mutually enjoyable activity, such as buddy walks, card playing and horseshoes as well as activity by oneself, such as bird watching, nature walks, and card playing;

(C) Each resident shall have the opportunity to participate in at least one planned group social or recreational activity weekly. A group activity is one which involves a number of residents in physical and mental interaction. Each resident shall be encouraged to participate in an activity which best matches his physical, mental and emotional capability. Such activities may include group singing, dancing, bingo, and exercise classes;

(D) Each resident shall have the opportunity to participate in at least one outing every other month. A resident interested in involving himself in the community more frequently shall be encouraged and helped to do so. The coordinator is to

contact volunteers and residents' families to assist in the effort to get residents involved in activities outside the home;

- (E) If a resident cannot participate actively in community events, arrangements shall be made so that the more active residents can still participate in such outings. If there is a question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities; and
- (F) The activities planned and offered shall take into account possible cultural differences of the residents;
- (2) Diversional and Intellectual Activities:
 - (A) Opportunity for both individual and group diversional and intellectual activities sufficiently diverse to accommodate the residents' varied interests and capabilities shall be available. There shall be adequate supplies and supervision provided to enable each resident to participate;
 - (B) Individual activities emphasize individual accomplishments, creative expression, increased knowledge and the learning of new skills. Such activities may include sewing, crafts, painting, reading, creative writing, and wood carving;
 - (C) Each resident shall have the opportunity to participate in at least one planned group activity weekly that emphasizes group accomplishment, creative expression, increased knowledge, and the learning of new skills. Such activities may include discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events, and spelling bees; and
 - (D) The activities planned and offered shall take into account possible cultural differences of the residents.
- (3) Work-Type and Volunteer Service Activities: Each resident shall have the opportunity to participate in meaningful work-type and volunteer service activities in the home or in the community, but participation shall be on an entirely voluntary basis. Under no circumstances shall this activity be forced upon a resident. Residents shall not be assigned these tasks in place of staff. Examples of work-type and volunteer services activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing,

making or repairing toys for children, telephone reassurance, and gardening.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .170510A NCAC 13F .0906 OTHER RESIDENT CARE AND SERVICES

The requirements in 10 NCAC 42C .2305 shall control for this Subchapter.

(a) Transportation. The administrator shall assure the provision of transportation for the residents to necessary resources and activities, including transportation to the nearest appropriate health facilities, social services agencies, shopping and recreational facilities, and religious activities of the resident's choice. The resident is not to be charged any additional fee for this service. Sources of transportation may include community resources, public systems, volunteer programs, family members as well as facility vehicles.

(b) Mail.

- (1) Residents shall receive their mail promptly and it shall be unopened unless there is a written, witnessed request authorizing management staff to open and read mail to the resident. This request shall be recorded on Form DSS-1865, the Resident Register or the equivalent.
- (2) Outgoing mail written by a resident shall not be censored.
- (3) Residents shall be encouraged and assisted, if necessary, to correspond by mail with close relatives and friends. Residents shall have access to writing materials, stationery and postage and, upon request, the home is to provide such items at cost. It is not the home's obligation to pay for these items.

(c) Laundry.

- (1) Laundry services shall be provided to residents without any additional fee.
- (2) It is not the home's obligation to pay for a resident's personal dry cleaning. The resident's plans for personal care of clothing are to be indicated on Form DSS-1865, the Resident Register.

(d) Telephone.

- (1) A telephone shall be available in a location providing privacy for residents to make and receive a reasonable number of calls of a reasonable length.
- (2) A pay station telephone is not acceptable for local calls.
- (3) It is not the home's obligation to pay for a resident's toll calls.

(e) Personal Lockable Space.

- (1) Personal lockable space shall be provided for each resident to secure his personal valuables. One key shall be provided free of charge to the resident. Additional keys are to be provided to residents at cost upon request. It is not the home's obligation to pay for additional keys.
- (2) While a resident may elect not to use lockable space, it shall still be available in the home

since the resident may change his mind. This space shall be accessible only to the resident and the administrator or supervisor-in-charge. The administrator or supervisor-in-charge shall determine at admission whether the resident desires lockable space, but the resident may change his mind at any time.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .180210A NCAC 13F .0702 DISCHARGE OF RESIDENTS

The rules stated in 10 NCAC 42C .2500 shall control for this Subchapter.

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

Note: The discharge requirements in this rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule would apply.

(b) The discharge of a resident shall be based on one of the following reasons:

- (1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (3) the safety of other individuals in the facility is endangered;
- (4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;
- (5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2(a)(1).

(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
- (2) reasons under Subparagraphs (b)(2), (b)(3), (b)(4) and (b)(6) of this Rule exist.

(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

(f) Visiting.

- (1) Visiting in the home and community at reasonable hours shall be encouraged and arranged through the mutual prior understanding of the residents and administrator.
- (2) There shall be at least 10 hours each day for visitation in the home by persons from the community. If a home has established visiting hours or any restrictions on visitation, information about the hours and any restrictions shall be included in the house rules given to each resident at the time of admission and posted conspicuously in the home.
- (3) A signout register shall be maintained for planned visiting and other scheduled absences which indicates the resident's departure time, expected time of return and the name and telephone number of the responsible party.
- (4) If the whereabouts of a resident are unknown and there is reason to be concerned about his safety, the person in charge in the home shall immediately notify the resident's responsible person, the appropriate law enforcement agency and the county department of social services.

Authority G.S. 131D-2; 143B-153.

SECTION .1800 - REMAINING POLICIES AND REGULATIONS

10 NCAC 42D .180110A NCAC 13F .0701 ADMISSION OF RESIDENTS

The rules stated in 10 NCAC 42C .2400 shall control for this Subchapter.

(a) Any adult (18 years of age or over) who, because of a temporary or chronic physical condition or mental disability, needs a substitute home may be admitted when, in the opinion of the resident, physician, family or social worker, and the administrator the services and accommodations of the home will meet his particular needs.

(b) Exceptions. People are not to be admitted:

- (1) for treatment of mental illness, or alcohol or drug abuse;
- (2) for maternity care;
- (3) for professional nursing care under continuous medical supervision;
- (4) for lodging, when the personal assistance and supervision offered for the aged and disabled are not needed; or
- (5) who pose a direct threat to the health or safety of others.

TEMPORARY RULES

- (1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
 - (2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
 - (3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or
 - (4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a)(1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.
- (e) The facility shall assure the following requirements for written notice are met before discharging a resident:
- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505;
 - (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated;
 - (3) Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services; and
 - (4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.
- (f) The facility shall provide assistance in preparing for a safe and orderly discharge as evidenced by:
- (1) notifying staff in the county department of social services responsible for placement services;
 - (2) explaining to the resident and responsible person or legal representative why the discharge is necessary;
 - (3) informing the resident and responsible person or legal representative about an appropriate discharge destination; and
 - (4) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (C) a copy of the resident's current physician orders;
 - (D) a list of the resident's current medications;
 - (E) the resident's current medications; and
 - (F) a record of the resident's vaccinations and TB screening.
- (g) If an appeal hearing is requested:
- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and
 - (2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c)(2) of this Rule.
- (h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person prior to the resident leaving the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 99-0334; S.L. 2002-0160.

~~10 NCAC 42D .1809~~10A NCAC 13F .1202 DISPOSAL OF RESIDENT RECORDS

~~The rules stated in 10 NCAC 42C .3102 shall control for this Subchapter.~~

(a) All records may be purged of material more than three years old unless the home has been asked by the monitoring or licensing agency to keep it for a longer period.

(b) After a resident has left the home or died, his records shall be put in order and filed in a safe place in the home for a period of three years and then may be destroyed.

Authority G.S. 131D-2; 143B-153.

~~10 NCAC 42D .1810~~10A NCAC 13F .1203 REPORT OF ADMISSIONS AND DISCHARGES

~~The rules stated in 10 NCAC 42C .3103 shall control for this Subchapter.~~

When there is an admission or discharge of a resident, the administrator or supervisor-in-charge shall notify the county department of social services by the fifth day of the month following admission or discharge. Notification shall be made by submitting the form for reporting admissions and discharges. The form does not need to be submitted if there have not been any admissions or discharges.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .181110A NCAC 13F .1204 POPULATION REPORT

The rules stated in 10 NCAC 42C .3104 shall control for this Subchapter.

The administrator or supervisor-in-charge shall submit by January 31 of each year an annual population report for the previous calendar year to the county department of social services. If the home closes during the year, the administrator or supervisor-in-charge shall report for the previous calendar year to date of closing.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .181310A NCAC 13F.1206 ADVERTISING

The rules stated in 10 NCAC 42C .3200 regarding advertising shall control for this Subchapter:

The administrator may use acceptable methods of advertising provided:

- (1) The name used is as it appears on the license;
- (2) Only the services and accommodations for which the home is licensed are used; and
- (3) The home is listed under proper classification in telephone books, newspapers or magazines.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .181410A NCAC 13F.0206 CAPACITY

The requirements in 10 NCAC 42C .3202 shall control for this Subchapter except that the licensed capacity of homes for the aged and disabled is seven or more residents.

- (a) Family care homes have a capacity of from two to six residents only. The licensed capacity of adult care homes is seven or more residents.
- (b) The total number of residents shall not exceed the number shown on the license.
- (c) A request for an increase in capacity without building modification shall be made to the county department of social services. The Division of Facility Services has authority for approval of the request.
- (d) A request for an increase in capacity by adding rooms or remodeling shall be made to the county department of social services and submitted to the state Division of Facility Services, accompanied by one copy of blueprints and specifications, showing the existing building and the addition. Plans shall show how the addition will be tied onto the old building and all proposed changes in old structure.
- (e) When licensed homes increase their designed capacity by the addition to or remodeling of the existing physical plant, the entire home shall meet all current fire safety regulations.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .181810A NCAC 13F .0207 CHANGE OF OWNERSHIP

The requirements in 10 NCAC 42C .3304 (1) through (5) shall control for this Subchapter.

When a currently licensed administrator wishes to sell or lease the home to another, the following procedure is required:

- (1) The administrator shall notify the county department of social services that a change is desired. When there is a plan for a change of administrator and another person applies to operate the home immediately, the administrator shall notify the county department and the residents or their responsible persons. It is the responsibility of the county department to talk with the residents, giving them the opportunity to make other plans if they so desire;
- (2) The applicant shall meet the qualifications for administrator as specified in Rule .0401 of this Subchapter;
- (3) The county department of social services will submit all forms and reports specified in Rule .0204 (c) of this Subchapter with the exception of Subparagraph (4) to the Division of Facility Services;
- (4) The Division of Facility Services will review the records of the facility and, if necessary, visit the home; and
- (5) The administrator and prospective applicant will be advised by the Division of Facility Services of any changes which shall be made to the building before licensing to a new administrator can be recommended.

Authority G.S. 131D-2; 143B-153.

10 NCAC 42D .182010A NCAC 13F .0202 THE LICENSE

The rules stated in 10 NCAC 42C .3401 shall control for this Subchapter.

- (a) Except as otherwise provided in Rule .0203 of this Subchapter, the Department shall issue an adult care home license to any person who submits an application on the forms provided by the Department if the Department determines that the applicant complies with the provisions of all applicable State adult care home licensure statutes and rules. All applications for a new license shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.
- (b) The license shall be conspicuously posted in a public place in the home.
- (c) The license shall be in effect for 12 months from the date of issuance unless revoked for cause, voluntarily or involuntarily terminated, or changed to provisional licensure status.
- (d) A provisional license may be issued in accordance with G.S. 131D-2(b).
- (e) When a provisional license is issued, the administrator shall post the provisional license and a copy of the notice from the Division of Facility Services identifying the reasons for it, in place of the full license.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113.

10 NCAC 42D .182110A NCAC 13F .0208 RENEWAL OF LICENSE

Rule 10 NCAC 42C .3402 shall control for this Subchapter.

(a) The license shall be renewed annually, except as otherwise provided in Rule .0209 of this Subchapter, if the licensee submits an application for renewal on the forms provided by the Department and the Department determines that the licensee complies with the provisions of all applicable State adult care home licensure statutes and rules. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of license, the Department may approve a continuation or extension of a plan of correction, or may issue a provisional license or revoke the license for cause.

(b) All applications for license renewal shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

10 NCAC 42D .182310A NCAC 13F .0212 DENIAL OR REVOCATION OF LICENSE

The rules stated in 10 NCAC 42C .3404 shall control for this Subchapter.

(a) A license may be denied by the Division of Facility Services for failure to comply with the rules of this Subchapter.

(b) Denial by the Division of Facility Services shall be effected by mailing to the applicant, by registered mail, a notice setting forth the particular reasons for such action.

(c) A license may be revoked by the Division of Facility Services in accordance with G.S. 131D-2(b) and G.S. 131D-29.

(d) When a facility receives a notice of revocation, the administrator shall inform each resident and his responsible person of the notice and the basis on which it was issued.

Authority G.S. 131D-2.

10 NCAC 42D .182410A NCAC 13F .0213 APPEAL OF LICENSURE ACTION

The rules stated in 10 NCAC 42C .3405 shall control for this Subchapter.

(a) In accordance with G.S. 150B-2(2), any person may request a determination of his legal rights, privileges, or duties as they relate to laws or rules administered by the Department of Health & Human Services. All requests shall be in writing and contain a statement of facts prompting the request sufficient to allow for appropriate processing by the Department of Health & Human Services.

(b) Any person seeking such a determination shall comply with G.S. 150B-22 concerning informal remedies.

(c) All petitions for hearings regarding matters under the control of the Department of Health & Human Services shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the Department of Health & Human Services. A list of registered agents may be obtained

from the Office of Legal Affairs at 2005 Mail Service Center, Raleigh, NC 27699-2005.

(d) An administrator of a facility which has its license revoked may not apply to operate another facility except according to the terms set forth by the Director of the Division of Facility Services in his final closure notice.

Authority G.S. 131D-2; 143B-153; 150B-23.

10 NCAC 42D .182610A NCAC 13F .0215 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

10 NCAC 42C .3601 shall control for this Subchapter.

(a) The county department of social services or the Division of Facility Services shall identify areas of non-compliance resulting from a complaint investigation or monitoring or survey visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. If the county department of social services or the Division of Facility Services decides that the violation is a Type B violation as defined in G.S. 131D-34(a)(2), it shall require a plan of correction pursuant to G.S. 131D-34(a)(2). If the county department of social services or the Division of Facility Services decides that the violation is a Type A violation as defined in G.S. 131D-34(a)(1), it shall follow the procedure required in G.S. 131D-34(a)(1)(a-c) and prepare an administrative penalty proposal for submission to the Department. The proposal shall include a copy of the written confirmation required in G.S. 131D-34(a)(1)(c) and documentation that the licensee was notified of the county department of social services' or the Division of Facility Services' intent to prepare and forward an administrative penalty proposal to the Department; offered an opportunity to provide additional information prior to the preparation of the proposal; after the proposal is prepared, given a copy of the contents of the proposal; and then extended an opportunity to request a conference with the agency proposing the administrative penalty, allowing the licensee 10 days to respond prior to forwarding the proposal to the Department. The conference, if requested of the county department of social services, shall include the county department director or his designee. The licensee may request a conference and produce information to cause the agency recommending the administrative penalty to change its proposal. The agency recommending the administrative penalty may rescind its proposal or change its proposal and submit it to the Department or submit it unchanged to the Department pursuant to G.S. 131D-34(c2).

(b) An assistant chief of the Adult Care Licensure Section shall receive the proposal, review it for completeness and evaluate it to determine the penalty amount.

- (1) If the proposal is complete, the assistant chief shall make a decision on the amount of penalty to be submitted for consideration and whether to recommend training in lieu of an administrative penalty pursuant to G.S. 131D-34(g1).
- (2) If the proposal is incomplete, the assistant chief shall contact the agency that submitted the proposal to request necessary changes or additional material.
- (3) When the proposal is complete and the amount of penalty determined, the assistant chief shall

forward the proposal to the administrative penalty monitor for processing. If the assistant chief recommends training in lieu of an administrative penalty pursuant to G.S. 131D-34(g1), the recommendation shall be forwarded with the proposal.

(c) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the administrative penalty monitor that an administrative penalty is being considered.

(d) The licensee shall have 10 working days from receipt of the notification to provide both the Department and the county department of social services any additional information relating to the proposed administrative penalty.

(e) If a facility fails to correct a Type A or a Type B violation within the time specified on the plan of correction, an assistant chief of the Adult Care Licensure Section shall make a decision on the amount of penalty pursuant to G.S. 131D-34(b)(1) and (2) and submit a penalty proposal for consideration by the Penalty Review Committee.

(f) The Penalty Review Committee shall consider Type A violations and Type A and Type B violations that have not been corrected within the time frame specified on the plan of correction. Providers, complainants, affected parties and any member of the public may attend Penalty Review Committee meetings. Upon written request of any affected party for reasons of illness or schedule conflict, the department may grant a delay until the following month for Penalty Review Committee review. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.

(g) The Penalty Review Committee shall have for review, the entire record relating to the penalty recommendation; shall make recommendations after review of administrative penalty proposals, any supporting evidence, any additional information submitted by the licensee as described in Paragraph (d) and the factors specified in G.S. 131D-34(c).

(h) There shall be no taking of sworn testimony or cross-examination of anyone during the course of the Penalty Review Committee meetings.

(i) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty for each violation pursuant to G.S. 131D-34. Recommendations for adult care home penalties shall be submitted to the Chief of the Adult Care Licensure Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation or require staff training pursuant to G.S. 131D-34(g1) and notify the licensee by certified mail.

(j) The licensee shall have 60 days from receipt of the notification to pay the penalty or shall file a petition for a contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131D-34.

10 NCAC 42D .182710A NCAC 13F .0801 RESIDENT ASSESSMENT

10 NCAC 42C .3701 shall control for this Subchapter.

(a) The facility shall assure that an admission assessment of each resident is completed within 72 hours of admitting the resident using an assessment instrument approved by the Department. Effective January 1, 2002, in addition to the admission assessment within 72 hours, an evaluation of each resident shall be completed within 30 calendar days from the date of admission and annually thereafter using the Resident Assessment Instrument as approved by the Department. The evaluation within 30 calendar days of admission and annually thereafter is a functional assessment to determine a resident's level of functioning to include routines, preferences, needs, mood and psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident which are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The evaluation within 30 calendar days of admission and annually thereafter shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

(b) The facility shall assure a reassessment of a resident is completed within 10 days of a significant change in the resident's condition using the assessment instrument to be completed within 72 hours of resident admission prior to January 1, 2002 and the Resident Assessment Instrument thereafter. For the purposes of this Subchapter, significant change in the resident's condition is defined as follows:

- (1) Significant change is one or more of the following:
 - (A) deterioration in two or more activities of daily living;
 - (B) change in ability to walk or transfer;
 - (C) change in the ability to use one's hands to grasp small objects;
 - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
 - (E) no response by the resident to the treatment for an identified problem;
 - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
 - (G) threat to life such as stroke, heart condition, or metastatic cancer;
 - (H) emergence of a pressure ulcer at Stage II or higher;
 - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time such as initial diagnosis of Alzheimer's disease or diabetes;
 - (J) improved behavior, mood or functional health status to the extent

Authority G.S. 131D-2; 131D-34; 143B-153.

TEMPORARY RULES

- that the established plan of care no longer matches what is needed;
- (K) new onset of impaired decision-making;
- (L) continence to incontinence or indwelling catheter; or
- (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
- (A) changes that suggest slight upward or downward movement in the resident's status;
- (B) short-term changes that resolve with or without intervention;
- (C) changes that arise from easily reversible causes;
- (D) a short-term acute illness or episodic event;
- (E) a well-established, predictive, cyclical pattern; or
- (F) steady improvement under the current course of care.

(c) If a resident experiences a significant change as defined in Paragraph (b) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record.

(d) The assessment to be completed within 72 hours and the evaluation to be completed within 30 calendar days of admission and annually thereafter as required in Paragraph (a) of this Rule and any reassessment as required in Paragraph (b) of this Rule shall be completed and signed by the administrator or a person designated by the administrator to perform resident assessments or reassessments.

(e) The facility administrator or a person designated by the administrator to perform resident assessments and reassessments using the Resident Assessment Instrument shall successfully complete training provided by the Department on assessing residents before performing any assessments or reassessments using the Resident Assessment Instrument as required in Paragraph (a) of this Rule. Registered nurses are exempt from the assessment training. Documentation of assessment training shall be maintained in the facility and available for review.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

10 NCAC 42D .182810A NCAC 13F .0802 RESIDENT CARE PLAN

10 NCAC 42C .3702 shall control for this Subchapter.

(a) Effective January 1, 2002, the facility shall assure a care plan is developed for each resident in conjunction with the resident evaluation to be completed within 30 calendar days of admission according to Rule .0801 of this Section and revised as needed based on annual assessments and any reassessments of the resident. Prior to January 1, 2002, the administrator shall assure a care plan is developed in conjunction with the

admission assessment to be completed within 72 hours of admission according to Rule .0801 of this Section and revised as needed based on annual assessments and any reassessments of the resident. For the purposes of this Subchapter, the care plan is an individualized, written program of personal care for each resident.

(b) The care plan shall include the following:

- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
- (2) frequency of the service provision.

(c) The assessor shall sign the care plan upon its completion.

(d) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:

- (1) the resident is under the physician's care; and
- (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-153; S.L. 99-0334.

10 NCAC 42D .182910A NCAC 13F .0903 LICENSED HEALTH PROFESSIONAL SUPPORT

10 NCAC 42C .3703 shall control for this Subchapter.

(a) The facility shall assure that a registered nurse, licensed under G.S. 90, Article 9A, participates in the on-site review and evaluation of the residents' health status, care plan and care provided for residents requiring, but not limited to, one or more of the following personal care tasks. The review and evaluation shall be completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter:

- (1) applying and removing ace bandages, ted hose and binders;
 - (2) feeding techniques for residents with swallowing problems;
 - (3) bowel or bladder training programs to regain continence;
 - (4) enemas, suppositories and vaginal douches;
 - (5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;
 - (6) chest physiotherapy or postural drainage;
 - (7) clean dressing changes;
 - (8) collecting and testing of fingerstick blood samples;
 - (9) care of well established colostomy or ileostomy;
 - (10) care for pressure ulcers;
 - (11) inhalation medication by machine;
 - (12) maintaining accurate intake and output data;
 - (13) medication administration through gastrostomy feeding tube;
 - (14) medication administration through injection;
- Note: Unlicensed staff may only administer subcutaneous injections as stated in Rule.1001 of this Subchapter;

TEMPORARY RULES

- (15) oxygen administration and monitoring;
- (16) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;
- (17) oral suctioning;
- (18) care of well established tracheostomy; or
- (19) administering and monitoring of gastrostomy tube feedings.

(b) The facility shall assure that a registered nurse, occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B, participates in the on-site review and evaluation of the residents' health status, care plan and care provided within the time frames specified in Paragraph (a) of this Rule for those residents who require one or more of the following personal care tasks:

- (1) application of prescribed heat therapy;
- (2) application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;
- (3) ambulation using assistive devices;
- (4) range of motion exercises;
- (5) any other prescribed physical or occupational therapy; or
- (6) transferring semi-ambulatory or non-ambulatory residents.

(c) The facility shall not provide care to residents with conditions or care needs as stated in G.S. 131D-2(a1).

(d) The facility shall assure that participation by a registered nurse, occupational therapist or physical therapist in the on-site review and evaluation of the residents' health status, care plan and care provided includes:

- (1) assuring that licensed practical nurses and non-licensed personnel providing care and performing the tasks are competency validated according to Paragraph (e) of this Rule;
- (2) performing a physical assessment of the residents as related to their diagnosis and current condition;
- (3) evaluating the resident's progress to care being provided;
- (4) recommending changes in the care of the resident as needed; and
- (5) documenting the activities in Subparagraphs (1) through (4) of this Paragraph.

(e) The facility shall assure that licensed practical nurses and non-licensed personnel are trained and competency validated for personal care task specified in Paragraphs (a) and (b) of this Rule. Competency validation shall be completed prior to staff performing the personal care task and documentation shall be in the facility and readily available. Staff shall be competency validated by the following health professionals:

- (1) A registered nurse shall validate the competency of staff who perform personal care task specified in Paragraph (a) of this Rule. In lieu of a registered nurse, a registered respiratory therapist may validate the competency of staff who perform personal care task (6), (11), (15), (17) and (18) specified in Paragraph (a) of this Rule. In lieu of a registered nurse, a registered pharmacist may validate the competency of staff who

perform personal care task (8) specified in Paragraph (a) of this Rule; and

- (2) A registered nurse, occupational therapist or physical therapist shall validate the competency of staff who performs personal care task specified in Paragraph (b) of this Rule.

(f) The facility shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows and documented:

- (1) Training shall be provided by a registered nurse or registered pharmacist; and
- (2) Training shall include at least the following:
 - (A) basic facts about diabetes and care involved in the management of diabetes;
 - (B) insulin action;
 - (C) insulin storage;
 - (D) mixing, measuring and injection techniques for insulin administration;
 - (E) treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;
 - (F) blood glucose monitoring; and
 - (G) universal precautions.

(g) The facility shall assure that staff who perform personal care tasks listed in Paragraphs (a) and (b) of this Rule are at least annually observed providing care to residents by a licensed registered nurse or other appropriate licensed health professional, as specified in Paragraph (d) of this Rule, who is employed by the facility or under contract or agreement, individually or through an agency, with the facility. Annual competency validation shall be documented and readily available for review.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

10 NCAC 42D .183010A NCAC 13F .0908 COOPERATION WITH CASE MANAGERS

~~10 NCAC 42C .3704 shall control for this Subchapter.~~

The administrator shall cooperate with and assure the cooperation of facility staff with case managers in their provision of case management services to the appropriate residents.

Authority G.S. 131D-2; 131D-4.3; 143B-153.

SECTION .2200 - ADULT CARE HOME LICENSE ELIGIBILITY

10 NCAC 42D .220110A NCAC 13F .0201 DEFINITIONS

~~Rule 10 NCAC 42C .3901 shall control for this Subchapter.~~

The following definitions shall apply throughout this Section:

- (1) "Person" means an individual; a trust or estate; a partnership; a corporation; or any grouping of individuals, each of whom owns five percent or more of a partnership or corporation, who collectively own a majority interest of either a partnership or a corporation;

TEMPORARY RULES

- (2) "Owner" means any person who has or had legal or equitable title to or a majority interest in an adult care home;
- (3) "Affiliate" means any person that directly or indirectly controls or did control an adult care home or any person who is controlled by a person who controls or did control an adult care home. In addition, two or more adult care homes who are under common control are affiliates;
- (4) "Principal" means any person who is or was the owner or operator of an adult care home, an executive officer of a corporation that does or did own or operate an adult care home, a general partner of a partnership that does or did own or operate an adult care home, or a sole proprietorship that does or did own or operate an adult care home; and
- (5) "Indirect control" means any situation where one person is in a position to act through another person over whom the first person has control due to the legal or economic relationship between the two.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334.

10 NCAC 42D .220210A NCAC 13F .0203 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

~~Rule 10 NCAC 42C .3902 shall control for this Subchapter.~~

- (a) A new license shall not be issued for an adult care home if any of the conditions specified in G.S. 131D-2(b)(1b) apply to the applicant for the adult care home license.
- (b) Additionally, no new license shall be issued for any adult care home to an applicant for licensure who is the owner, principal or affiliate of an adult care home that has had its admissions suspended until six months after the suspension is lifted.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334.

10 NCAC 42D .220310A NCAC 13F .0209 CONDITIONS FOR LICENSE RENEWAL

~~Rule 10 NCAC 42C .3903 shall control for this Subchapter.~~

- (a) Before renewing an existing license of an adult care home, the Department shall conduct a compliance history review of the facility and its principals and affiliates.
- (b) In determining whether to renew a license under G.S. 131D-2(b)(6), the Department shall take into consideration at least the following:
 - (1) the compliance history of the applicant facility;
 - (2) the compliance history of the owners, principals or affiliates in operating other adult care homes in the state;
 - (3) the extent to which the conduct of a related facility is likely to affect the quality of care at the applicant facility; and
 - (4) the hardship on residents of the applicant facility if the license is not renewed.

(c) Pursuant to G.S. 131D-2(b)(1), an adult care home is not eligible to have its license renewed if any outstanding fines or penalties imposed by the Department have not been paid; provided, however that if an appeal is pending the fine or penalty will not be considered imposed until the appeal is resolved.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

TITLE 12 – DEPARTMENT OF JUSTICE

Rule-making Agency: *Criminal Justice Education and Training Standards Commission*

Rule Citation: *12 NCAC 09A .0103; 09B .0102, .0108, .0116-.0117, .0207, .0234-.0236; 09G .0401, .0405-.0407*

Effective Date: *April 15, 2003*

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

Authority for the rulemaking: *G.S. 17C*

Reason for Proposed Action:

12 NCAC 09A .0103; 09B .0102, .0108, .0116-.0117, .0207, .0234-.0236 - When the General Assembly ratified this bill in December of 2001, it was made retroactive to June 30, 2001. This bill created new positions and eliminated some positions within the Department of Juvenile Justice and Delinquency Prevention. In order to prepare rules for the new requirements OJJDP had to rewrite position descriptions, and develop new curriculum for training courses for the new positions. This required a great deal of research and coordination between OJJDP and the Criminal Justice Education and Training Standards Commission. The Commission wanted to see the training curriculum before it reviewed any new rules. Once the training curriculum was developed it had to go through a subcommittee before being voted on by the full Commission. The new positions created by Senate Bill 68 have now been under the authority of the Commission for over a year and a half with no rules in place to regulate certification of these positions. It is important that these rules be approved as soon as possible in order to rectify the situation.

12 NCAC 09G .0401, .0405-.0407 – The amendments to these rules were previously discussed at a public rule-making hearing and no objection was raised. History: Notice of Rule-making Proceedings was filed on 12/15/00. Notice of Text was filed on 7/16/01. A Rule-making hearing was held on 8/16/01. The rules were adopted by the agency on 8/17/01. An objection was filed by the Rules Review Commission on 9/20/01 and the rules were returned to our agency on 12/20/01. The objection was that the Commission did not have authority over the Department of Correction Instructors and School Directors. The legislative technical amendment listed above grants the Commission authority over these positions.

Comment Procedures: *Comments from the public shall be directed to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton St., Raleigh, NC*

27602, phone (919) 716-6473, fax (919) 716-6752, and email tmarrrella@mail.jus.state.nc.us.

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(b).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.
- ~~(4)(3)~~ "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- ~~(5)(4)~~ "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- ~~(6)(5)~~ "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- ~~(7)(6)~~ "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(c) and excluding Correctional officers; Probation/parole officers, and Probation/parole officers-surveillance.
- ~~(8)(7)~~ "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.

- ~~(9)(8)~~ "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee formally appointed in writing by the Department head.
- ~~(10)(9)~~ "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- ~~(11)(10)~~ "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- ~~(12)(11)~~ "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a Commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
 - (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
 - (b) for Department of Juvenile Justice and Delinquency Prevention personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- ~~(13)(12)~~ "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- ~~(14)(13)~~ "In-Service Training" means any and all training prescribed in 12 NCAC 09E .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- ~~(15)(14)~~ "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- ~~(16)(15)~~ "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads:
As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression

or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

(17) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

(18) "Juvenile Justice Officer" means persons designated by the Secretary of the Department of Juvenile Justice and Delinquency Prevention to provide for the care and supervision of juveniles placed in the physical custody of the Department.

(19)(46) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded

from this title are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.

(20)(47) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.

(21)(48) "LIDAR" means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.

(22)(49) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.

(23)(20) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:

(a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (20)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly

included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(I)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice which is hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following

exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, driving while license permanently revoked or permanently suspended, and those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

- ~~(24)~~(21) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with 12 NCAC 09C .0404.
- ~~(25)~~(22) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
- ~~(26)~~(23) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band and either of which operates in the stationary and/or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- ~~(27)~~(24) "Resident" means any youth committed to a facility operated by the Department of Juvenile Justice and Delinquency Prevention.
- ~~(28)~~(25) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.

- ~~(29)(26)~~ "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- ~~(30)(27)~~ "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 09C .0601.
- ~~(31)(28)~~ "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- ~~(32)(29)~~ "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.
- ~~(30)~~ ~~"State Youth Services Officer" means an employee of the Department of Juvenile Justice and Delinquency Prevention whose duties include the evaluation, treatment, instruction, or supervision of juveniles committed to that agency.~~

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;
 Eff. January 1, 1981;
 Amended Eff. November 1, 1981; August 15, 1981;
 Readopted Eff. July 1, 1982;
 Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;
 Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989;
 Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995;
 Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998;
 January 1, 1995;
 Temporary Amendment Eff. January 1, 2001;
 Amended Eff. August 1, 2002; April 1, 2001;
 Temporary Amendment Eff. April 15, 2003.

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0102 BACKGROUND INVESTIGATION

- (a) Any agency contemplating the employment of an applicant as a criminal justice officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a criminal justice officer and shall determine whether the applicant is of good moral character.
- (b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form to provide a basis for the investigation.

(c) The agency shall utilize an investigator with prior experience or training in conducting background investigations. The investigator shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
- (2) family data;
- (3) scholastic data;
- (4) employment data;
- (5) criminal history data;
- (6) interviews with the applicant's references; and
- (7) a summary of the investigator's findings and conclusions regarding the applicant's moral character.

(d) For criminal justice officers employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention, ~~North Carolina Department of Correction~~, the agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs in accordance with the Commission form. However, the Commission's Mandated Background Investigation Form must be used as a guide of minimum information to be collected and recorded by the investigator for all other criminal justice officer applicants that are regulated by the Commission.

(e) Upon written request by the Director of the Standards Division, the employing agency shall provide the Commission with a copy of any background investigation retained by the agency.

History Note: Authority G.S. 17C-6;
 Eff. January 1, 1981;
 Amended Eff. August 1, 2002; August 1, 1998; July 1, 1989;
Temporary Amendment Eff. April 15, 2003.

12 NCAC 09B .0108 MINIMUM STANDARDS FOR STATE YOUTH SERVICES OFFICERS

~~In addition to the requirements for criminal justice officers contained in Rule .0101 of the Section, every state youth services officer employed by the Division of Youth Services, Department of Human Resources shall:~~

- ~~(1) not have committed or been convicted of:~~
 - ~~(a) a felony; or~~
 - ~~(b) a crime for which the punishment could have been imprisonment for more than two years; or~~
 - ~~(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or~~
 - ~~(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or~~
 - ~~(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;~~
- ~~(2) have attained the associate degree or have satisfactorily completed at least 60 semester~~

- hours or 90 quarter hours of educational credit at an accredited technical institute, community college, junior college, college, or university;
- (3) ~~in lieu of the educational requirements of Paragraph (2) of this Rule, persons employed as "Cottage Parent I," "Cottage Parent II," "Cottage Life Counselor Technician", or "Youth Services Behavioral Technician" shall have graduated from high school or have successfully completed the General Education Development Test indicating high school equivalency.~~

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2001; December 1, 1987; October 1, 1985; July 1, 1983; January 1, 1983; Temporary Repeal Eff. April 15, 2003.

12 NCAC 09B .0116 MINIMUM STANDARDS FOR JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every juvenile court counselor and chief court counselor employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

- (1) not have committed or been convicted of:
- (a) a felony; or
 - (b) a crime for which the punishment could have been imprisonment for more than two years; or
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; and
- (2) have attained a bachelor's degree from an accredited college or university.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. April 15, 2003.

12 NCAC 09B .0117 MINIMUM STANDARDS FOR JUVENILE JUSTICE OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every juvenile justice officer employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

- (1) not have committed or been convicted of:
- (a) a felony; or

- (b) a crime for which the punishment could have been imprisonment for more than two years; or
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; and
- (2) be a high school graduate or have passed the General Equivalency Development Test indicating high school equivalency.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003.

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0207 BASIC TRAINING -- STATE YOUTH SERVICES OFFICERS

(a) ~~The basic training course for state youth services officers shall consist of a minimum of 167 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a state youth services officer.~~

(b) ~~Each basic training course for state youth services officers shall include training in the following identified topical areas:~~

- (1) ~~Basic Orientation 11 Hours~~
- (2) ~~Juvenile Law & The Juvenile Justice System 9 Hours~~
- (3) ~~Institutional Operations and Program Orientation 25 Hours~~
- (4) ~~Medical Emergencies and Other Unusual Problems 11 Hours~~
- (5) ~~Supervision and Leadership 6 Hours~~
- (6) ~~Psychological Factors in Delinquency 14 Hours~~
- (7) ~~Special Issues of Delinquent Adolescents 7 Hours~~
- (8) ~~Sociological Factors in Delinquency 7 Hours~~
- (9) ~~Issues in Institutionalization 7 Hours~~
- (10) ~~Introduction to Counseling 7 Hours~~
- (11) ~~Counseling Techniques 7 Hours~~
- (12) ~~Theories of Counseling and Psychotherapy 7 Hours~~
- (13) ~~Group Counseling & Counseling Practicum 14 Hours~~

TEMPORARY RULES

- (14) Team Building 7 Hours
(15) Interpersonal Communications Theory and Skills 14 Hours
(16) Group Problem Solving 7 Hours
(17) Handling Job Stress 4 Hours
(18) Review and Examinations 3 Hours

(c) Upon successful completion of a commission-accredited training course by state youth services, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2000; December 1, 1987; January 1, 1983; Temporary Repeal Eff. April 15, 2003.

12 NCAC 09B .0234 BASIC TRAINING -- JUVENILE DETENTION HOMES PERSONNEL

(a) The basic training course for local confinement personnel who work in juvenile detention homes, either state or local, shall consist of a minimum of 72 hours of instruction presented during a single course offering not to exceed two weeks in length.
(b) The basic training course for juvenile detention home officers shall include training in the following identified topical areas:

- (1) Course Orientation 2 Hours
(2) Juvenile Law 4 Hours
(3) Introduction to Reality Therapy 24 Hours
(4) Suicide Prevention 4 Hours
(5) Daily Supervision in a Juvenile Detention Center 6 Hours
(6) Unarmed Self Defense 20 Hours
(7) Standard First Aid 8 Hours
(8) Evaluation and Testing 2 Hours
(9) Prevention of Communicable Diseases 2 Hours

(c) The Commission-accredited school that is accredited to offer the "Basic Training - Juvenile Detention" course is: The North Carolina Division of Youth Services.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Eff. March 1, 1990; Amended Eff. August 1, 2001; Temporary Repeal Eff. April 15, 2003.

12 NCAC 09B .0235 BASIC TRAINING - JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for juvenile court counselors and chief court counselors shall consist of a minimum of 144 hours of instruction designed to provide the trainee with the skills and

knowledge to perform those tasks essential to function as a juvenile court counselor and a chief court counselor.

(b) Each basic training course for juvenile court counselors shall include training in the following identified topical areas:

- (1) Orientation to Basic Training 8 Hours
(2) Juvenile Law 8 Hours
(3) Roles and Responsibilities of Juvenile Court Counselors 6 Hours
(4) Special Program Procedures 2 Hours
(5) Report Writing, Documentation and Correspondence 8 Hours
(6) Interpersonal Communication Skills 8 Hours
(7) Interviewing 8 Hours
(8) Basic Individual Counseling Skills 16 Hours
(9) Working with Families of Delinquent 4 Hours
(10) Risk and Needs Assessment 4 Hours
(11) Intake 8 Hours
(12) Safety Issues 4 Hours
(13) First Aid/CPR and Blood Borne Pathogens 8 Hours
(14) Restraint, Control and Defense Techniques 28 Hours
(15) Defensive Driving 8 Hours
(16) Secure Transportation 8 Hours
(17) Review and Examinations 8 Hours

(c) Upon successful completion of a Commission-accredited training course for juvenile court counselors and chief court counselors, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003.

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

(a) The basic training course for juvenile justice officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for juvenile justice officers shall include training in the following identified topical areas:

- (1) Facility Specific Safety, Security and Supervision 24 Hours
(2) Orientation, Roles and Responsibilities of the JJO 8 Hours
(3) Interpersonal Communication Skills 12 Hours
(4) Basic Group Leadership Skills 8 Hours
(5) Adolescent Development 4 Hours
(6) Characteristics of Delinquents 4 Hours
(7) Gang Awareness 2 Hours
(8) Basic Individual Counseling Skills 16 Hours
(9) Effective Behavior Management of Juveniles 12 Hours
(10) Crisis Intervention Techniques 8 Hours
(11) Working with Families of Delinquent Juveniles 4 Hours

TEMPORARY RULES

- (12) Treatment Program Operation 6 Hours
- (13) Maintaining Documentation of Activities and Behaviors 8 Hours
- (14) First Aid/CPR and Blood Borne Pathogens 8 Hours
- (15) Restraint, Control and Defense Techniques 28 Hours
- (16) Review and Examinations 8 Hours

(c) Upon successful completion of a Commission-accredited training course for juvenile justice officers the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0400 - MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0401 ADMINISTRATION OF BASIC CORRECTIONS TRAINING SCHOOLS

(a) The Secretary of the North Carolina Department of Correction shall have primary responsibility for implementation of the Rules in this Section. The executive officer or officers of the institution or agency shall secure School Accreditation pursuant to 12 NCAC 09G .0402 prior to offering any corrections training course.

(b) The Secretary shall designate not more than one compensated staff member for each Commission-accredited program for which the North Carolina Department of Correction has been granted accreditation. Such staff member shall be formally certified by the Commission under Rule .0405 of this Subchapter to be the corrections School Director. The School Director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored accredited corrections training course. If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited training course, an additional Qualified Assistant must be designated to assist the School Director in the administration of the course. This person must be selected by the School Director and must attend a course orientation conducted by Standards Division staff and attend the annual School Directors' Conference.

History Note: Authority 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003.

12 NCAC 09G .0405 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a School Director in the delivery or presentation of a

Commission-accredited corrections training course shall be and continuously remain certified by the Commission as a School Director.

(b) To qualify for certification as a corrections School Director, at a minimum, an applicant shall:

(1) present documentary evidence showing that the applicant:

(A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required five years experience must have been while actively participating in corrections training as a Commission-certified instructor; or

(B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required four years experience must have been while directly participating in corrections training as a Commission-certified instructor; or

(C) has been awarded a baccalaureate degree acceptable to any Commission-accredited school in its criminal justice or corrections program;

(2) attend or must have attended the most current offering of the School Director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member may be required; and

(3) submit a written request to the Commission for the issuance of such certification. This request shall be executed by the executive officer of the North Carolina Department of Correction.

(c) To qualify for certification as a School Director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:

(1) document that he/she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;

(2) present evidence showing successful completion of a Commission-accredited instructor training course or an equivalent instructor training program as determined by the Commission;

(3) be currently certified as a criminal justice instructor by the Commission; and

(4) document successful participation in a special program presented by the Justice Academy for

purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003.

12 NCAC 09G .0406 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a School Director is two years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of 12 NCAC 09G .0405(b)(2) and (b)(3).

(b) To retain certification as a School Director, the School Director shall perform the duties and responsibilities of a School Director as specifically required in 12 NCAC 09G .0408.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003.

12 NCAC 09G .0407 SUSPENSION: REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION

(a) The Commission may deny, suspend, or revoke certification of a School Director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the Commission or otherwise demonstrates incompetence.

(b) Prior to the Commission's action denying, suspending, or revoking a School Director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Rule-making Agency: *NC State Board of Dental Examiners*

Rule Citation: *21 NCAC 16Q .0401*

Effective Date: *March 13, 2003*

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

Authority for the rulemaking: *G.S. 90-28; 90-30.1*

Reason for Proposed Action: *This temporary rule was previously filed with the Office of Administrative Hearings on September 3, 2002. The rule went into effect on December 11, 2002. An interested party raised the issue that there was a typographical error in Paragraph (b)(2) of the Rule. That paragraph refers to Paragraph (d)(1)(D) and (d)(1)(E) which do not exist. The reference should be to Paragraphs (b)(1)(D) and (b)(1)(E). This reference to Paragraphs that do not exist is causing confusion in the regulated community. Also, the Subparagraphs of Paragraph (b)(1) were inadvertently numbered incorrectly and did not make sense. The Subparagraphs of Paragraph (b)(1) have now been numbered correctly.*

Comment Procedures: *Written comments should be submitted to Lisa Thompson, NC State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513.*

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0400 - ENTERAL CONSCIOUS SEDATION

21 NCAC 16Q.0401 ENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer enteral conscious sedation, he or she shall obtain either a parenteral conscious sedation permit issued by the Board, a general anesthesia permit issued by the Board, or an enteral conscious sedation permit issued by the Board. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain an enteral conscious sedation permit from the Board by submitting the appropriate information on an application form provided by the Board and paying a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder. A dentist who holds an enteral conscious sedation permit shall not administer deep sedation or general anesthesia.

- (1) An enteral conscious sedation permit may be obtained by completing an application form approved by the Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.
- (2) The application form must be filled out completely and appropriate fees paid.
- (3) Prior to issuance of an enteral conscious sedation permit the Board shall require that the applicant undergo a facility inspection or further review of credentials. The Board shall direct an evaluator to assist in this inspection or review. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall coordinate the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no

more than 90 days may be granted if the designated evaluator or applicant requests one.

- (4) An applicant for an enteral conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these rules "good standing" means that a licensee is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing will not be approved.

(b) Educational/Professional Requirements:

- (1) The dentist applying for an enteral conscious sedation permit shall meet one of the following criteria:

- (A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the ~~(B)~~ Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious sedation in a minimum of five cases;

- ~~(C)~~(B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage enteral conscious sedation;

- ~~(D)~~(C) successful completion of a 12 hour enteral conscious sedation course approved by the Board which affords comprehensive training necessary to administer and manage enteral conscious sedation;

- ~~(E)~~(D) successful completion of an ADA accredited postgraduate program in pediatric dentistry; or

- ~~(F)~~(E) is a North Carolina licensed dentist in good standing who has been utilizing enteral conscious sedation in a competent manner for the five years preceding January 1, 2002, his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (a)(3) of this Rule, and has presented evidence of successful administration of enteral conscious sedation in a minimum of five clinical cases involving the administration of enteral conscious sedation.

- (2) Prior to administering enteral conscious sedation to minor children under the age of 13, a dentist who only qualifies for an enteral conscious sedation permit shall also successfully complete a six hour course in pediatric enteral conscious sedation developed by the Pediatric Dentistry Department at the University of North Carolina or a Board approved equivalent course and submit

documentation showing successful completion of such course to the Board. The requirements of this Paragraph shall not apply to Pediatric Dentists who meet the requirements of Paragraph ~~(d)(1)(D)~~ (b)(1)(D) of this Rule nor to those dentists who otherwise meet the requirements of Paragraph ~~(d)(1)(E)~~ (b)(1)(E) of this Rule and in addition have administered enteral conscious sedation to minor children under the age of 13 in a competent manner for the five years preceding January 1, 2002 and have presented evidence of successful administration of enteral conscious sedation in a minimum of five clinical cases involving the administration of enteral conscious sedation to minor children under the age of 13.

History Note: Authority G.S. 90-28; 90-30.1; Temporary Adoption Eff. March 13, 2003; December 11, 2002.

CHAPTER 29 – LOCKSMITH LICENSING BOARD

Rule-making Agency: NC Locksmith Licensing Board

Rule Citation: 21 NCAC 29 .0601 - .0602

Effective Date: March 26, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 74F

Reason for Proposed Action: The Locksmith Licensing Act is already in effect. These rules will allow licensees and potential licensees to have specific questions answered.

Comment Procedures: Written comments should be submitted to Jim Scarborough, PO Box 10972, Raleigh, NC 27605. Phone: (919) 838-8782.

SECTION .0600 – ADMINISTRATIVE LAW PROCEDURES

21 NCAC 29 .0601 PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

(a) Any person may petition the Board under G.S. 150B-20 to adopt a new rule or to amend or repeal an existing rule by sending a written petition for rulemaking to the Chair at the Board's address. The petition shall be entitled "Petition for Rulemaking" and shall include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of the proposed new rule or amended rule;
- (4) the reason for the proposal, with any information the petitioner believes is relevant and wishes the Board to consider;

TEMPORARY RULES

- (5) the effect of the proposed new rule or amendment on existing rules or decisions;
- (6) practices likely to be affected by the proposed new rule or amendment; and
- (7) an identification of the persons or class of persons most likely to be affected by the proposal.

(b) The Board may request additional information before making its decision.

History Note: Authority G.S. 74F-6; 150B-20; Temporary Adoption Eff. March 26, 2003.

21 NCAC 29 .0602 DECLARATORY RULINGS

(a) A person seeking a declaratory ruling from the Board under G.S. 150B-4 shall file a petition for a declaratory ruling that meets the requirements of this Rule.

(b) All petitions for declaratory rulings shall be in writing and shall be sent to the Chair at the Board's address. Each petition shall be entitled "Petition for Declaratory Ruling" and shall include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a statement of the manner in which the petitioner has been or may be aggrieved by the statute or rule; and

(4) if the petitioner wishes to make an oral presentation to the Board on the petition, a statement clearly requesting an opportunity to appear and be heard.

(c) The Board may refuse to issue a declaratory ruling when:

- (1) the petition does not comply with this Rule;
- (2) the petitioner is not a "person" or a "person aggrieved" as defined in G.S. 150B-2;
- (3) the Board has previously issued a declaratory ruling on substantially similar facts;
- (4) the Board has previously issued a final agency decision in a contested case on substantially similar facts;
- (5) the facts underlying the request for a declaratory ruling were specifically considered at the time the rule was adopted;
- (6) the subject matter of the petition is involved in pending litigation; or
- (7) the Board determines for good cause not listed in this Paragraph that issuance of a declaratory ruling is undesirable.

History Note: Authority G.S. 74F-6; 150B-4; Temporary Adoption Eff. March 26, 2003.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, April 17, 2003, 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 by Friday, April 11, 2003 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

Jim Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Laura Devan
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

| | |
|------------------|--------------------|
| April 17, 2003 | May 15, 2003 |
| June 19, 2003 | July 17, 2003 |
| August 21, 2003 | September 18, 2003 |
| October 16, 2003 | |

RULES REVIEW COMMISSION MARCH 20, 2003 MINUTES

The Rules Review Commission met on Thursday morning, March 20, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Jennie Hayman, Graham Bell, Jim Funderburk, Walter Futch, Thomas Hilliard, John Tart, and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

| | |
|------------------|---|
| Lebeed Kady | NC Hazardous Waste |
| Helen Cotton | NC Hazardous Waste |
| Bart Campbell | DENR |
| Mike Eddinger | DFS/EMS |
| Mark Benton | DFS/EMS |
| Dedra Alston | DENR |
| Allan Russ | Secretary of State |
| Haley Montgomery | Secretary of State |
| Nick Fountain | Plumbing, Heating & Fire Sprinkler Contractor Board |

APPROVAL OF MINUTES

The meeting was called to order at 10:04 a.m. with Commissioner Hayman presiding. The Commission went into Executive Session in the Office of the Rules Review Commission to discuss with its attorney the Pharmacy Board lawsuit against the Rules Review Commission.

At 10:20 a.m. the Commission came out of Executive Session and relocated back to the Assembly Room. At 10:32 a.m. the meeting was called to order. Mrs. Hayman asked for any discussion, comments, or corrections concerning the minutes of the February 20, 2003, meeting. The minutes were approved as written. The Commission welcomed new member Graham Bell to the Rules Review Commission. Newly appointed Commissioner Meredith Norris has submitted a letter of resignation to the Democratic Speaker of the House.

FOLLOW-UP MATTERS

RULES REVIEW COMMISSION

- 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 – The Commission took no action on these rules at the request of the agency.
- 2 NCAC 52C .0701: Department of Agriculture – The agency intends to submit a rewritten rule at the April meeting.
- 8 NCAC 1 .0101: Board of Elections – The Commission took no action on this rule at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 2 .0101-.0113: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 4 .0101-.0109; .0201-.0208; .0301-.0307: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 6B .0101-.0105: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 7B .0101; .0102: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 9 .0101-.0109: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 10B .0101-.0108: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 8 NCAC 12 .0101-.0111: Board of Elections – The Commission took no action on these rules at the request of the agency. The agency intends to submit revised rules for review at the October meeting.
- 10 NCAC 3D .2508; .2521; .2522; .2601; .2602; .2701; .2901; .2902; .2905; .2908; .2909; .3001; .3002; .3003; .3101: DHHS/Medical Care Commission – The Commission approved the rewritten rules submitted by the agency.
- 10 NCAC 26H .0211; .0213: Department of Health and Human Services – The Commission approved the rewritten rules submitted by the agency contingent upon technical change being made by the end of the business day. The change was made.
- 21 NCAC 46 .1812: Board of Pharmacy – This rule will be considered at next month’s meeting.
- 21 NCAC 46 .2502: Board of Pharmacy – This rule will be considered at next month’s meeting.
- 21 NCAC 50 .0103: Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – Nick Fountain asked Commission to rescind the objection. The Commission took no action on this rule.
- 23 NCAC 2E .0201: State Board of Community Colleges – The Commission approved the rewritten rule submitted by the agency.
- 25 NCAC 1D .1945: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.
- 25 NCAC 1E .0805: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved unanimously with the following exceptions:

- 1 NCAC 30D .0302: State Building Commission – The Commission objected to the rule due to ambiguity. In (2), it is not clear what “special circumstances” would dictate the need to institute interview procedures. This objection applies to exiting language in this rule
- 15A NCAC 13A .0109: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (1)(2), it is unclear if the two lines have to be different types or if two clayey liners or two artificial liners would work. Items (r)(2)(B) and (r)(2)(C) seem inconsistent as to distance from property lines. Subparagraph (r)(1) lists a number of risks and factors the Department is to consider in determining whether to issue a permit. It is not clear what standard these risks and factors must meet for a permit to be issued or denied. In (r)(2)(A), it is not clear what standards will be used to determine if a risk is unreasonable. There is the same problem in (r)(2)(D)(I) and (r)(3). In (r)(2)(D)(i), it is not clear what would amount to “an adequate secondary containment system.” In (r)(1) and (r)(3), it is not clear what would constitute an “adequate” buffer zone. In (r)(4)(B), it is not clear what would constitute “highly weathered” and “relatively “impermeable” clayey formations. In (r)(4)(B)(viii), it is not clear what is meant by “competent” geologic formation and “adequate” protection. This objection applies to existing language.
- 15A NCAC 13A .0113: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (1), it is unclear what “other facilities are being referred to. This objection applies to existing language.
- 15A NCAC 18A .2606: Commission for Health Services – The Commission objected to the rule due to ambiguity. It is not clear how the percentage scores established by this rule are determined. In (b), it is not clear what standards the Department will use in approving food service sanitation programs. The objection applies to exiting language in this rule.
- 18 NCAC 2 .0103: Secretary of State – The Commission objected to the rule due to lack of necessity. This rule only deals with the internal management of the agency and is not necessary to be included in the rules. The objection applies to exiting language in this rule.
- 18 NCAC 6 .1501: Secretary of State – The Commission continued this rule to the next meeting at the request of the agency.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commission held elections for Chair, Vice Chair and Second Vice Chair. Commissioner Jennie Hayman was elected Chairman, Jim Funderburk was elected First Vice Chairman and David Twiddy was elected Second Vice Chairman.

RULES REVIEW COMMISSION

Chairman Hayman suggested that Mr. DeLuca write Speakers of the House and the President Pro-Tempore about appointments to fill the two vacancies in the Commission.

The meeting adjourned at 11:30 a.m.

The next meeting of the Commission is Thursday, April 17, 2003 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

Log of Filings (Log #196)

February 21, 2003 through March 20, 2003

DHHS/MEDICAL CARE COMMISSION

Other Services Performed by Physicians and Other 10 NCAC 26H .0404 Amend

DENR/ENVIRONMENTAL MANGEMENT COMMISSION

Permits Requiring Public Participation 15A NCAC 02Q .0306 Amend

DENR/WELL CONTRACTORS CERTIFICATION COMMISSION

Application Requirements for Certification 15A NCAC 27 .0301 Amend

DEPARTMENT OF TRANSPORTATION

Safety of Operation and Equipment 19A NCAC 03D .0801 Amend

NC BOARD OF LICENSING OF GEOLOGIST

Forms 21 NCAC 21 .0106 Repeal

NC BOARD OF REFRIGERATION EXAMINERS

Office of the Board 21 NCAC 60 .0102 Amend

Dates of Board Meetings 21 NCAC 60 .0201 Repeal

Scoring Examinations 21 NCAC 60 .0204 Repeal

Examination Application Duly Filed 21 NCAC 60 .0206 Amend

Requirements for Examination Applicants 21 NCAC 60 .0207 Amend

Examination Review 21 NCAC 60 .0208 Amend

Special Examination 21 NCAC 60 .0210 Repeal

Qualifying Examinations 21 NCAC 60 .0212 Adopt

Examinations 21 NCAC 60 .0213 Adopt

Permits 21 NCAC 60 .0311 Adopt

Preferring Charges 21 NCAC 60 .1102 Adopt

NC STATE VETERINARY MEDICAL BOARD

Minimum Standards for Continuing Education (4) 21 NCAC 66 .0206 Amend

AGENDA

Rules Review Commission

April 17, 2003

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. State Building Commission – 1 NCAC 30D .0302 Objection 03/20/03 (Bryan)
 - B. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 Carried over to April from 12/19/02 (DeLuca)
 - C. Department of Agriculture – 2 NCAC 52C .0701 Objection 12/19/02 (DeLuca)
 - D. Commission for Health Services – 15A NCAC 13A .0109; .0113 Objection 03/20/03 (Bryan)
 - E. Commission for Health Services – 15A NCAC 18A .2606 Objection 03/20/03 (Bryan)
 - F. Secretary of State – 18 NCAC 2 .0103 Objection 03/20/03 (Bryan)
 - G. Secretary of State – 18 NCAC 6 .1501 Carried over to April meeting 03/20/03 (Bryan)
 - H. Board of Pharmacy – 21 NCAC 46 .1812 Objection 11/21/02 (DeLuca)
 - I. Board of Pharmacy – 21 NCAC 46 .2502 Objection 11/21/02 (DeLuca)
 - J. Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0103 Objection 12/19/02 (Bryan)
 - K. Cultural Resources Commission – 7 NCAC 4S .0104 Objection 12/21/00 (DeLuca)

RULES REVIEW COMMISSION

- L. Board of Elections – 8 NCAC Chapter 1-12 Extend Period of Review 01/16/03 (DeLuca) To be considered at October Meeting.
- IV. Review of rules (Log Report #196)
- V. Commission Business
- VI. Next meeting: May 15, 2003

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> |
|--|--------------------|------------|-------------------------|---|
| <u>ALCOHOL BEVERAGE CONTROL COMMISSION</u> | | | | |
| NC ABC Commission v. Issa Fuad Shaikh T/A Variety Pic Up #14 | 01 ABC 0874 | Conner | 12/03/02 | |
| NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry | 01 ABC 1325 | Chess | 05/21/02 | |
| Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm. | 01 ABC 1396 | Wade | 06/26/02 | |
| NC ABC Commission v. Headlights, Inc. T/A Headlights | 01 ABC 1473 | Wade | 06/28/02 | |
| NC ABC Commission v. Jerry Lynn Johnson T/A E & J Millenium | 02 ABC 0115 | Conner | 10/23/02 | |
| Roy Hoyt Durham, Lisa Chambers Durham t/a Lincoln House v. NC ABC Commission | 02 ABC 0157 | Mann | 12/03/02 | |
| Edward L. Mumford v. NC Alcoholic Control Commission | 02 ABC 0264 | Conner | 08/29/02 | |
| NC ABC Commission v. WDB, Inc. T/A Twin Peeks | 02 ABC 0517 | Conner | 07/15/02 | |
| Jrs Nigh Hawk, James Theron Lloyd Jr v. NC ABC Commission | 02 ABC 0629 | Chess | 11/19/02 | 17:13 NCR 1116 |
| NC ABC Commission v. Cevastiano Hernandez T/A Cristy Mexican Store | 02 ABC 0667 | Gray | 10/17/02 | |
| NC ABC Commission v. Easy Street Bistro, Inc. T/A Raleigh Live | 02 ABC 0781 | Wade | 10/23/02 | |
| Scott Patrick Windsor T/A Depot v. NC Alcoholic Beverage Comm. | 02 ABC 0909 | Hunter | 02/26/03 | |
| <u>APPRAISAL BOARD</u> | | | | |
| NC Appraisal Board v. Thomas G. Hildebrandt, Jr. | 02 APB 0130 | Chess | 08/20/02 | 17:06 NCR 563 |
| <u>CEMETARY COMMISSION</u> | | | | |
| Lee Memory Gardens, Inc. v. NC Cemetary Commission | 02 COM 0126 | Gray | 09/19/02 | |
| <u>UTILITIES COMMISSION</u> | | | | |
| Tracy Woody v. State of NC Utilities Commission | 02 COM 1004 | Morrison | 08/26/02 | |
| <u>CRIME CONTROL AND PUBLIC SAFETY</u> | | | | |
| Hattie Holt v. Crime Victims Compensation Commission | 00 CPS 1067 | Conner | 05/30/02 | |
| Carol Peebles v. Crime Victims Compensation Commission | 02 CPS 0180 | Gray | 02/05/03 | |
| Linda Hawley v. Crime Victims Compensation Commission | 02 CPS 0121 | Conner | 06/14/02 | |
| Lial McKoy v. Crime Victims Compensation Commission | 02 CPS 0394 | Chess | 07/26/02 | |
| Elbert Reid, Jr. v. Crime Victims Compensation Commission | 02 CPS 0431 | Conner | 11/13/02 | |
| Francis Michael McLaurin on behalf of B.W. McLaurin v. Crime Victims Compensation Commission | 02 CPS 0760 | Chess | 11/19/02 | |
| Willie Ray Lucas v. Crime Victims Compensation Commission | 02 CPS 0770 | Wade | 01/06/03 | |
| Claudia White v. Crime Victims Compensation Commission | 02 CPS 0894 | Conner | 01/08/03 | |
| Phyllis Ponder Duren v. Crime Victims Compensation Commission | 02 CPS 1173 | Gray | 11/06/02 | |
| Brenda S. DuBois on behalf of victim Priscilla Bryant v. Dept. of Crime Control & Public Safety, Div. of Victim Comp. Services | 02 CPS 1332 | Lassiter | 09/20/02 | |
| William S. McLean v. Crime Victims Compensation Commission | 02 CPS 1600 | Lassiter | 11/18/02 | |
| <u>HEALTH AND HUMAN SERVICES</u> | | | | |
| A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions . | | | | |
| Chiffon R Robeson, Ronald V Robeson v DHHS, Div. of Child Dev. | 00 DHR 1030 | Gray | 02/28/03 | |
| Lisa Williams v. NC DHHS, Div. of Soc. Svc., Child Supp. Enf. Sec. | 01 DCS 2351 | Elkins | 10/28/02 | 17:11 NCR 1024 |
| Thelma Street v. NC DHHS | 01 DHR 0303 | Reilly | 09/17/02 | |

CONTESTED CASE DECISIONS

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|---|-------------|----------|----------|----------------|
| Emilia E Edgar v. DHHS, Div. of Facility Services | 01 DHR 1356 | Hunter | 09/09/02 | |
| Joyce Jeanette Jones v. DHHS, Div. of Facility Services | 02 DHR 1663 | Conner | 11/15/02 | |
| Evelia Williams v. NC DHHS | 01 DHR 1750 | Conner | 07/15/02 | |
| Jacob Jones v. NC DHHS, Div. of Medical Assistance | 01 DHR 2169 | Wade | 10/04/02 | |
| Kathy Mumford v. DHHS, Div. of Facility Services | 01 DHR 2253 | Chess | 07/26/02 | |
| Brenda L. McQueen v. DHHS, Div. of Facility Services | 01 DHR 2321 | Morrison | 10/17/02 | |
| Tammy Baldwin v. DHHS, Div. of Facility Services | 01 DHR 2329 | Morrison | 10/16/02 | |
| Pamela S Vuncannon v. DHHS, Div of Child Development | 01 DHR 2332 | Chess | 11/18/02 | |
| James Bell v. NC DHHS, Div. of Facility Services | 01 DHR 2340 | Elkins | 06/27/02 | |
| Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center | 01 DHR 2352 | Conner | 06/21/02 | |
| Ramiro Ramos v. NC DHHS and Chris Hoke, State Registrar | 01 DHR 2366 | Conner | 09/11/02 | |
| Effie M. Williams v. NC Department of Health and Human Services | 02 DHR 0001 | Gray | 08/08/02 | |
| Kathy Denise Urban v. NC DHHS, Div. of Facility Services | 02 DHR 0055 | Hunter | 09/10/02 | |
| Betty Carr v. DHHS, Div. of Facility Services | 02 DHR 0070 | Mann | 09/10/02 | |
| Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center | 02 DHR 0083 | Chess | 06/07/02 | |
| Ursula Philomena Nwapa v. DHHS | 02 DHR 0091 | Wade | 12/18/02 | |
| Lollipop's Learning Tree #2, Lori Kirkling, ID #32001062 v. DHHS, | 02 DHR 0095 | Gray | 02/28/03 | |
| Albemarle Home Care & Ginger Parrish, PhD v. DHHS, Div. of Medical Assistance | 02 DHR 0142 | Conner | 07/22/02 | |
| Shonta R. Fox v. Dept. of Health & Human Services | 02 DHR 0218 | Conner | 11/08/02 | |
| Birgit James v. Dept. of Health & Human Services | 02 DHR 0255 | Connor | 07/01/02 | |
| Geraldine Rountree Cooper v. DHHS, Div. of Facility Services | 02 DHR 0267 | Elkins | 07/15/02 | |
| Gemela Kidada Davis v. DHHS, Div. of Facility Services | 02 DHR 0283 | Lassiter | 02/24/03 | |
| Unieca Richardson v. DHHS, Division of Facility Services | 02 DHR 0286 | Chess | 06/17/02 | |
| Greg McKinney & Virgie Elaine McKinney v. DHHS | 02 DHR 0301 | Mann | 08/01/02 | |
| Jerry Dean Webber v. DHHS, Broughton Hospital | 02 DHR 0306 | Conner | 08/28/02 | |
| Donna R Anderson v. DHHS, Broughton Hospital | 02 DHR 0340 | Gray | 08/01/02 | |
| Notisha Utley v. DHHS, Division of Facility Services | 02 DHR 0379 | Conner | 07/26/02 | |
| Isa Spaine v. Department of Health & Human Services | 02 DHR 0403 | Chess | 06/24/02 | |
| Debra A. Browner v. DHHS, Broughton Hospital | 02 DHR 0405 | Conner | 08/28/02 | |
| Vernon Farley v. DHHS, Div. of Medical Assistance | 02 DHR 0450 | Gray | 01/29/03 | |
| NC Community Association v. DHHS, Off. of Economic Opportunity | 02 DHR 0497 | Morrison | 12/11/02 | 17:14 NCR 1200 |
| Bill & Suzy Crawford for (NEELY) Crawford v. DHHS | 02 DHR 0539 | Wade | 12/18/02 | |
| Mooresville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section | 02 DHR 0541 | Chess | 08/07/02 | |
| Wayne Douglas Temples v. DHHS, NC Off. of Emer. Med. Svcs. | 02 DHR 0543 | Morrison | 10/09/02 | |
| Mark Thomas v. DHHS, Div. of Facility Services | 02 DHR 0555 | Chess | 10/17/02 | |
| Eli Maxwell v. DHHS, Div. of Facility Services, Health Care Registry | 02 DHR 0556 | Lassiter | 08/08/02 | |
| Robin Lee Arnold v. DHHS, Div. of Facility Services | 02 DHR 0558 | Conner | 08/15/02 | |
| Laura Sheets v. DHHS, Div. of Facility Services | 02 DHR 0569 | Conner | 10/17/02 | |
| Terry A. Bolick v. DHHS | 02 DHR 0618 | Conner | 02/26/03 | |
| Evelyn Denise Humphrey v. DHHS, Div. of Facility Services | 02 DHR 0624 | Morrison | 08/08/02 | |
| James Parks v. Dept. of Health and Human Services | 02 DHR 0680 | Morrison | 08/07/02 | |
| Andrea Green, Parent, on behalf of her minor child, Andrew Price v. The Durham Clinic | 02 DHR 0682 | Gray | 11/07/02 | |
| Lisa Murphy v. DHHS, Division of Facility Services | 02 DHR 0694 | Mann | 07/26/02 | |
| Vernessa B Pittman v. DHHS | 02 DHR 0734 | Chess | 11/21/02 | |
| Mary's Family Care #2, Beulah Spivey v. OAH | 02 DHR 0735 | Morrison | 08/27/02 | |
| Clinita Faye Hooker v. DHHS, Div. of Facility Services | 02 DHR 0748 | Lassiter | 01/02/03 | |
| Miranda Lynn Stewart v. DHHS, Div. of Facility Services | 02 DHR 0791 | Mann | 11/08/02 | 17:12 NCR 1086 |
| Hazel Chea v. Department of Health & Human Services | 02 DHR 0795 | Mann | 06/11/02 | |
| Jeffrey Wayne Radcliff v. DHHS | 02 DHR 0838 | Conner | 12/16/02 | |
| Mr. Mohamed Mohamed v. DHHS, Women's & Children's Health (WIC Program) | 02 DHR 0866 | Chess | 10/02/02 | |
| Mooresville Hospital Management Assoc, Inc. d/b/a Lake Norman Reg. Med. Ctr v. DHHS, Div. of Fac. Svcs, CON Section, Robert J Fitzgerald in his official capacity as Director of the Div of Fac Svcs, and Lee B Hoffman in her official capacity as Chief of the CON Section and The Presbyterian Hospital and the Town of Huntersville | 02 DHR 0888 | Morrison | 11/26/02 | 17:13 NCR 1120 |
| Cleon A Gibbs v. Division of Medical Assistance (DMA) | 02 DHR 0901 | Elkins | 12/16/02 | |
| Martha L Cox v. DHHS, Div. of Facility Services | 02 DHR 0935 | Morrison | 10/25/02 | |
| Tracy Woody v. Coop Ex. Svc, Coll of Ag & Life Sc Family & Consumer Svcs, In-Home Breastfeeding Support Program & Nash Co. Dept. of Social Svcs, Child Protective Svcs & State WIC Program for Nash County | 02 DHR 0944 | Morrison | 09/25/02 | |
| Stacy L Pleaze-Wilson v. DHHS, Health Care Personnel Registry | 02 DHR 0973 | Wade | 01/31/03 | |
| Sheryl L Hoyle v. DHHS, Div. of Facility Services | 02 DHR 1009 | Conner | 10/24/02 | |
| Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr. | 02 DHR 1033 | Chess | 08/15/02 | |
| Gloria Dean Gaston v. Office of Administrative Hearings | 02 DHR 1081 | Morrison | 07/26/02 | |
| Teresa King v. Division of Mental Health | 02 DHR 1154 | Chess | 12/19/02 | |
| Maria Goretti Obialor v. DHHS, Div. of Facility Services | 02 DHR 1187 | Mann | 09/11/02 | |
| Lashanda Skinner v. DHHS | 02 DHR 1190 | Lassiter | 09/09/02 | |
| Robert A. Thomas v. DHHS, Div. of Facility Services | 02 DHR 1254 | Lassiter | 09/13/02 | |
| Janet Cook v. Division of Medical Assistance | 02 DHR 1272 | Lassiter | 11/15/02 | |
| Shirley's Development Center, Shirley Campbell v. State of DHHS, Div. of Child Development | 02 DHR 1309 | Morrison | 10/08/02 | |
| Joann V Blakeney v. Piedmont Behavior Healthcare | 02 DHR 1319 | Conner | 12/16/02 | |
| Jack Irizarry v. DHHS, Div. of Facility Services, Adult Care License Sec. | 02 DHR 1331 | Elkins | 02/19/03 | |
| Timothy W Andrews for Ridgecrest Retirement LLC v. DHHS, Div | 02 DHR 1417 | Elkins | 11/26/02 | |

CONTESTED CASE DECISIONS

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| of Facility Services | | | |
| Psychiatric Solutions, Inc. d/b/a Holly Hill Hospital v. Div. of Medical Assistance, DHHS | 02 DHR 1499 | Elkins | 12/12/02 |
| Evy's Group Care v. DHHS, Div. of Mental Health, Program Accountability | 02 DHR 1462 | Gray | 01/27/03 |
| LatusMcRae v. Dept Health Care Personnel Registry Section | 02 DHR 1533 | Lassiter | 01/14/03 |
| Marquell's Enrichment Center for Edith James & Wilhelmenia Bridges v. Div. of Child Dev. Regulatory Services Section | 02 DHR 1537 | Gray | 01/27/03 |
| Betty J. Hastings v. Office of Administrative Hearings | 02 DHR 1592 | Lassiter | 02/11/03 |
| Twakeena Rachel Simmons v. Office of Administrative Hearings | 02 DHR 1626 | Chess | 01/13/03 |
| Peggy Renee Smith v. DHHS, Div. of Facility Svcs, Hlth Care Per Reg | 02 DHR 1683 | Lassiter | 11/13/02 |
| Queen Esther Hampton Fant v DHHS, Div. of Facility Services | 02 DHR 1751 | Elkins | 03/07/03 |
| Sherry D Tucker v. DHHS, Div. of Facility Services | 02 DHR 1753 | Mann | 01/02/03 |
| Mary A. Johnson v. DHHS | 02 DHR 1885 | Wade | 03/13/03 |
| Donna Stillie v. Nurse Registry for CAN's | 02 DHR 1940 | Chess | 01/15/03 |
| Opportunities Industrialization Center of America, Inc. (via counsel, David C. Smith) v. DHHS | 02 DHR 1982 | Chess | 01/27/03 |
| Shirley Suggs v. DHHS, Division of Facility Services | 02 DHR 2038 | Gray | 02/13/03 |
| Ziad El-Hilou, A&T Food v. Food & Nutrition Service – USDA, and DHHS | 02 DHR 2165 | Elkins | 01/08/03 |
| Donna W. Roach v. DHHS | 02 DHR 2187 | Chess | 03/07/03 |

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| Heather Lail v DHHS, Health Care Personnel Registry | 03 DHR 0014 | Gray | 02/26/03 |
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ADMINISTRATION

| | | | |
|---|-------------|-------|----------|
| San Antoni Equipment Co. v. NC Department of Administration | 02 DOA 0430 | Chess | 06/26/02 |
| James J. Lewis v. DOA, Gov. Advocacy Council for Persons w/Disabilities | 02 DOA 0545 | Chess | 08/26/02 |

JUSTICE

| | | | |
|--|-------------|----------|----------|
| Darren P Botticelli v. DOJ, Company Police Program | 02 DOJ 0898 | Lassiter | 03/20/03 |
| Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis | 02 DOJ 1038 | Gray | 08/08/02 |

Alarm Systems Licensing Board

| | | | |
|---|-------------|----------|----------|
| 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 |
| Jeffery Lee Garrett v. Alarm Systems Licensing Board | 02 DOJ 0908 | Morrison | 08/06/02 |
| Robert Bradley Tyson v. Alarm Systems Licensing Board | 02 DOJ 1266 | Morrison | 10/09/02 |
| Larry Thomas Medlin Jr. v. Alarm Systems Licensing Board | 02 DOJ 1433 | Lassiter | 11/19/02 |
| Lottie M Campbell v. Alarm Systems Licensing Board | 02 DOJ 1602 | Mann | 11/27/02 |
| Katherine Claire Willis v Alarm Systems Licensing Board | 02 DOJ 1953 | Gray | 03/04/03 |
| John Courtney Rose v Alarm Systems Licensing Board | 02 DOJ 1954 | Morrison | 12/19/02 |
| Adam David Braswell v Alarm Systems Licensing Board | 02 DOJ 1955 | Morrison | 12/19/02 |
| Jason Lee Davenport v. Alarm Systems Licensing Board | 02 DOJ 1956 | Morrison | 12/19/02 |

Private Protective Services Board

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|--|-------------|----------|----------|
| Anthony Davon Webster v. Private Protective Services Board | 01 DOJ 1857 | Gray | 06/07/02 |
| Benita Lee Luckey v. Private Protective Services Board | 02 DOJ 0530 | Elkins | 07/12/02 |
| 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 |
| Barry Snadon, Sr. v. Private Protective Services Board | 02 DOJ 0907 | Elkins | 07/12/02 |
| Gregory Darnell Martin v. Private Protective Services Board | 02 DOJ 0916 | Morrison | 08/06/02 |
| Marvin Ray Johnson v. Private Protective Services Board | 02 DOJ 0945 | Morrison | 08/06/02 |
| Quincey Adam Morning v. Private Protective Services Board | 02 DOJ 1084 | Morrison | 08/06/02 |
| Philip Garland Cameron v. Private Protective Services Board | 02 DOJ 1258 | Morrison | 09/06/02 |
| Jamaal Ahkiem Gittens v. Private Protective Services Board | 02 DOJ 1260 | Conner | 01/08/03 |
| Desantis Lamarr Everett v. Private Protective Services Board | 02 DOJ 1259 | Morrison | 09/06/02 |
| Junius Buddy Weaver Jr v. Private Protective Services Board | 02 DOJ 1432 | Morrison | 11/21/02 |
| John Curtis Howell v. Private Protective Services Board | 02 DOJ 1562 | Lassiter | 10/04/02 |

Sheriffs' Education & Training Standards Commission

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|--|-------------|----------|----------|
| Kevin Warren Jackson v. Sheriffs' Education & Training Stds. Comm. | 01 DOJ 1587 | Chess | 07/16/02 |
| Andrew Arnold Powell Jr v. Criminal Justice & Training Stds. Comm. | 01 DOJ 1771 | Chess | 11/26/02 |
| Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0004 | Mann | 06/28/02 |
| Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm. | 02 DOJ 0057 | Gray | 07/15/02 |
| Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0089 | Conner | 06/25/02 |
| Clarence Raymond Adcock v. Criminal Justice Ed. & Trng. Stds. Comm. | 02 DOJ 0104 | Chess | 09/09/02 |
| Joseph Garth Keller v. Criminal Justice & Trng. Stds. Comm. | 02 DOJ 0170 | Gray | 09/11/02 |
| Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm. | 02 DOJ 0171 | Mann | 06/04/02 |
| Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0304 | Reilly | 07/17/02 |
| Michael A Carrion v. Criminal Justice Educ & Trng Stds. Comm. | 02 DOJ 0416 | Conner | 09/25/02 |
| Wallace A. Hough, Jr. v. Criminal Justice & Training Stds. Comm. | 02 DOJ 0474 | Morrison | 08/08/02 |
| Jerome Martrice Johnson v. Criminal Justice Educ. & Trng. Stds. Comm. | 02 DOJ 0484 | Elkins | 09/23/02 |
| Antonio Fitzgerald McNeil v. Criminal Justice Educ. & Trng. Stds. Comm. | 02 DOJ 0526 | Wade | 09/25/02 |
| Wanda L Grant v. Sheriffs' Education & Training Standards Comm. | 02 DOJ 0602 | Mann | 10/18/02 |
| Bentrell Blocker v. Sheriffs' Educ. & Training Stds. Commission | 02 DOJ 0603 | Chess | 11/15/02 |
| Sharon L. Joyner v. Sheriffs' Educ. & Training Stds. Commission | 02 DOJ 0604 | Morrison | 09/05/02 |
| Debra E. Taylor v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0605 | Wade | 11/05/02 |
| Keith E. Kilby, Sr. v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0609 | Lassiter | 08/07/02 |
| John R. Tucker v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0632 | Morrison | 06/26/02 |
| Eddie Kurt Newkirk v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 0870 | Gray | 08/28/02 |
| Marshall Decarlos Williams v. Criminal Justice Educ. & Trng. Stds. Comm. | 02 DOJ 1039 | Conner | 12/16/02 |
| Mike Doyle Colvin Jr v. Sheriffs' Educ. & Training Standards Comm. | 02 DOJ 1122 | Chess | 10/25/02 |

CONTESTED CASE DECISIONS

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|---|--------------------------|----------|----------|----------------|
| Dennis Damon Foster v. Sheriffs' Educ. & Training Stds. Comm. | 02 DOJ 1162 | Mann | 10/18/02 | |
| Vickie Renee Kirkland v. Sheriffs' Educ. & Training Stds. Comm. | 02 DOJ 1163 | Gray | 10/14/02 | |
| Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm. | 02 DOJ 1420 | Wade | 06/27/02 | |
| Charles S Grainger v. Criminal Justice Educ. & Training Stds. Comm. | 02 DOJ 1584 | Wade | 02/07/03 | |
| Mark A Faucette Sr. v. Criminal Justice & Training Stds. Comm | 02 DOJ 1585 | Chess | 01/02/03 | |
| Helen Marie Williams v. Sheriffs' Education & Training Stds. Comm. | 02 DOJ 1788 | Gray | 03/10/03 | |
| Ricky Hargrove v. Criminal Justice Education & Training Stds. Comm. | 02 DOJ 1946 | Elkins | 01/26/03 | |
| Christopher John Hubacker v Criminal Justice Ed. & Trng. Stds. Comm. | 02 DOJ 2118 | Morrison | 03/21/03 | |
| <u>DEPARTMENT OF PUBLIC INSTRUCTION</u> | | | | |
| Melvin Quincy Etheridge v. Department of Public Instruction | 02 EDC 1174 | Mann | 02/11/03 | |
| <u>ENVIRONMENT AND NATURAL RESOURCES</u> | | | | |
| Enviro-Soil, Inc. v. St. of NC DENR, Div. of Env. Management | 94 EHR 1296 | Gray | 12/03/02 | |
| Town of Belville v. NC DENR, Div. of Coastal Management | 96 EHR 0598 | Gray | 07/29/02 | |
| Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD. | 00 EHR 0363 ³ | Conner | 11/21/02 | |
| Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD. | 00 EHR 1475 ⁵ | Conner | 11/21/02 | |
| Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1 | 01 EHR 0182 ⁴ | Conner | 11/04/02 | |
| Squires Enterprises, Inc. v. NC DENR (LQS00-091) | 01 EHR 0300 | Mann | 09/23/02 | |
| Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1 | 01 EHR 0312 ⁴ | Conner | 11/04/02 | |
| Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality | 01 EHR 0976 | Chess | 07/16/02 | |
| SRF Dev. Corp. v. NC DENR, Div. of Land Resources | 01 EHR 1040 ³ | Gray | 10/02/02 | |
| SRF Dev. Corp. v. NC DENR, Div. of Land Resources | 01 EHR 1402 ³ | Gray | 10/02/02 | |
| Rhett & Julie Taber, Robert W. Sawyer, John T. Talbert, Stephen Bastian, Dr. Ernest Brown, Thomas Read, Keith Brown, Fred Johnston, James L. Dickens, James T. Coin, Eleanor Coin & James Vaughn v. NC DENR, Div. of Coastal Management | 01 EHR 1512 | Conner | 09/11/02 | |
| Grassy Creek Neighborhood Alliance Inc v. DHHS, Div. of Waste Mgmt, & City of Winston Salem & City/County Utility Commission | 01 EHR 1585 | Mann | 02/07/03 | |
| Lucy, Inc. George Chemall v. NC DENR, Div. of Waste Management | 01 EHR 1695 | Morrison | 10/22/02 | |
| Town of Ocean Isle Beach v. NC DENR | 01 EHR 1885 | Chess | 07/31/02 | 17:06 NCR 557 |
| Valley Proteins, Inc. v. NC DENR, Div. of Air Quality | 01 EHR 2362 | Mann | 09/26/02 | |
| Frederick M. and Anne C. Morris, et al v. NC DENR, Div. of Air Quality and Martin Marietta Materials, Inc. | 02 EHR 0068 | Gray | 10/18/02 | |
| Helen Smith v. NC DENR | 02 EHR 0152 | Morrison | 08/09/02 | |
| Helen R. Bass v. County of Durham | 02 EHR 0191 | Gray | 06/26/02 | |
| Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management | 02 EHR 0244 | Gray | 06/05/02 | |
| J.B. Hooper v. NC DENR | 02 EHR 0285 | Conner | 08/21/02 | |
| Elwood Montgomery v. NC DENR, Div. of Waste Management | 02 EHR 0329 | Wade | 09/26/02 | |
| J.L. Hope & wife, Ruth B. Hope v. NC DENR | 02 EHR 0395 | Mann | 06/10/02 | |
| Kathy Teel Perry v. Environmental Health Division | 02 EHR 0576 | Chess | 10/09/02 | |
| Linda L. Hamrick v. NC DENR | 02 EHR 0600 | Conner | 07/23/02 | |
| Mitchell Oil Company Larry Furr v. DENR | 02 EHR 0676 | Lassiter | 08/07/02 | |
| Johnnie Burgess v. NC DENR, Div. of Waste Management | 02 EHR 0688 | Morrison | 10/11/02 | |
| County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality | 02 EHR 0690 | Chess | 06/17/02 | |
| Michael John Barri v. New Hanover Co. Health Dept./Env. Health | 02 EHR 0742 | Conner | 09/03/02 | |
| Christopher L. Baker v. City of Asheville | 02 EHR 0763 | Gray | 09/11/02 | |
| Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm. | 02 EHR 0777 | Wade | 07/11/02 | |
| Infiltrator Systems, Inc., v. DENR & Ring Industrial Group, LP | 02 EHR 0836 | Morrison | 03/03/03 | |
| E Scott Stone, Env & Soil Serv. Inc v. NC DENR, Div. of Env Health | 02 EHR 1305 | Mann | 11/20/02 | |
| Thomas Tilley, Trustee v DENR, Div. of Water Quality | 02 EHR 1466 | Elkins | 03/10/03 | |
| GT of Hickory, Inc, Cole Alexander Gaither v. NC DENR | 02 EHR 1534 | Lassiter | 11/18/02 | |
| Brian Drive LLC, Cole Alexander Gaither v. NC DENR | 02 EHR 1535 | Lassiter | 11/18/02 | |
| Ronald E. Petty v. Office of Administrative Hearings | 02 EHR 1183 | Gray | 09/20/02 | |
| Madison M Day v Environment & Natural Resources | 02 EHR 1307 | Mann | 12/12/02 | |
| Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section | 02 EHR 1671 ⁹ | Conner | 02/12/03 | |
| Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section | 02 EHR 1945 ⁹ | Conner | 02/12/03 | |
| Bobby Long v. DENR | 02 EHR 2026 | Lassiter | 02/11/03 | |
| Lawrence N Ferguson, Jr. (SGI) and Ready Mixed Concrete Co. (RMC) v. NC DENR Underground Storage Tank Secion, Trust Fund Branch | 02 EHR 2181 | Chess | 01/15/03 | |
| <u>ENGINEERS AND LAND SURVEYORS</u> | | | | |
| NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner | 01 ELS 0078 | Lewis | 06/05/02 | |
| <u>TEACHERS & ST. EMP. COMP MAJOR MEDICAL PLAN</u> | | | | |
| Philip M Keener v. Bd. of Trustees & Exec. Admin. for the State Health Plan | 02 INS 0252 | Mann | 12/11/02 | 17:14 NCR 1205 |

CONTESTED CASE DECISIONS

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|---|--------------------------|----------|----------|----------------|
| Sandra Halperin v. Teachers' & St. Emp. Comp. Major Medical Plan | 02 INS 0337 | Elkins | 10/02/02 | |
| Seena Binder v. Teachers' & St. Emp. Comp. Major Medical Plan | 02 INS 0766 | Wade | 12/18/02 | |
| Bryan Atarian v. Teachers' & St. Emp. Comp. Major Medical Plan | 02 INS 0837 | Elkins | 01/06/03 | |
| Louise Rodgers on behalf of George Rodgers v. St. of NC Teachers' and St. Emp. Comprehensive Major Medical Plan | 02 INS 1546 | Gray | 03/13/03 | |
| Charles Brent & Marisha Boone v Teachers' & St. Emp. Comp. Major Medical Plan | 02 INS 1589 | Conner | 02/18/03 | |
| Lorraine Carol Collins v Teachers & St Emp Comp Major Med Plan | 02 INS 2235 | Elkins | 03/17/03 | |
| MISCELLANEOUS | | | | |
| Howard A Reeves, Walter W Norris v. Swansboro Bd. of Adjustment | 02 MIS 2208 | Morrison | 12/23/02 | |
| NURSING HOME ADMINISTRATORS | | | | |
| State Bd. of Examiners for Nursing Home Administrators v. Yvonne Washburn | 02 NHA 0915 | Morrison | 09/25/02 | |
| OFFICE OF STATE PERSONNEL | | | | |
| Helen McIntyre v. UNC-TV, University of Chapel Hill | 97 OSP 1164 | Gray | 12/20/02 | |
| Robin Heavner Franklin v. Lincoln Co. Dept. of Social Services | 98 OSP 1239 | Conner | 08/28/02 | |
| Danny Wilson Carson v. NC DHHS, NC School for the Deaf | 99 OSP 0641 | Gray | 11/15/02 | |
| Theodore M Banks v. DOC, Harnett Correctional Institute | 00 OSP 0474 ⁷ | Gray | 12/20/02 | |
| Laura C. Seamons v. NC DHS/Murdoch Center | 00 OSP 0522 | Wade | 06/28/02 | |
| James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist. | 00 OSP 0722 | Wade | 06/28/02 | |
| Diane Oakley v. DHHS/John Umstead Hospital | 00 OSP 1186 | Gray | 02/18/03 | |
| Andre Foster v. Winston-Salem State University | 00 OSP 1216 ¹ | Mann | 06/03/02 | 17:01 NCR 93 |
| Theodore M Banks v. DOC, Harnett Correctional Institute | 00 OSP 1258 ⁷ | Gray | 12/20/02 | |
| Berry Eugene Porter v. Department of Transportation | 01 OSP 0019 | Gray | 07/03/02 | |
| C.W. McAdams v. Div. of Motor Vehicles | 01 OSP 0229 | Conner | 09/30/02 | |
| Linda R. Walker v. Craven County Health Department | 01 OSP 0309 | Gray | 07/12/02 | |
| Thomas Michael Chamberlin v. Dept. of Crime Control & Pub. Safety | 01 OSP 0479 | Gray | 11/19/02 | |
| J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services | 01 OSP 0734 | Morgan | 06/06/02 | |
| Dennis Covington v. NC Ag. & Tech. State University | 01 OSP 1045 | Wade | 06/28/02 | |
| Reginald Ross v. Department of Correction | 01 OSP 1122/23 | Wade | 06/28/02 | |
| Bob R Napier v. Department of Correction | 01 OSP 1379 | Lassiter | 09/26/02 | 17:09 NCR 914 |
| Andre Foster v. Winston-Salem State University | 01 OSP 1388 ¹ | Mann | 06/03/02 | 17:01 NCR 93 |
| Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2 | 01 OSP 1405 | Wade | 06/28/02 | |
| Joseph E. Teague, Jr. PE, CM v. Dept. of Transportation | 01 OSP 1511 | Lassiter | 10/17/02 | |
| Marshall E Carter v Department of Transportation | 01 OSP 1516 | Wade | 12/19/02 | |
| Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC | 01 OSP 1559 | Gray | 08/13/02 | |
| Anthony W. Price v. Eliz City State University | 01 OSP 1591 | Lassiter | 11/05/02 | |
| Wade Elms v. Department of Correction | 01 OSP 1594 | Gray | 06/27/02 | |
| Wayne G. Whisemant v. Foothills Area Authority | 01 OSP 1612 | Elkins | 05/30/02 | 17:01 NCR 103 |
| Linwood Dunn v. NC Emergency Management | 01 OSP 1691 | Lassiter | 08/21/02 | |
| Gladys Faye Walden v. Department of Correction | 01 OSP 1741 | Mann | 07/12/02 | |
| Bruce A Parsons v. Gaston County Board of Health | 01 OSP 2150 | Gray | 11/04/02 | |
| Barbara A. Harrington v. Harnett Correctional Institution | 01 OSP 2178 | Conner | 09/03/02 | |
| Joy Reep Shuford v. Department of Correction | 01 OSP 2179 | Overby | 06/25/02 | |
| Debra R. Dellacroce v. NC DHHS | 01 OSP 2185 | Conner | 09/11/02 | |
| Thomas E Bobbitt v. NC State University | 01 OSP 2196 ⁶ | Reilly | 11/21/02 | |
| Thomas E Bobbitt v. NC State University | 01 OSP 2197 ⁶ | Reilly | 11/21/02 | |
| Jana Washington v Department of Corrections (Central Prison) | 01 OSP 2224 | Wade | 12/19/02 | |
| Joseph Kevin McKenzie v. DOC, Lavee Hamer (Gen. Counsel to the Section) | 01 OSP 2241 | Mann | 06/05/02 | |
| Bryan Aaron Yonish v. UNC at Greensboro | 01 OSP 2274 | Conner | 06/25/02 | |
| Theresa Truner v. Albemarle Mental Health Center | 01 OSP 2331 | Gray | 07/11/02 | |
| Mark Wayne Faircloth v. Forest Service | 01 OSP 2374 | Conner | 06/20/02 | |
| Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health | 01 OSP 2385 ² | Elkins | 08/07/02 | |
| James Donoghue v. Department of Correction | 02 OSP 0011 | Mann | 08/26/02 | |
| Robert N. Roberson v. DOC, Div. of Community Corrections | 02 OSP 0059 | Conner | 10/14/02 | |
| Lashaundon Smith v. Neuse Correctional Institution | 02 OSP 0064 | Elkins | 07/03/02 | 17:03 NCR 329 |
| Stacey Joel Hester v. Dept. of Correction | 02 OSP 0071 | Gray | 10/18/02 | |
| Gwendolyn Gordon v. Department of Correction | 02 OSP 0103 | Gray | 10/24/02 | 17:14 NCR 1218 |
| Gwendolyn Gordon v. NC Department of Correction | 02 OSP 0103 | Gray | 11/25/02 | 17:14 NCR 1223 |
| Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health | 02 OSP 0110 ² | Elkins | 08/07/02 | |
| Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways" | 02 OSP 0140 | Conner | 06/06/02 | |
| Mark P. Gibbons v. NC Department of Transportation | 02 OSP 0147 | Conner | 06/14/02 | |
| Jana S. Rayne v. Onslow Co. Behavioral Health Care | 02 OSP 0184 | Morrison | 08/01/02 | |
| 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 | |
| William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm | 02 OSP 0270 | Elkins | 06/25/02 | |
| Darrell Glenn Fender v. Avery/Mitchell Correctional Institution | 02 OSP 0290 | Mann | 06/14/02 | |
| Karen Lynette Smith v Dr. Steven Ashby, Dir. The Durham Center | 02 OSP 0316 | Elkins | 12/18/02 | |
| Gerald W Jones v. NC Dept. of Transportation | 02 OSP 0318 | Wade | 10/25/02 | |
| Alber L. Scott v. UNC General Administration | 02 OSP 0336 | Elkins | 06/10/02 | |
| Pamela C. Williams v. Secretary of State | 02 OSP 0348 | Chess | 08/26/02 | |
| Ronald P Covington v. NC DOC, Dept. of Prisons | 02 OSP 0404 | Morrison | 11/07/02 | |
| Isiah A Black Jr v. NC DOC Div of Community Corrections | 02 OSP 0435 | Morrison | 11/05/02 | |

CONTESTED CASE DECISIONS

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| Michael Forreest Peeler v. NC Department of Transportation | 02 OSP 0478 | Conner | 07/01/02 |
| Shirley J. Davis v. NC Department of Correction | 02 OSP 0486 | Elkins | 07/11/02 |
| Alber L. Scott v. UNC General Administration | 02 OSP 0498 | Elkins | 06/10/02 |
| Trayce H Butler v Durham County Dept. of Social Services | 02 OSP 0499 | Wade | 02/11/03 |
| Harold Phillips v. Durham Co. Dept. of Social Services | 02 OSP 0503 | Chess | 07/30/02 |
| Michelle G. Minstrell v. NC State University | 02 OSP 0568 | Chess | 06/26/02 |
| Robert L. Swinney v. NC Dept. of Transportation | 02 OSP 0570 | Lassiter | 10/23/02 |
| Janet Watson v. Nash Co. DSS, Carl Daughtry, Director | 02 OSP 0702 | Chess | 08/13/02 |
| Lisa A Forbes v Dorothea Dix Hospital | 02 OSP 0757 | Wade | 02/11/03 |
| Jackie Brannon v. Durham Co. Social Services, Daniel Hudgins | 02 OSP 0769 | Wade | 12/19/02 |
| Patricia Anthony v. NC Dept. of Correction (Pamlico CI) | 02 OSP 0797 | Lassiter | 08/07/02 |
| Alber L Scott v. UNC General Administration | 02 OSP 0828 | Gray | 01/15/03 |
| Linda Kay Osbon v. Isothermal Community College | 02 OSP 0911 | Elkins | 09/25/02 |
| Deona Renna Hooper v. NCC Police Dept, NCCU | 02 OSP 0984 | Lassiter | 10/31/02 |
| Jerry J Winsett v. Cape Fear Community College | 02 OSP 0998 | Morrison | 08/09/02 |
| Jerry J. Winsett v. Cape Fear Community College | 02 OSP 0998 | Morrison | 09/05/02 |
| Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.) | 02 OSP 1002 | Morrison | 07/30/02 |
| Ella Fields-Bunch v. Martin-Tyrrell-Washington Dist. Health Dept. | 02 OSP 1037 | Conner | 10/16/02 |
| JoAnn A Sexton v. City of Wilson | 02 OSP 1041 | Morrison | 07/25/02 |
| Karen C. Weaver v. State of NC Dept. of Administration | 02 OSP 1052 | Lassiter | 10/25/02 |
| Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.) | 02 OSP 1060 | Morrison | 08/09/02 |
| John C Candillo v. Roselyn Powell | | | |
| John C Candillo v. Roselyn Powell, Jud. Div Chief, NC DOCC, Jud Div. 3 | 02 OSP 1067 | Conner | 10/21/02 |
| Juanita M Brown v. DOC, Harnett Correctional Institution | 02 OSP 1104 ⁸ | Wade | 01/13/03 |
| Hoyte Phifer, Jr. v. UNC-Greensboro | 02 OSP 1105 | Gray | 01/15/03 |
| Carolyn Davis v Durham Co. MHDDSAS Area Authority | 02 OSP 1116 | Lassiter | 01/16/03 |
| Donald B. Smith v. NC DOC, Div. of Community Corrections | 02 OSP 1117 | Chess | 10/03/02 |
| Russell V Parker v Capt Dennis Daniels Pasquotank Corr. Inst | 02 OSP 1127 | Lassiter | 11/05/02 |
| Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education | 02 OSP 1136 | Morrison | 07/29/02 |
| James J. Lewis v. Department of Correction | 02 OSP 1158 | Mann | 08/20/02 |
| James J. Lewis v. Department of Commerce/Industrial Commission | 02 OSP 1179 | Mann | 09/19/02 |
| Melvin Kimble v. NC Dept. of Crime Control & Public Safety | 02 OSP 1318 | Lassiter | 11/06/02 |
| Gwendolyn H Abbott v. Wayne Talbert, Asst Super. NC DOC, Div. of Prisons, Dan River Work Farm (3080) | 02 OSP 1334 | Conner | 12/03/02 |
| Theodore M Banks v. DOC, Harnett Correctional Institute | 02 OSP 1367 ⁷ | Gray | 12/20/02 |
| Mark Tony Davis v DHHS | 02 OSP 1372 | Overby | 02/12/03 |
| Marie D Barrentine v. Robert William Fisher, NC Probation/Parole | 02 OSP 1410 | Elkins | 02/11/03 |
| Onyedika Nwaebube v Employment Security Commission of NC | 02 OSP 1443 | Gray | 01/24/03 |
| Alber LScott v UNC General Administration | 02 OSP 1444 | Gray | 01/22/03 |
| Esther L Jordan v. Pasquotank Correctional Ins. (Ernest Sutton) | 02 OSP 1453 | Conner | 02/06/03 |
| Martha Ann Brooks v. State of NC Brown Creek Correctional Inst. | 02 OSP 1468 | Chess | 10/25/02 |
| Theodore M Banks v. DOC, Harnett Correctional Institute | 02 OSP 1482 ⁷ | Gray | 12/20/02 |
| James Orville Cox II v. NC DOC, Adult Probation/Parole | 02 OSP 1526 | Chess | 10/17/02 |
| Renee Shirley Richardson v Albert Blake, Interim Dir. of Eng Svcs, DDH | 02 OSP 1551 | Gray | 12/20/02 |
| Juanita M Brown v. DOC, Harnett Correctional Institution | 02 OSP 1599 ⁸ | Wade | 01/13/03 |
| Kevin W Lawrence v DOC, Division of Prisons | 02 OSP 1675 | Conner | 02/18/03 |
| Rashad A Rahman v. South East Region Mental Health | 02 OSP 1669 | Lassiter | 01/09/03 |
| Alwilda G. George v. Sanford Correctional Center | 02 OSP 2317 | Elkins | 02/06/03 |
| Jennifer Howard v Sampson Correctional Center | 03 OSP 0042 | Elkins | 02/24/03 |
| Bobby C Lee v Dorothea Dix Hospital | 03 OSP 0096 | Lassiter | 03/07/03 |

SUBSTANCE ABUSE PROFESSIONAL BOARD

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| NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden | 00 SAP 1573 | Chess | 05/10/02 |
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UNIVERSITY OF NORTH CAROLINA

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|---|-------------|--------|----------|
| Patsy R. Hill v. UNC Hospitals | 02 UNC 0458 | Conner | 08/21/02 |
| Sharon Reed v. UNC Hospitals | 02 UNC 1284 | Conner | 11/11/02 |
| Shirley Lally v UNC Hospitals | 02 UNC 1325 | Conner | 03/11/03 |
| Dee C Driver/Jenny Driver one and the same and Philip L Driver v. UNC Hospitals | 02 UNC 1635 | Gray | 01/15/03 |

17:06 NCR 571

- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases
- 7 Combined Cases
- 8 Combined Cases
- 9 Combined Cases