

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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

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

I. IN ADDITION
Voting Rights Letter..... 1218

II. PROPOSED RULES
Commerce
Cemetery Commission 1219
Justice
Private Protective Services Board 1219 - 1221
Licensing Boards
Funeral Services, Board of..... 1262 - 1268
Massage and Bodywork Therapy, Board of..... 1221 - 1249
Medical Board 1249 - 1262
Nursing, Board of 1268 - 1276

III. APPROVED RULES 1277 - 1342
Administration
State Construction Office
Environment and Natural Resources
Environmental Management
Health Services
Health and Human Services
Children’s Services
Medical Care Commission
Labor
Elevator and Amusement Device Division
Wage and Hour
Licensing Boards
Chiropractic Examiners, Board of
Dental Examiners, Board of
Nursing, Board of
Plumbing, Heating & Fire Sprinkler Contractors
State Personnel
State Personnel Commission
Transportation
Highways, Division of
Treasurer
Local Government Commission

IV. RULES REVIEW COMMISSION..... 1343 - 1346

V. CONTESTED CASE DECISIONS
Index to ALJ Decisions 1347 - 1352
Text of Selected Decisions
02 DHR 2212 1353 - 1355
02 INS 1306..... 1356 - 1361
03 DHR 0567 1362 - 1365
03 DOJ 1925..... 1366 - 1369
03 EHR 1125 1370 - 1372

For the CUMULATIVE INDEX to the NC Register go to:
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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterater (Reserved)	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing Board	
22	ADMINISTRATIVE PROCEDURES (REPEALED)	30 Massage & Bodywork Therapy	
23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
24*	INDEPENDENT AGENCIES	32 Medical Examiners	
25	STATE PERSONNEL	33 Midwifery Joint Committee	
26	ADMINISTRATIVE HEARINGS	34 Funeral Service, Board of	
27	NC STATE BAR	36 Nursing	
28	JUVENILE JUSTICE AND DELINQUENCY PREVENTION	37 Nursing Home Administrators	
		38 Occupational Therapists	
		40 Opticians	
		42 Optometry	
		44 Osteopathic Examination (Repealed)	
		45 Pastoral Counselors, Fee-Based Practicing	
		46 Pharmacy	
		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology Board	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal Board	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care Board	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical Board	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

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 TEXT

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

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

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

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

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

U.S. Department of Justice

Civil Rights Division

JDR:JR:MDS:HEW:hew:jdh
DJ 166-012-3
2003-4072
2003-4710

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

December 30, 2003

George A. Weaver, Esq.
113 East Nash Street, Suite 404
Wilson, NC 27893

Dear Mr. Weaver:

This refers to the county's conduct of the Town of Saratoga's municipal elections, and the temporary polling place change and change in voting method for No-Excuse One Stop Voting for Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 3, 2003.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
 Statutory reference: G.S. 150B-21.2.

TITLE 4 – DEPARTMENT OF COMMERCE

- Substantive (>\$3,000,000)
 None

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Cemetery Commission intends to amend the rule cited as 04 NCAC 05A .0106.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: February 25, 2004

Time: 10:00 a.m.

Location: 1110 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action: *The North Carolina Cemetery Commission is a receipt supported agency. The Commission has not raised fees in over fifteen years. The Commission has been taking in less cash receipts than cash disbursements for several years and will soon be out of funds to operate. This amendment addresses that problem by raising fees as already allowed under G.S. 65-54.*

Procedure by which a person can object to the agency on a proposed rule: *Written comments can be mailed to Valinda Barnes, North Carolina Cemetery Commission, 1001 Navaho Drive, Suite 100, Raleigh, NC 27609, (919)981-2536.*

Written comments may be submitted to: *Valinda Barnes, North Carolina Cemetery Commission, 1001 Navaho Drive, Suite 100, Raleigh, NC 27609.*

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
 Local

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

04 NCAC 05A .0106 FEES

In addition to the licensing and penalty fees provided by statute to this commission, the following fees are provided after ~~May 3, 1993~~ June 1, 2004:

- (1) ~~One dollar (\$1.00)~~ Two dollars (\$2.00) per grave space, mausoleum crypt, and niche when deeded;
- (2) ~~Four dollars (\$4.00)~~ Five dollars (\$5.00) per vault when contracted;
- (3) ~~Four dollars (\$4.00)~~ Five dollars (\$5.00) per each crypt in a bank of below ground crypts or lawn crypt garden when contracted, ~~contracted before completion or one dollar (\$1.00) per each crypt when contracted after completion.~~ An additional ~~one dollar (\$1.00)~~ two dollars (\$2.00) shall be paid for each crypt when deeded as provided in Item 1 of this Rule;
- (4) ~~Four dollars (\$4.00)~~ Five dollars (\$5.00) per pre-need memorial;
- (5) ~~Four dollars (\$4.00)~~ Five dollars (\$5.00) per pre-constructed mausoleum crypt or niche when contracted, ~~contracted before completion or one dollar (\$1.00) per crypt or niche when contracted after completion.~~ An additional ~~one dollar (\$1.00)~~ two dollars (\$2.00) shall be paid for each crypt or niche when deeded as provided in Item 1 of this Rule;
- (6) All at need merchandise, cash or credit sales, do not require any assessments;
- (7) ~~One dollar (\$1.00)~~ Five dollars (\$5.00) per preneed opening and closing of a grave space.

Authority G.S. 65-49; 65-54; 150B-19.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Private Protective Services Board intends to adopt the rules cited as 12 NCAC 7D .0907-.0909 and amend the rules cited as 12 NCAC 7D .0901, .0903.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: February 17, 2004

Time: 2:00 p.m.

Location: PPSB Conference Rm., 1631 Midtown Pl., Suite 104, Raleigh, NC

Reason for Proposed Action: The Board has determined that it is in the interest of the public and the industry to formalize the requirements to obtain an unarmed guard trainer certificate. The training requirements currently are set forth in the training program for certified trainers that has been approved by both the Board and the Attorney General pursuant to G.S. 74C-13(1). Further, the Board is amending the requirements for a firearms trainer certificate to require successful completion of the unarmed training prior to completing the armed training requirements.

Procedure by which a person can object to the agency on a proposed rule: Comments may be submitted to the Board in writing and addressed to the W. Wayne Woodard, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Written comments may be submitted to: W. Wayne Woodard, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Comment period ends: April 3, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>\$3,000,000)
None

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES BOARD

SUBCHAPTER 7D - PRIVATE PROTECTIVE BOARD

SECTION .0900 - TRAINER CERTIFICATE

12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

Firearms trainer applicants shall:

- (1) meet the minimum standards established by 12 NCAC 07D .0703;
(2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
(3) attain a 90 percent score on a firearm's course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office; and
(4) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
(5) the applicants registration fee; and
(6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0907.

Authority G.S. 74C-5; 74C-13.

12 NCAC 07D .0903 FEES FOR TRAINER CERTIFICATE

(a) Firearms trainer Trainer certificate fees are as follows:

- (1) forty dollar (\$40.00) non-refundable initial application fee (this fee shall not apply to unarmed trainer applicants); and
(2) twenty-five dollar (\$25.00) biennial fee for a new or renewal firearms trainer certificate.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

Authority G.S. 74C-9.

12 NCAC 07D .0907 UNARMED GUARD TRAINER CERTIFICATE

To receive an unarmed guard trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of 12 NCAC 07D .0703;
(2) have a minimum of one year experience in security with contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
(3) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 24 hours classroom, instruction to include the following topic areas:

- (a) civil liability for the security trainer - two hours;
- (b) interpersonal communications in instruction – three hours;
- (c) teaching adults – four hours;
- (d) principles of instruction - one hour;
- (e) methods and strategies of instruction - one hour;
- (f) principles of instruction: audio-visual aids – three hours, and student performance: 45 minute presentation, or possess a Criminal Justice General Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission or any training certification approved by the Director of PPS. The Board may require any additional training it deems necessary;
- (4) favorable recommendation from licensee; and
- (5) comply with the application process for an Unarmed Trainer Certificate as set forth in 12 NCAC 07D .0908.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13.

12 NCAC 07D .0908 APPLICATION FOR AN UNARMED GUARD TRAINER CERTIFICATE

Each applicant for an Unarmed Guard Trainer certificate shall submit a Board approved application. The application should be accompanied by:

- (1) the applicants registration fee; and
- (2) a certificate of successful completion of the training required. This training shall have been completed within 120 days of the submission of the application or current certificate of other acceptable certification.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13.

12 NCAC 07D .0909 RENEWAL OF AN UNARMED GUARD TRAINER CERTIFICATE

Each applicant for renewal of an unarmed guard trainer certificate shall complete a renewal form approved by the board. This form shall be submitted not less than 30 days prior to the expiration of the applicant’s current certificate. In additions, the applicant shall include the following:

- (1) the applicants registration fee;
- (2) certification of a minimum of 8 hours of instruction performed during past one year; and
- (3) statement verifying the classes taught for the prior year on a form approved by the Board.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13.

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Massage and Bodywork Therapy intends to adopt the rules cited as 21NCAC 30 .0205-0206, .0507-.0515, .0605-.0633, .0703-.0704 and amend the rules cited as 21 NCAC 30 .0102, .0203-.0204, .0301-.0303, .0404, .0501-.0506, .0601-.0604, .0701, .0702, .0901-.0905.

Proposed Effective Date: July 1, 2004

Public Hearing:

Date: February 18, 2004

Time: 9:00 a.m.-2:00 p.m.

Location: 150 Fayetteville Street Mall, Ste. 1300, Raleigh, NC

Reason for Proposed Action: *To update rules to current definitions, practices, and financial requirements and make technical, grammatical changes.*

Procedure by which a person can object to the agency on a proposed rule: *Write to NCBMBT at P.O. Box 2539, Raleigh, NC 27602*

Written comments may be submitted to: *Charles P. Wilkins, P.O. Box 2539, Raleigh, NC 27602*

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State**
- Local**
- Substantive (>\$3,000,000)**
- None**

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 30 .0102 DEFINITIONS

In addition to the definitions set forth in G.S. 90-622(1) through (5), the following definitions apply:

- (1) Practice Act. -- Article 36, Chapter 90 of the North Carolina General Statutes: The North

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

PROPOSED RULES

- Carolina Massage and Bodywork Therapy Practice Act.
(2) Licensee. -- A person who holds a valid license issued by the Board to engage in the practice of massage and bodywork therapy.
(3) Reciprocity. Pursuant to G.S. 90-630, a provision which shall apply only to qualified practitioners of massage and bodywork therapy who reside outside the State; or qualified practitioners who have resided in the State for not more than one hundred eighty (180) days.
(4)(3) Place of business. -- The primary street location where the licensee provides massage and bodywork therapy.
(5)(4) Malpractice. -- Professional misconduct or unreasonable lack of skill. Conduct that is in variance with the Standards of Practice set forth in Section .0500.
(6)(5) Gross negligence. -- The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.
(7)(6) Incompetency. -- Conduct which that evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of massage and bodywork therapy.
(8) Sexual activity. Any direct or indirect physical contact, or verbal communication, by any person or between persons which is intended to erotically stimulate either person, or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. As used herein, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. Sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm or ejaculation has occurred.
(9)(7) Therapeutic, educational, or relaxation purposes. -- Pursuant to G.S. 90-622(3), that which is intended to positively affect the health and well-being of the client, and which that does not include sexual activity, as defined in Rule .0102(8). .0508.

Authority G.S. 90-622; 90-626(9)

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 30 .0203 EXEMPTIONS FROM LICENSURE

- (a) Persons who are utilizing certain therapeutic techniques may claim exemption from licensure pursuant to G.S. 90-624 (6) or (7) only by meeting one of the following criteria:
(1) Such persons are solely practicing techniques which that are defined by national

- organizations which that meet the criteria for exemption set forth in either G.S. 90-624 (6) or (7); or
(2) Such persons are solely practicing techniques which that do not involve any contact with the body of the client; or
(3) Such persons are solely practicing techniques which that involve resting the hands on he surface of the client's body without delivering pressure to or manipulation of the soft tissues.
(b) Persons who are utilizing exempt techniques along with the practice of massage or bodywork therapy, as defined in G.S. 90-622(3), are not considered to be exempt and will be required to be licensed.
(c) Pursuant to G.S. 90-623, such exempted practitioners may not hold themselves out to be a massage and bodywork therapist; they may not utilize or promote themselves or their services using such terms as "massage, massage therapy, bodywork, bodywork therapy," or any other derivative term which that implies a soft tissue technique or method.
(d) Services such as herbal body wraps, skin exfoliating treatments or the topical application of products to the skin for beautification purposes are not considered to be the practice of massage and bodywork therapy, as long as such services do not involve direct manipulation of the soft tissues of the body. Those who are utilizing such techniques along with the practice of massage or bodywork therapy are not considered exempt and will be required to be licensed.

Authority G.S. 90-624; 90-626.

21 NCAC 30 .0204 FEES

- (a) Fees are as follows:
(1) Request for License Application Package \$20.00
(2) License fee 150.00
(3) License renewal 100.00
(4) Late renewal penalty 75.00
(5) Duplicate license 25.00
(6) Provisional license 150.00
Application fee for examination of educational credentials from non-Board-approved schools
(7) Investigation of applicant's background 150.00

- (b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Board of Massage and Bodywork Therapy. Personal checks shall be accepted for payment of renewal fees.
(c) A personal check returned for insufficient funds is shall be grounds for a letter of reprimand.

Authority G.S. 90-626(8); 90-628.

21 NCAC 30 .0205 TERM OF LICENSE

- (a) Pursuant to G.S. 90-632, a license to practice massage and bodywork therapy shall be granted for a term of two years, beginning on January 1.
(b) Initial applications for licensure submitted between October 1 and December 31 shall be granted for two full years, plus the

additional period of up to three months. Initial applications submitted between January 1 and September 30 shall pay the full fee, but the initial license period shall be two years, minus the period following January 1.

Authority G.S. 90-626(9); 90-632.

21 NCAC 30 .0206 BACKGROUND INVESTIGATION REQUIRED FOR APPLICANT

(a) If the Board determines that an applicant for licensure has a charge of a criminal offense, civil lawsuit, domestic violence, termination from employment, dismissal from an educational institution, or disciplinary action regarding another occupational license or certification, the Board shall investigate the applicant's background.

(b) At the request of the Board, the applicant shall provide all documentation related to the event(s), and shall pay the additional fee set forth in Rule .0204(7) to cover the Board's costs of such investigation.

Authority G.S. 90-626(2); 90-629(3).

SECTION .0300 - LICENSING

21 NCAC 30 .0301 PROFESSIONAL DESIGNATIONS

(a) All licensees shall use the professional title, "Licensed Massage and Bodywork Therapist," or the letters "L.M.B.T." when they are holding themselves out to be a licensee in their professional communications.

(b) Licensees shall not use any other letters or abbreviations after their name when they are holding themselves out to be a licensee in their professional communications, except those which that are conveyed by a degree from an accredited post-secondary institution, a license from another occupational licensing board, or certification from an agency which that is approved by the National Commission on Certifying Agencies.

(c) Licensees may also use other words descriptive of their work, consistent with Rule .0501(1), such as areas of clinical specialty, in addition to their primary identification as a Licensed Massage and Bodywork Therapist.

Authority G.S. 90-623(c); 90-626(9).

21 NCAC 30 .0302 DISPLAY OF LICENSE

A license shall be displayed in a prominent place at the licensee's primary place of business so as to be visible for inspection. A licensee Licensees providing massage and bodywork therapy outside their primary business location, or at the location of clients, shall have their licensure card a copy of their license available for inspection upon request.

Authority G.S. 90-626-(9).

21 NCAC 30 .0303 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license shall comply with all continuing education requirements, shall apply for renewal and shall submit the required fee.

(b) A license which that has not been renewed prior to its expiration date is considered lapsed expired.

(c) Licenses lapsed expired in excess of twenty four (24) 24 months are expired and shall not be not renewable. Persons whose licenses have expired and who desire to be licensed shall not be entitled to renew their license but shall apply been expired for more than 24 months must apply for a new license.

(d) Any person whose license has lapsed or expired and who engages in any massage and bodywork therapy activities governed by the Practice Act will be subject to the penalties prescribed in Rule .0905 herein, G.S. 90-643 and G.S. 90-634.1.

Authority G.S. 90-626(3).

SECTION .0400 - BUSINESS PRACTICES

21 NCAC 30 .0404 ADVERTISING

(a) Any advertisement of massage and bodywork therapy services in any advertising medium as defined herein shall include the licensee's name and license number, whether or not a trade name is used.

(b) Advertising medium shall be defined as any form of written, printed, broadcast or computer-based advertising, or other promotional materials, except a telephone directory listing for which no additional advertising charge is made.

(c) A business or establishment which that employs or contracts with massage and bodywork therapists licensed by the Board may advertise on behalf of those licensees, by complying with the requirements of this section. Rule. As an alternative to the requirement of Paragraph (a) of this Rule, such business or establishment may indicate the listing of the service itself in advertising or other promotional materials, accompanied by the exact phrase: "Provided by North Carolina Licensed Massage and Bodywork Therapists." In this phrase, "North Carolina" may be abbreviated as "N.C."

Authority G.S. 90-623(c); 90-626(9).

SECTION .0500 - STANDARDS OF PRACTICE

21 NCAC 30 .0501 PURPOSE

This Code of Ethics establishes standards for the practice of massage and bodywork therapy which are intended to protect the public health, safety and welfare, to preserve the integrity of the profession, and to allow for the proper discharge of responsibilities to those served. Licensees shall have a commitment to provide the highest quality of care to those who seek their professional services, and shall:

- (1) Represent their qualifications, credentials and professional affiliations accurately, and provide only those services which they are qualified to perform;
- (2) Inquire as to the health status of each client before treatment to determine whether there are contraindications for the application of massage and bodywork therapy;
- (3) Inform clients, other health care practitioners and the public of the scope and limitations of the practice of massage and bodywork therapy, and refer clients to appropriate health care practitioners whenever indicated;
- (4) Maintain the confidentiality of all client information, unless disclosure is consented to

- by the client, required by law or by court order;
- (5) Obtain and document the informed consent of the client before providing treatment. Informed consent may be given in written or verbal form;
- (6) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client;
- (7) Respect the client's right to refuse, modify or terminate treatment regardless of prior consent given;
- (8) Refrain from initiating or engaging in any sexual activity involving a client, as defined in Rule .0102(8);
- (9) Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are primarily for personal gain and not for the good of the client.
- (10) Inform the Board of any violation of the Practice Act or Rules and Regulations

These standards establish basic requirements for the safe and effective practice of massage and bodywork therapy. They are intended to protect the public, to preserve the integrity of the profession, and to allow for the proper discharge of responsibilities to those served.

Authority G.S. 90-621; 90-626(9).

21 NCAC 30 .0502 GENERAL REQUIREMENTS

(a) ~~The practice of massage and bodywork therapy shall be conducted in facilities which are safe and sanitary. Licensees shall maintain their treatment facilities according to the following standards:~~

- (1) ~~Comply with all local building code requirements;~~
- (2) ~~Comply with all state fire safety codes;~~
- (3) ~~Comply with all state health inspection codes;~~
- (4) ~~Maintain all equipment used in the practice of massage and bodywork therapy in a safe and sanitary condition;~~
- (5) ~~Launder or sanitize, before reuse, all materials furnished for the personal use of the client, including towels and linens;~~
- (6) ~~Provide adequate toilet and lavatory facilities for the client;~~
- (7) ~~If equipped with a whirlpool bath, sauna, steam cabinet, or steam room, maintain adequate and clean shower facilities on the premises;~~
- (8) ~~Maintain a lavatory for hand cleansing, or have available a chemical germicidal product designed to disinfect and cleanse hands without the use of a lavatory.~~

(b) ~~For treatments which are given at the location of a client, only standards (4), (5) and (8) above, apply. For treatments which are given at a temporary location lasting not more than five (5) days such as a trade show, sporting event or community festival, only standards (4) and (8) above, apply.~~

In the practice of massage and bodywork therapy, licensees shall:

- (1) provide only those services that they have the training and practical experience to perform, and that are designed to benefit the health and well-being of the client;
- (2) deliver treatment in a manner that respects each client's individuality and dignity, and that ensures their safety, comfort and privacy;
- (3) inform clients of the scope and limitations of massage and bodywork therapy; and
- (4) respect the traditions and practices of other health care practitioners, and not falsely impugn the reputation of any colleague.

Authority G.S. 90-626(9).

21 NCAC 30 .0503 CLIENT ASSESSMENT AND INFORMED CONSENT

~~Licensees shall maintain a professional standard of hygiene in the practice of massage and bodywork therapy.~~

- (1) ~~Before and after each treatment, licensees shall cleanse and disinfect their hands, using a lavatory or a chemical germicidal product.~~
- (2) ~~Licensees shall maintain a barrier of unbroken skin on their hands, forearms and elbows at all times. In the case of broken skin, the licensee shall use a finger cot, glove or chemical barrier product to cover the affected area during treatment.~~

Before providing treatment, licensees shall:

- (1) determine the health status of each client to identify whether there are contraindications for the application of massage and bodywork therapy;
- (2) assess the needs and expectations of the client, develop a plan of care, and update the plan as needed for succeeding treatments;
- (3) obtain and document in writing the informed consent of the client. For the purposes of this Section, "informed consent" means the therapist has informed the client as to the nature and purpose of the service to be provided, what such treatment is likely to include, what treatment shall not include, and the client acknowledges that he or she understands the terms under which the treatment is being provided and voluntarily agrees to receive such treatment. Following the initial treatment with a therapist, the client may give verbal consent on successive visits within a 12 month period;
- (4) respect the client's right to refuse, modify or terminate treatment regardless of prior consent given; and
- (5) only modify the plan of care with the informed consent of the client.

Authority G.S. 90-626(9).

21 NCAC 30 .0504 PROGRESS NOTES; REFERRALS

PROPOSED RULES

~~(a) Licensees shall maintain a sufficient supply of clean drapes, for the purpose of draping each client during treatment. As used herein, "drapes" mean towels, sheets, gowns or other appropriate coverings.~~

~~(b) Before proceeding with a treatment, licensees shall explain expected draping techniques to the client and provide the client with a clean drape for the purpose of ensuring their safety, comfort and privacy.~~

~~(c) The requirements of (a) and (b), above, do not apply in the case of treatments where the client does not disrobe.~~

~~On an ongoing basis, the licensee shall:~~

- ~~(1) maintain written client progress notes on each treatment, including the date of service, needs assessment, plan of care, observations made and actions taken by the licensee;~~
- ~~(2) refer the client to other health care practitioners or other professional service providers when in the best interest of the client and/or licensee; and~~
- ~~(3) follow recommendations for the plan of care when receiving a client referral from a medical care provider.~~

Authority G.S. 90-626(9).

21 NCAC 30 .0505 CONFIDENTIALITY, ROLES AND BOUNDARIES

~~(a) Sexual activity with a client, as defined in Rule .0102(8), is prohibited where the practice of massage and bodywork therapy is conducted.~~

~~(b) No licensee shall engage in or permit any person or persons to engage in sexual activity with a client in a location where the practice of massage and bodywork therapy is conducted, or use such location to make arrangements to engage in sexual activity in any other place.~~

~~(c) Licensees shall not use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.~~

~~In managing the client/therapist relationship, licensees shall:~~

- ~~(1) maintain the confidentiality of all client information, unless written disclosure is consented to by the client, or required by law or by court order; this shall include protecting the client's identity in all social conversations, advertisements, and in any other manner;~~
- ~~(2) maintain client records in such a manner as to prevent unauthorized access or damage for the entire term of the client/therapist relationship, and for at least four years after the termination of such relationship;~~
- ~~(3) dispose of client records in a secure manner;~~
- ~~(4) protect the interests of clients who are minors or who are unable to give informed consent by securing permission from an authorized third party or guardian;~~
- ~~(5) avoid relationships with the client that could impair professional judgment or result in exploitation of the client;~~
- ~~(6) solicit only information about the client that is relevant to the professional relationship;~~

~~(7) recognize and limit the impact of transference and counter transference between client and therapist; and~~

~~(8) refrain from promoting products or services to the client that are not related to the plan of care.~~

Authority G.S. 90-626(9).

21 NCAC 30 .0506 DRAPING REQUIREMENTS

~~(a) All licensees are under a continuing duty to report to the Board any and all of the following by themselves or by other licensees:~~

- ~~(1) Charges of, convictions of, or pleas of guilty or no contest to a felony;~~
- ~~(2) Charges of, convictions of, or pleas of guilty or no contest to any crime that involves moral turpitude;~~
- ~~(3) Charges of, convictions of, or pleas of guilty or no contest to any alcohol or drug-related offense.~~

~~(b) All licensees are under a continuing duty to report to the Board if they are named as a defendant in a civil suit arising out of a licensee's practice of massage and bodywork therapy.~~

~~(c) A licensee must report a charge, conviction, plea in a criminal case, or involvement as a defendant in a civil suit, as set forth in (a) and (b), above, within thirty (30) days after it occurs. Licensees shall adhere to the following requirements, except in the case of treatments where the client remains fully clothed;~~

- ~~(1) provide draping in a manner that ensures the safety, comfort and privacy of the client;~~
- ~~(2) maintain a supply of clean drapes, such as towels, sheets, gowns or other coverings, for the purpose of draping the client's body during treatment;~~
- ~~(3) explain expected draping procedures to the client before treatment; and~~
- ~~(4) ensure that the following areas are draped during treatment: the gluteal and genital areas for male and female clients, and the breast area for female clients. With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment to structures in those areas.~~

Authority G.S. 90-626(9).

21 NCAC 30 .0507 HYGIENE

~~To maintain a professional standard of hygiene in their practice, licensees shall:~~

- ~~(1) cleanse and disinfect their hands before and after each treatment, using a lavatory with hot water or a chemical germicidal product;~~
- ~~(2) maintain a barrier of unbroken skin on their hands, forearms and elbows at all times; in the case of broken skin, licensees shall use a finger cot, glove or chemical barrier product to cover the affected area during treatment;~~

PROPOSED RULES

- (3) wear clothing that is clean, modest and professional; maintain personal hygiene; wear hair in a manner so as not to touch the client.;
- (4) maintain all equipment used in the practice of massage and bodywork therapy in a safe and sanitary condition; and
- (5) utilize only those materials furnished for the personal use of the client, including towels, linens, or gowns, that have been laundered or sanitized before reuse, or that are single-use items disposed of after treatment.

Authority G.S. 90-626(9).

21 NCAC 30 .0508 SEXUAL ACTIVITY DEFINED

For the purposes of this Chapter, "sexual activity" shall mean any direct or indirect physical contact, or verbal communication, by any person or between persons which is intended to erotically stimulate either person, or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. As used herein, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. Sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm or ejaculation has occurred.

Authority G.S. 90-626(9).

21 NCAC 30 .0509 SEXUAL ACTIVITY PROHIBITED

To preserve the safety and integrity of the therapeutic relationship, the following requirements shall apply from the beginning of the client/therapist relationship, and continue for a period of at least six months after the termination of such relationship. Licensees shall:

- (1) not engage in sexual activity, as defined in Rule .0508 of this Section between the licensee and the client, whether such activity is consensual or otherwise;
- (2) not engage in or permit any person or persons to engage in sexual activity with a client in a location where the practice of massage and bodywork therapy is conducted, or to use such location to make arrangements to engage in sexual activity with a client in any other place; and
- (3) clearly define the boundaries of the professional relationship in the event that the client initiates or asks the licensee to engage in sexual activity.

Authority G.S. 90-626(9).

21 NCAC 30 .0510 PROVIDING OR TERMINATING SERVICE

Licensees shall have the right to provide therapeutic services to whom they choose. Licensees shall also have the right to refuse treatment, or to terminate a treatment in progress to protect their own safety and well-being, including situations such as:

- (1) a client who is abusive, under the influence of alcohol, drugs, or any illegal substance, or otherwise impaired; or
- (2) a client who has violated the boundaries of the professional relationship by initiating or asking the licensee to engage in sexual activity.

Authority G.S. 90-626(9).

21 NCAC 30 .0511 BUSINESS AND ETHICAL REQUIREMENTS

In the management and promotion of their practices, licensees shall:

- (1) represent their qualifications, credentials and professional affiliations accurately and completely;
- (2) conduct their business affairs with integrity and avoid actual or potential conflicts of interest;
- (3) refuse any gifts or benefits that are intended to influence a referral, decision or treatment that are primarily for personal gain and not for the good of the client;
- (4) adhere to the advertising requirements of Rule .0404 of this Chapter, and promote their practices accurately, avoiding language or images that are misleading, provocative, sexual, or sensational;
- (5) provide the client with information on their business policies before commencing treatment, including a list of services available and fees charged, payment arrangements, appointment scheduling and cancellation requirements; discuss and resolve any questions the client may have about such policies;
- (6) accept gratuities in addition to the stated fee for treatment only in settings where such practice is customary and known to the client in advance of treatment;
- (7) follow generally accepted accounting practices;
- (8) maintain accurate financial records, client records, appointment records, contracts, and legal obligations for at least four years; and
- (9) comply with all applicable municipal, state, and federal laws.

Authority G.S. 90-626(9).

21 NCAC 30 .0512 IMPAIRMENT

In the practice of massage and bodywork therapy, licensees shall not provide therapeutic services to clients when under the influence of alcohol, drugs, or any illegal substance, with the exception of prescribed dosage of a prescription medication that does not impair the cognitive, psychological, or motor capacity of the licensee.

Authority G.S. 90-626(9).

21 NCAC 30 .0513 FACILITY REQUIREMENTS

The practice of massage and bodywork therapy shall be conducted in facilities that are safe and sanitary. With the exception of treatments that are given at the location of a client, or treatments given at a temporary location lasting not more than five days such as a trade show, sporting event or community festival, licensees shall assure that the facility in which they practice:

- (1) is in compliance with all local building code requirements, state fire safety codes, and state health inspection codes;
- (2) provides adequate toilet and lavatory facilities with hot and cold running water; and
- (3) provides adequate and clean shower facilities on the premises, if equipped with a whirlpool bath, sauna, steam cabinet, or steam room.

Authority G.S. 90-626(9).

21 NCAC 30 .0514 INFORMING BOARD OF VIOLATIONS

Licensees shall inform the Board within 10 days of any violation of the Practice Act or Rules, whether by licensees, schools, or non-regulated persons or entities.

Authority G.S. 90-626(9).

21 NCAC 30 .0515 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS

(a) Licensees shall report to the Board any and all charges of, convictions of, or pleas of guilty or no contest to the following criminal offenses, whether committed by themselves or by other licensees:

- (1) Felonies;
- (2) Crimes that involve moral turpitude;
- (3) Alcohol or drug-related offenses;
- (4) Sexual-related offense; and
- (5) Assault.

(b) Licensees are under a continuing duty to report to the Board if they are named as a defendant in a civil suit arising out of a licensee's practice of massage and bodywork therapy.

(c) Licensees shall report a charge, conviction, plea in a criminal case, or involvement as a defendant in a civil suit, as set forth in Paragraphs (a) and (b) of this Rule, within 30 days after it occurs.

Authority G.S. 90-626(9).

SECTION .0600 - MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0601 BOARD APPROVAL

(a) Any school, whether in this State or another state, territory or country, state or territory that offers a certificate, diploma or degree program in massage and bodywork therapy may make application for Board approval on a form provided by the Board. Every school must submit an application to be considered for approval, whether or not such school has been licensed, approved or accredited by another regulatory agency, state board, accreditation commission or trade association. A school

which that operates in more than one location shall submit a separate application for each location.

(b) The Board shall grant approval to schools that meet the standards set forth in this section. Section. The Board shall maintain a list of approved schools.

(c) In order to maintain approval status, each school shall submit an annual report by April 1 on a form provided by the Board, which that may include documentation of continued state licensure, where such licenses are required, authority to operate, student enrollments, and any changes in curriculum, instructional staff or administrative staff.

(d) An approved school shall notify the Board in writing within thirty (30) 30 days of any change in the school's location address, ownership, or controlling interest. interest, administration, facilities, instructional staff, curriculum, or other changes that may affect the programs offered.

(e) The Board may utilize disciplinary sanctions for schools set forth in Rules Section .0905(b) if the applicant for approval, or holder of such approval:

- (1) Fails to maintain, at any time, the minimum requirements for approval set forth in this Section;
- (2) Fails to require its students to complete the minimum standards in order to graduate;
- (3) Submits documents to the Board which contain false or misleading information;
- (4) Fails to allow authorized representatives of the Board to conduct inspections of the school, or refuses to make available to them at any time full information pertaining to the requirements for approval set forth in this Section;
- (5) Violates any statute or rule required for licensure or approval of that school by its educational licensing authority; or
- (6) Violates any applicable rule of this Section.

(e) School approval shall be granted for a one year term, beginning on July 1 and ending on June 30. For the purposes of this Section, this term shall be considered the Fiscal Year.

(f) If a Board-approved school has not met the requirements for renewal by June 30 preceding the new Fiscal Year, its approval status shall be deemed expired.

(g) Approval shall be reinstated by the Board if such a school completes its renewal process by July 31 of the Fiscal Year. A school that has had its approval reinstated by July 31 shall be considered to have maintained its approval status on a continuous basis, pursuant to Paragraph (i) of this Rule.

(h) The Board shall not renew the approval of a school that has not met the approval standards by July 31.

(i) Pursuant to G.S. 90-629(4), "successful completion of a course of study at a Board-approved school" means that the applicant graduated from a school that maintained its approval status with the Board on a continuous basis during the applicant's time of enrollment.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0602 DEFINITIONS

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

- (1) Program. -- A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set

- forth in ~~Paragraph (m) herein, Rule .0618, which that~~ is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.
- (2) Massage and bodywork therapy school. -- Any educational institution that conducts a program, as defined above, for a tuition charge. Such institutions may be organized as proprietary schools, ~~which that~~ are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.
- (3) Instructor. -- A person who meets the qualifications set forth in ~~Subparagraph (e)(1) or (2), herein, Rule .0610~~ of this Section who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.
- (4) Teaching assistant. -- A person who meets the qualifications set forth in ~~Subparagraph (e)(3) or (4), herein, Rule .0610~~ of this Section who is in the classroom to support the role of the instructor, and who may only provide instruction to students under the direct supervision of the instructor.
- (5) One classroom hour of supervised instruction. -- At least ~~fifty (50)~~ 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the school's instructional staff.
- (6) Student enrollment. -- The total number of students at an approved school in a designated Fiscal Year who have begun a program for which they have registered and paid a fee in said Fiscal Year, and who have completed at least four weeks of such program.
- (7) Key administrative staff. -- The school's program director, director of education, and other administrative staff members who direct key areas such as operations, admissions, financial aid, placement, or student services.
- (8) One year of professional experience. -- In determining the qualifications of administrative or instructional staff members, at least 500 hours of documentable work in the professional job responsibility or subject area in a given year.
- (9) Additional program. -- A program that is of a different title, subject matter, or number of hours of instruction than the program under which the school received its initial approval from the Board. An approved school that
- intends to offer an additional program shall submit an Application for Additional Program Approval.
- (10) Additional location. -- A facility not part of, nor adjoining the facility of an approved school, where an approved school intends to offer a program. Each such location is considered a separate school, requiring a new Application for School Approval to be submitted to the Board.
- ~~(b) Authority to operate.~~
- ~~(1) A proprietary school shall provide documentation that it is licensed or approved by the educational regulatory authority in the state, territory or country in which it operates; or shall be exempt from licensure or approval by statute.~~
- ~~(2) A regionally accredited postsecondary institution within the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval to conduct such program from the State Board of Community Colleges or the University of North Carolina.~~
- ~~(3) A regionally accredited postsecondary institution outside the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state, territory or country in which it operates.~~
- ~~(c) Program director. One person shall be designated as the program director, and shall be qualified in accordance with the requirements listed in Subparagraph (d)(2) herein. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including: curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of proper administrative records, financial management, recruitment of students, and maintenance of school plant and equipment.~~
- ~~(d) Administrative staff and qualifications.~~
- ~~(1) The school shall have administrative staff to support the number of students enrolled.~~
- ~~(2) The program director or department chair shall have the following qualifications:~~
- ~~(A) Be a graduate of a regionally accredited college or university and hold a baccalaureate degree, or have at least five years of professional experience in the field of massage and bodywork therapy; and~~
- ~~(B) Have at least two years experience as an instructor in one or more of the major courses which are presented in the school's curriculum, or have at least two years experience in education administration.~~
- ~~Persons who possess qualifications which are equivalent to the~~

requirements prescribed in (A) and (B) of this Paragraph may be approved individually by the Board.

(3) Other administrative staff who oversee such areas as operations, education, admissions, financial aid, or student services, shall have the following qualifications:

(A) Be a high school graduate or its equivalent;

(B) Have at least one year of professional experience in their area of their job responsibility, or have received training from the school sufficient to perform their defined job responsibilities.

(e) Instructional staff qualifications. The requirements herein shall apply to instructors and teaching assistants who provide more than six (6) instructional hours in the program. Instruction is provided by persons with appropriate education and experience as follows:

(1) Instructors who teach courses related to the theory and practice of massage and bodywork therapy shall have the following qualifications:

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

(B) Have received training in teaching methods, which shall include:

- (i) Presentation skills;
- (ii) Development and implementation of lesson plans;
- (iii) Dynamics of the teacher/student relationship;
- (iv) Management of the classroom environment;
- (v) Evaluation of student performance;
- (vi) Orientation to the school's administrative policies; and

(C) Have one of the following credentials:

- (i) Be licensed under the Practice Act; or
- (ii) For schools and instructors outside the State, hold a similar credential in massage and bodywork therapy; if no such credential is available, hold a valid certification from a certifying agency which is approved by the National Commission of Certifying Agencies; or
- (iii) Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist,

occupational therapist, or acupuncturist.

(2) Instructors in all other courses in the curriculum shall have received training in teaching methods as defined in Subparagraph (e)(1)(b) above, and shall have one of the following qualifications:

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

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

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

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

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

(B) Have a minimum of 6 semester credit hours of academic course work in the subject area they teach from a regionally accredited postsecondary institution.

(f) Job descriptions and contracts.

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

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

(g) School plant and equipment.

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

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

PROPOSED RULES

- ~~(3) The school shall have an annual inspection from the city or county agencies which determine compliance with requirements for fire, safety, health, and sanitation in its jurisdiction.~~
- ~~(4) For classes conducted in the practice of massage and bodywork therapy, the school shall provide a minimum of 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be one therapy treatment table, adjustable in height, for every two students in such classes.~~
- ~~(h) Financial management systems and economic stability.~~
 - ~~(1) Schools shall maintain financial management systems which assure safety, accountability and effective use of financial resources, and which provide accurate information for assessing the financial condition of the institution. This includes regular profit and loss statements, balance sheets, and an annual budget. The following standards shall be met:
 - ~~(A) Generally accepted accounting principles are followed in the preparation of financial statements; and~~
 - ~~(B) Accuracy and security of records is maintained.~~~~
 - ~~(2) Schools shall be financed to ensure long term stability. The following standards shall be met:
 - ~~(A) Income and reserves are sufficient to complete instruction of currently enrolled students while still meeting all requirements for Board approval;~~
 - ~~(B) A ratio of assets to liabilities of at least 1:1 is maintained; and~~
 - ~~(C) An annual independent review or audit of the school's financial statements is conducted by a Certified Public Accountant.~~~~
 - ~~(3) The Board may request a credit report on a school.~~
 - ~~(4) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.~~
- ~~(i) Admissions.~~
 - ~~(1) The school shall maintain admission policies and procedures which are fully disclosed and which are administered consistently.~~
 - ~~(2) Admissions standards are designed to ensure that only those students who have the ability to successfully complete the program will be admitted.~~
 - ~~(3) The school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.~~
- ~~(4) Documentation is maintained, for a minimum of three (3) years, of the reasons for the denial of admission of any student.~~
- ~~(5) A school is not precluded from enrolling students in individual courses not leading to a credential.~~
- ~~(j) Tuition, refunds and financial aid.~~
 - ~~(1) The school shall fully and clearly disclose tuition and all related program costs to prospective students.~~
 - ~~(2) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:
 - ~~(A) Cancellation of enrollment within seventy-two (72) hours of signing an student enrollment agreement;~~
 - ~~(B) Student withdrawal before the program start date;~~
 - ~~(C) Student withdrawal after the program start date;~~
 - ~~(D) Student dismissal; and~~
 - ~~(E) Cancellation of program by the school.~~~~
 - ~~(3) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non-residents.~~
 - ~~(4) The school shall maintain a refund policy as follows:
 - ~~(A) Proprietary schools shall base refunds on a percentage of the program actually completed by the student. At a minimum, such policy shall grant refunds up to and including the twenty five percent (25%) point of the program. Refunds shall be calculated from the last date of attendance and made within thirty (30) days of the date of withdrawal or dismissal.~~
 - ~~(B) Programs offered by postsecondary colleges or universities shall follow the refund policy set forth by the applicable governing body or regulatory agency.~~~~
 - ~~(5) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools which administer Title IV funds shall also include in its catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."~~
- ~~(k) Student records and academic progress.~~

- (1) ~~The school shall maintain current, complete, and accurate records on each student. Such records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.~~
- (2) ~~Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.~~
- (3) ~~Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.~~
- (4) ~~All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced. Students shall be notified when completion standards are not being met.~~
- (l) ~~Educational credential issued to graduates; reporting of graduates' pass rate on national certification examination.~~
- (1) ~~Upon completion of the program, the student is given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been satisfactorily completed.~~
- (2) ~~Such credentials are only granted to students who have completed the entire program for which the student enrolled.~~
- (3) ~~The school shall authorize agencies which conduct national certification examinations which are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.~~
- (m) ~~Pursuant to G.S. 90-631(1), programs shall meet the following standards:~~
- (1) ~~The school shall develop a set of educational objectives which describe the intended skills, knowledge, and attitudes which the program is designed to develop in the student by the completion of such program.~~
- (2) ~~The school shall offer a program consisting of a minimum of five hundred (500) classroom hours of supervised instruction. Such program shall contain the following hours of specific course work which are consistent with the school's mission and educational objectives:~~
- (A) ~~Two hundred (200) hours in the fundamental theory and practice of massage and bodywork therapy, which shall include a minimum of one hundred (100) hours in application of hands-on methods; the balance of such hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;~~
- (B) ~~One hundred (100) hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies;~~
- (C) ~~Fifty (50) hours in the following areas:~~
- (i) ~~Fifteen (15) hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;~~
- (ii) ~~Fifteen (15) hours in business practices related to the field of massage and bodywork therapy; and~~
- (iii) ~~Twenty (20) hours in somatic psychology, including dynamics of the therapist/client relationship, communication skills, and boundary functions;~~
- (D) ~~One hundred fifty (150) hours in other courses related to the practice of massage and bodywork therapy; such courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychology, movement education, or supervised clinical practice. First Aid or CPR may not be included in this category.~~
- (3) ~~For programs which include a student clinic or fieldwork experiential component, such hours do not exceed one hundred (100) hours of the minimum requirement set forth in Subparagraph (m)(2)(d), above. All such work is directly supervised and evaluated by an instructional staff member.~~
- (4) ~~For programs which include an externship component, such hours shall not be included in the minimum requirements set forth in Subparagraph (m)(2), above, and shall not comprise more than twenty percent (20%) of the total program hours. All such work is supervised by a designated person at the externship site, and is evaluated by the school.~~
- (5) ~~Programs shall consist of a series of courses which are organized in a logical sequence, and which are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills~~

- and/or knowledge to utilize that material safely and effectively.
- (6) ~~Course titles match the content of the course; published course descriptions accurately reflect the specific learning objectives of each course; sufficient hours are allotted to each course to allow students to gain competence in the subject areas covered.~~
- (7) ~~A course curriculum is developed for each course, which shows the basic content of each individual class in the course, in the sequence presented.~~
- (8) ~~Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure such consistency. Teaching methods are appropriate to course content, and to diverse learning styles.~~
- (9) ~~Programs shall be a minimum of six (6) months in length, with no more than nine (9) instructional hours in one day. There shall be no more than two (2) hours of instruction without a break. There shall be no more than four (4) hours of instruction without a meal break.~~
- (10) ~~For a student to receive credit in a course, the school shall require students to attend no less than seventy five percent (75%) of the instructional hours, and to make up all missed instructional hours according to the procedures established by the school.~~
- (11) ~~A syllabus is developed for each course, and provided to students prior to the beginning of instruction. The syllabus shall include the following elements: course title, course description, learning objectives, total number of instructional hours, meeting dates and class times, assignments, textbooks, evaluation methods, quiz and examination dates, and performance standards.~~
- (12) ~~For post secondary institutions, courses which fulfill the minimum requirements set forth in Subparagraph (m)(2), above, shall support the program in massage and bodywork therapy. Courses in addition to the minimum requirements may include courses from other departments or programs which are directly relevant to the practice of massage and bodywork therapy.~~
- (n) ~~Student to instructor ratios.~~
- (1) ~~For classes which involve hands on practice, the student to instructor ratio shall not exceed 16 to 1.~~
- (2) ~~Both instructors and teaching assistants, as defined in Paragraph (a) of this Rule, shall be considered in calculating these ratios.~~
- (o) ~~Learning resources. The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:~~
- (1) ~~The school shall maintain a library or resource center which contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.~~
- (2) ~~All other resources, such as charts, models, or videotapes, shall be maintained in good condition.~~
- (p) ~~Standards of professional behavior.~~
- (1) ~~Conduct by instructional staff and students shall follow the Standards of Practice set forth by the National Certification Board for Therapeutic Massage and Bodywork, and those standards set forth in Rules Section .0500 of this Chapter.~~
- (2) ~~Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this section, "nudity" is defined as exposure of the genital or anal area for men or women, or the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.~~
- (3) ~~The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.~~
- (4) ~~The above requirements shall apply to all classroom settings, as well as any location where instructional staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements, whether at the school or another location.~~
- (q) ~~Student compensation prohibited. A student enrolled in a Board approved school shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.~~
- (r) ~~Transfer of Credit. A school shall not grant transfer credit from another institution unless the following standards are met:~~
- (1) ~~The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;~~
- (2) ~~The school from where credit is being transferred shall provide an official transcript;~~
- (3) ~~Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and~~
- (4) ~~Documentation of previous training shall be included in each student's permanent file.~~
- (s) ~~Advanced placement. A school may only grant advanced placement to a student, or exempt the student from curriculum~~

requirements, based on the student's performance on an examination which the school administers to determine competency in that subject area. Such advanced placement or exemption shall not exceed thirty five percent (35%) of the total number of hours in the program.

(t) Ethical requirements in advertising. The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:

- (1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public.
- (2) All statements and representations made shall be clearly worded, factually accurate, and current. Supporting information shall be kept on file and available for review. All advertising and promotional materials shall include the correct name and location of the school.
- (3) The school shall not falsely represent its facilities in photographs, illustrations, or through other means.
- (4) The school catalog or bulletin shall contain all information required in Paragraph (v) herein.
- (5) All advertising and promotional activities shall clearly indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field of massage and bodywork as a result of the completion of the course of study shall be used to solicit students.
- (6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection.
- (7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data.
- (8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they also indicate the normal range or starting salaries for graduates.
- (9) Schools offering programs which are not approved by the Board shall clearly identify which programs are Board approved.
- (10) Schools shall accurately describe requirements for state licensure.
- (11) The school shall not defame competitors by falsely imputing to them dishonorable conduct,

inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.

(u) The school shall execute a Student Enrollment Agreement for training with every student. A copy of the executed agreement shall be provided to the student. At a minimum, such agreement shall contain the following:

- (1) Name and telephone number of the school; location of where the student will attend classes.
- (2) Student's name, address, telephone number, social security number.
- (3) Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date.
- (4) Program tuition and all related costs, including application and registration fees, and estimated cost of books and supplies.
- (5) Refund and cancellation policies, including buyer's right to cancel.
- (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition.
- (7) Placement guarantee disclaimer.
- (8) Grounds for dismissal from the school.
- (9) Statement referencing the school catalog and student handbook as a legal part of the enrollment agreement.
- (10) Statement certifying that student has read and understands all terms of the enrollment agreement.
- (11) Signature lines for school official and student.

(v) The school shall publish a catalog or bulletin which is certified by an authorized official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

- (1) School name, location address, phone number.
- (2) Volume number and date of publication.
- (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions.
- (4) Names and titles of all instructional and key administrative staff.
- (5) Statement of school mission, philosophy, and educational program objectives.
- (6) School history and identification of all licenses, approvals or accreditations which the school maintains.
- (7) Definition of measurement of program, whether in clock hours or credit hours.
- (8) Detailed course descriptions, including number of hours for each course.
- (9) Graduation requirements, including type of credential issued upon graduation.

PROPOSED RULES

- ~~(10) Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates.~~
- ~~(11) Standards for admission and description of the school's admissions process.~~
- ~~(12) School calendar, including beginning and ending dates of all programs, all holidays and days off.~~
- ~~(13) Length of time required for completion of the program.~~
- ~~(14) Program tuition and all associated costs, including textbooks, supplies, and other expenses.~~
- ~~(15) Refund policy.~~
- ~~(16) Description of facilities and learning resources.~~
- ~~(17) Student services.~~
- ~~(18) Academic policies, including the following:
 - ~~(A) Grading system;~~
 - ~~(B) Standards of satisfactory academic progress;~~
 - ~~(C) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;~~
 - ~~(D) Transfer of credit from other institutions;~~
 - ~~(E) Attendance requirements, make up work, tardiness, leave of absence;~~
 - ~~(F) Standards of conduct, including a sexual harassment policy; and~~
 - ~~(G) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.~~~~

~~(w) Notification of changes. An approved school shall notify the Board in writing within thirty (30) days of any changes in administration, facilities, instructional staff, curriculum, or other changes that may effect the programs offered.~~

~~(x) Board approval not transferable.~~

- ~~(1) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. Provided, however, the Board may issue temporary operating approval for a period of ninety (90) days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.~~
- ~~(2) For the purposes of this Paragraph, "change of ownership" is defined as, but not limited to the following situations:
 - ~~(A) Sale of the school;~~~~

- ~~(B) Transfer of controlling interest of stock of the school or its parent corporation;~~
- ~~(C) Merger of two or more schools;~~
- ~~(D) Transfer of controlling interest of stock to parent corporation;~~
- ~~(E) Transfer of assets or liabilities of school to parent corporation or owners; or~~
- ~~(F) Change from profit to non-profit status.~~

~~(y) Initial application for Board approval. The school shall submit an application for approval on a form provided by the Board, which shall be accompanied by the following:~~

- ~~(1) A certified check for the application fee set forth in Rule .0606 herein, made payable to the Board.~~
- ~~(2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person.~~
- ~~(3) Job descriptions for school director, administrative staff, instructors, and teaching assistants.~~
- ~~(4) Examples of contracts for administrative and instructional staff.~~
- ~~(5) Detail of ownership structure of the school, and organizational chart.~~
- ~~(6) Facility plan, including detailed floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control.~~
- ~~(7) Equipment list, including furniture, office equipment, and instructional equipment for classroom.~~
- ~~(8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility.~~
- ~~(9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval.~~
- ~~(10) Statement of Financial Affirmation; copies of the school's financial statements for the previous fiscal year; letter from a Certified Public Accountant affirming that the school is in compliance with the requirements of Paragraph (h), herein.~~
- ~~(11) Copy of the application for admission which is submitted by prospective students; copies of materials used to document the admission process with applicants.~~
- ~~(12) Copies of the forms used for documentation of attendance, missed class make up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action.~~

- ~~(13) — Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.~~
- ~~(14) — Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.~~
- ~~(15) — List of student to instructor ratios for each course offered.~~
- ~~(16) — List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library. If the school has no library, include copy of the agreement for use of another facility, with its list of resources.~~
- ~~(17) — Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements.~~
- ~~(18) — Copy of the Student Enrollment Agreement issued by the school.~~
- ~~(19) — Catalog Certification Form; copy of the current school catalog or bulletin, with accompanying student handbook (if applicable).~~
- ~~(20) — As applicable, copy of state license or approval to operate school, or citation of statutory exemption; copy of certificate of accreditation (if applicable).~~

~~(z) Application for Board approval of additional programs. An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:~~

- ~~(1) — A certified check for the application fee set forth in Rule .0606 herein, made payable to the Board.~~
- ~~(2) — Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.~~
- ~~(3) — List of student to instructor ratios for each course offered.~~
- ~~(4) — Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.~~
- ~~(5) — Copy of the school catalog or bulletin which describes the additional program.~~
- ~~(6) — Complete documentation of any other requirement set forth in Paragraph (y), herein, which is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.~~

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0603 DOCUMENTATION OF SUCCESSFUL COMPLETION

(a) In order to be acknowledged as having successfully completed a course of study as required by G.S. 90-629(4), an

applicant for licensure must submit an official transcript to the Board's administrative office.

(b) Such transcript must document to the satisfaction of the Board that the applicant has completed all requirements in a course of study which that meets the ~~minimum curriculum~~ standards set forth in this ~~section~~, Section, and shall indicate the following:

- (1) Passing grades in all courses;
- (2) Dates of attendance;
- (3) Date of graduation or successful completion of the entire program; and
- (4) Total number of supervised classroom hours of ~~instruction~~ instruction; and
- (5) Credential awarded, whether a certificate, diploma, or degree.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0604 APPROVAL DESIGNATION

(a) A school which that is approved by the Board may utilize the designation, "Approved by the North Carolina Board of Massage and Bodywork Therapy," or "N.C. Board Approved." An approved school may utilize this designation only to promote a program in massage and bodywork therapy, and shall not utilize this designation to promote any other program.

(b) A school which that is in the application process for approval, and which that has not been granted approval by the Board, shall not publish or promote the fact that it has applied for such approval, and shall not utilize terms such as "approval pending."

Authority G.S. 90-626(9); 90-631;

21 NCAC 30 .0605 VERIFICATION OF COMPLIANCE

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

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0607 DISCIPLINARY SANCTIONS; REPORTING REQUIREMENTS

(a) The Board may utilize disciplinary sanctions for schools set forth in Rule .0905(b) of this Chapter if the applicant for approval, or holder of such approval:

- (1) fails to maintain, at any time, the requirements for approval set forth in this Section;
- (2) fails to require its students to complete the minimum standards in order to graduate;
- (3) submits documents to the Board that contain false or misleading information;
- (4) fails to allow authorized representatives of the Board to conduct inspections of the school, or

refuses to make available to them at any time full information pertaining to the requirements for approval set forth in this Section;

- (5) violates any statute or rule required for licensure or approval of that school by its educational licensing authority; or
- (6) violates any applicable rule of this Section.

(b) An approved school that is accredited by an agency recognized by the United States Department of Education (USDE) shall notify the Board in writing within 30 days of any notification it receives from its accrediting agency or the USDE Office of Postsecondary Education of a show cause action, probation action, or denial of accreditation.

(c) An approved school outside the State shall notify the Board in writing within 30 days of any notification it receives from its state, provincial, territorial or national licensing or approval authority of non-compliance with its regulatory standards, or disciplinary actions.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0608 AUTHORITY TO OPERATE

(a) A proprietary school shall provide documentation to the Board that it is licensed or approved by the regulatory authority for schools of massage and bodywork therapy in the state or territory in which it operates, or is exempt by statute.

(b) A regionally accredited post-secondary institution within the State that offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval to conduct such program from the State Board of Community Colleges or the University of North Carolina.

(c) A regionally accredited post-secondary institution outside North Carolina that offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state or territory in which it operates.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0609 PROGRAM DIRECTOR, ADMINISTRATIVE STAFF AND QUALIFICATIONS

(a) One person shall be designated as the program director. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including: curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of proper administrative records, financial management, recruitment of students, and maintenance of school plant and equipment. The program director or department chair shall have the following qualifications:

- (1) be a graduate of a regionally accredited college or university and hold a baccalaureate degree or have at least five years of professional experience in the field of massage and bodywork therapy; and have at least two years experience as a lead instructor in one or more of the core curriculum courses that are presented in the school's curriculum or have at

least two years experience in education administration; or

- (2) possess qualifications that are equivalent to the requirements prescribed in Subparagraph (1) of Paragraph (a) of this Rule that may be approved individually by the Board.

(b) If the program director does not have experience in either the professional practice of massage and bodywork therapy, or massage and bodywork therapy education, the school shall have a director of education on staff to manage the areas of curriculum and lesson plan development, instructional methods, and training and evaluation of instructional staff. The director of education shall have the following qualifications:

- (1) be a graduate of a regionally accredited college or university and have at least five years of professional experience in the field of massage and bodywork therapy; or
- (2) have at least two years experience as a lead instructor in one or more of the school's core curriculum courses, or have at least two years experience in massage therapy education administration or teacher training.

(c) Other key administrative staff members who oversee or direct such areas as operations, admissions, financial aid, or student services shall have the following qualifications:

- (1) be a high school graduate or its equivalent; and
- (2) have at least one year of professional experience in their area of their job responsibility, or have received training from the school sufficient to perform their defined job responsibilities.

(d) The school shall have administrative staff to support the number of students enrolled.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0610 INSTRUCTIONAL STAFF QUALIFICATIONS

(a) The requirements in this Rule are intended to assure that instructors, as defined in Rule .0602(3) of this Section, are competent in the fundamental knowledge and methodology of teaching, and possess a professional level of skills, knowledge and practical experience in every subject they teach in the program.

(b) Instructors shall be trained in teaching methods, that shall include:

- (1) presentation skills;
- (2) development and implementation of lesson plans;
- (3) dynamics of the teacher/student relationship;
- (4) management of the classroom environment;
- (5) evaluation of student performance;
- (6) instructional strategies for the adult learner;
- (7) accommodations for students with special needs; and
- (8) knowledge of the school's administrative policies and procedures.

(c) Instructors shall be trained in the subject taught, and shall have:

- (1) at least two years of professional experience in the subject area; and

- (2) have received certification in the subject area if such certification is available.
- (d) Instructors shall have one of the following professional credentials:
 - (1) be licensed under the Practice Act for at least two years; or
 - (2) have a baccalaureate degree from a regionally accredited post-secondary institution and have at least 12 semester credit hours of academic course work in the subject area they teach from such institution; or
 - (3) be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, or acupuncturist; or
 - (4) for schools and instructors outside the State, hold a state license or certification in massage and bodywork therapy for at least two years; if no such credential is available, hold a valid certification from a certifying agency that is approved by the National Commission of Certifying Agencies for at least two years.
- (e) Teaching assistants, as defined in Rule .0602(4) of this Section, shall have the following qualifications:
 - (1) assistants in courses related to the theory and practice of massage and bodywork therapy shall be licensed under the Practice Act, and shall have training in the subject area of the course.
 - (2) assistants in courses other than the theory and practice of massage and bodywork therapy shall have training in the subject area of the course, in addition to one of the following qualifications:
 - (A) be licensed under the Practice Act; or
 - (B) have at least one year of professional experience in the subject area; or
 - (C) have at least six semester credit hours of academic course work in the subject area from a regionally accredited post-secondary institution.
- (f) The school shall observe, evaluate, and document the performance of every instructional staff member at least once in each course taught to assure that competency in teaching methods and subject area is maintained.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0611 APPROVAL PROCESS FOR KEY ADMINISTRATIVE AND INSTRUCTIONAL STAFF

- (a) Key administrative staff, instructors and teaching assistants, as defined in Rule .0602 of this Section, must be approved by the Board before performing their job functions at a Board-approved school.
- (b) The school shall submit an application for each key administrative staff member, instructor, and teaching assistant on a form provided by the Board, which shall be accompanied by the following documentation:
 - (1) copies of all academic diplomas or degrees;
 - (2) official school transcripts from all post-secondary institutions;

- (3) copies of occupational licenses and certifications;
- (4) a record of work experience in the field; and
- (5) a record of training in teaching methods.

(c) In all cases, the burden of proof shall be on the school to demonstrate that each key administrative staff member meets the qualifications set forth in Rule .0609 of this Section, and that each instructor and teaching assistant meets the qualifications set forth in Rule .0610 of this Section.

(d) The requirements of this Rule shall not apply to guest instructors who provide no more than three hours of instruction in a program.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0612 MANAGEMENT OF STAFF

- (a) The school shall have written job descriptions with performance standards for each administrative and instructional position on its staff.
- (b) The school shall execute a written employment agreement or contract with each staff member, whether such staff member works in a full-time or part-time capacity, or is an employee or an independent contractor.
- (c) The school shall conduct and document an annual performance review for each staff member.
- (d) The school shall maintain a file for all staff members, that shall contain their original application for Board approval with all accompanying documentation, current employment agreement or contract, and annual performance reviews. The school shall keep each file current, with copies of their most recent occupational licenses, certifications, documentation of continuing education, and academic transcripts.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0613 SCHOOL PLANT AND EQUIPMENT

- (a) The school plant, premises, and facilities shall be safe and sanitary and shall be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation. Classrooms shall have sufficient lighting, ventilation, and temperature control to provide a comfortable learning environment for students.
- (b) The equipment, supplies, and instructional materials of the school shall be adequate in type, quality, and amount for each course offered by the school. These shall also meet all requirements of statutory provisions, and rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation.
- (c) The school shall have an annual inspection from the city or county agencies that determine compliance with requirements for fire, safety, health, and sanitation in its jurisdiction.
- (d) For classes conducted in the practice of massage and bodywork therapy, the school shall provide at least 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be one therapy treatment table, adjustable in height, for every two students in such classes.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0614 FINANCIAL MANAGEMENT

SYSTEMS AND ECONOMIC STABILITY

(a) The school shall maintain a sound financial structure, with resources sufficient for its ongoing operations and the discharge of its obligations to the students and staff. To demonstrate this, the school shall:

- (1) maintain financial management systems that assure reliability, accountability and effective use of financial resources, that provide accurate information for assessing the financial condition of the institution, and that assure the accuracy and security of records; and
- (2) provide annually a review or audit, prepared in accordance with Generally Accepted Accounting Principles by an independent certified public accountant. This annual financial statement shall demonstrate that the current assets of the school exceed the current liabilities, and that there was a positive net working capital for the prior year. If the school does not meet the above requirements, the Board shall require a financial improvement plan, teach-out plan, or form of surety guaranteeing that the resources are sufficient to protect the current students. If the Board determines that the school does not have sufficient resources, it may take disciplinary actions pursuant to Rule .0905(b) of this Chapter up to and including revocation of approval.

- (b) The Board may request a credit report on a school.
 (c) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0615 STUDENT RECRUITMENT

In its recruitment of students, an approved school shall:

- (1) not use employment agencies to recruit prospective students, or place advertisements in help-wanted sections of classified advertisements, or otherwise lead prospective students to believe they are responding to a job opportunity.
- (2) ensure that its recruiting agents and other personnel do not make false or misleading statements about the institution, its personnel, its programs, its services, its approval status, its accreditation, or any other pertinent information.
- (3) inform each student accurately about financial assistance and obligations for repayment of loans.
- (4) not make explicit or implicit promises of employment or salary expectations to prospective students.
- (5) not permit the payment of cash or other nonmonetary incentives to any student or prospective student as an inducement to enroll;

nor shall it use the word "free" or its synonyms in reference to any equipment, tuition, books, or other items in conjunction with recruiting or advertising; and

- (6) adhere to ethical practices in all aspects of the recruiting process, ensuring that its personnel do not discredit other institutions by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or similar negative characteristics; making other false representations; or by disparaging the character, nature, quality, value or scope of their program of instruction or services; or by demeaning their students. The school shall also ensure that its personnel do not knowingly influence any student to leave another institution or encourage a student to change plans after signing an enrollment application and paying a registration fee to another institution.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0616 ADMISSIONS

- (a) The school shall maintain admission policies and procedures that are fully disclosed and administered consistently.
 (b) The school shall regularly conduct an orientation session for persons who have applied for admission, or who are considering application for admission. Such orientation shall include an overview of the program's educational objectives and curriculum, the academic and physical requirements of the program, existing employment opportunities in the field, the time and financial requirements of the program, and state requirements for licensure.
 (c) Admissions standards shall be designed to ensure that only those applicants are admitted who have the cognitive, motor and behavioral skills and moral character necessary to successfully complete the program and to practice massage and bodywork therapy in a safe and effective manner.
 (d) The school shall conduct a pre-enrollment interview with each applicant to determine their qualifications. The information gathered from this interview shall be evaluated with all written documentation submitted by the applicant before the school renders a decision on their application.
 (e) The school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.
 (f) Documentation shall be maintained, for at least three years, of the reasons for the denial of admission of any student.
 (g) A school may enroll students in individual courses not leading to a credential.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0617 TUTION, REFUNDS AND FINANCIAL AID

- (a) The school shall fully and clearly disclose tuition and all related program costs to prospective students.

(b) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:

- (1) cancellation of enrollment within 72 hours of signing a student enrollment agreement;
- (2) student withdrawal before the program start date;
- (3) student withdrawal after the program start date;
- (4) student dismissal; and
- (5) cancellation of program by the school.

(c) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non-residents.

(d) The school shall maintain a refund policy as follows:

- (1) Proprietary schools shall base refunds on a percentage of the program actually completed by the student. Such policy shall grant refunds at least up to and including the 25% point of the program. Refunds shall be calculated from the last date of attendance and made within 30 days of the date of withdrawal or dismissal; and
- (2) Programs offered by post-secondary colleges or universities shall follow the refund policy set forth by the applicable governing body or regulatory agency.

(e) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools that administer Title IV funds shall also include in its catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0618 PROGRAM REQUIREMENTS

Pursuant to G.S. 90-631(1), programs shall meet the following requirements:

- (1) The school shall develop and adhere to a set of educational objectives that describe the intended skills, knowledge, and attitudes that the program is designed to develop in the student by the completion of such program;
- (2) The program shall have a core curriculum of at least 500 classroom hours of supervised instruction. Such core curriculum shall contain the following hours of specific course work that are consistent with the school's mission and educational objectives:
 - (a) 200 hours in the fundamental theory and practice of massage and bodywork therapy that is designed to produce comprehensive entry-level skills in the application of direct manipulation to the soft tissues of the

human body, and is based in therapeutic methods consistent with the definition set forth in G.S. 90-622(3) such as swedish massage, acupressure, shiatsu, deep muscle massage, trigger point therapy, and connective tissue bodywork. Of the 200 hours in this category, at least 100 hours shall be in the application of hands-on methods; the balance of such hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;

- (b) 100 hours in anatomy and physiology related to the practice of massage and bodywork therapy, that shall include the structure and function of the human body and common pathologies;
- (c) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;
- (d) 15 hours in business management practices related to the practice of massage and bodywork therapy;
- (e) 20 hours in psychology related to the practice of massage and bodywork therapy, including dynamics of the client/therapist relationship, professional communication skills, the mind-body connection, and boundary functions; and
- (f) 150 hours in other courses related to the practice of massage and bodywork therapy; such courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychology, movement education, or supervised clinical practice. First Aid or CPR shall not be included in this category. Techniques that are considered exempt from licensure pursuant to G.S. 90-624(6) or (7), and that are further defined by Rule .0203(a), herein, shall not be included in this category.

(3) For programs that include a student clinic or fieldwork experiential component, such hours shall not exceed 100 hours of the minimum requirement set forth in Paragraph (2)(f) of this Rule. All such work shall be directly supervised and evaluated by an instructional staff member;

- (4) For programs that include an externship component, such hours shall not be included in the requirements set forth in Paragraph (2) of this Rule, and shall not comprise more than 20% of the total program hours. All such work shall be supervised by a person at the externship site who is acceptable to the school, and shall be monitored and evaluated by the school.
- (5) Programs shall consist of a series of courses that are organized in a logical sequence, and that are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and knowledge to utilize that material safely and effectively;
- (6) Course titles shall match the content of the course; published course descriptions shall accurately reflect the specific learning objectives of each course; sufficient hours are allotted to each course to allow students to gain competence in the subject areas covered;
- (7) A course curriculum is developed for each course, that shows the basic content of each individual class in the course, in the sequence presented;
- (8) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure such consistency. Teaching methods are appropriate to course content, and to diverse learning styles;
- (9) Programs shall be at least 24 weeks in length, with no more than 9 instructional hours in one day. There shall be no more than 2 hours of instruction without a break. There shall be no more than 4 hours of instruction without a meal break;
- (10) For a student to receive credit in a course, the school shall require students to attend no less than 75% of the instructional hours, and to make up all missed instructional hours according to the procedures established by the school;
- (11) A syllabus shall be developed for each course, and provided to students prior to the beginning of instruction. The syllabus shall include the following elements: course title, course description, learning objectives, teaching methodologies, total number of instructional hours, meeting dates and class times, assignments, textbooks, evaluation methods, quiz and examination dates, and performance standards;
- (12) For post-secondary institutions, courses that fulfill the requirements set forth in Paragraph

(2) of this Rule shall support the program in massage and bodywork therapy. Courses in addition to these requirements may include courses from other departments or programs that are relevant to the practice of massage and bodywork therapy; and

- (13) For classes that involve hands-on practice, the student to instructor ratio shall not exceed 16 to 1. Both instructors and teaching assistants, as defined in Rule .0602 of this Section, shall be considered in calculating these ratios.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0619 STUDENT RECORDS AND ACADEMIC PROGRESS

- (a) The school shall maintain current, complete, and accurate records on each student. Such records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.
- (b) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.
- (c) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.
- (d) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced by the school. Students shall be notified when completion standards are not being met.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0620 EDUCATIONAL CREDENTIAL ISSUED; GRADUATES' PASS RATE ON NATIONAL EXAMINATIONS

- (a) Upon completion of the program, the student shall be given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been successfully completed.
- (b) Such credentials are only granted to students who have completed the entire program for which the student enrolled.
- (c) The school shall authorize agencies that conduct national certification examinations that are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0621 LEARNING RESOURCES

The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:

- (1) The school shall maintain a library or resource center that contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources; and

- (2) All other resources, such as charts, models, or videotapes, shall be maintained in good condition.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0622 STANDARDS OF PROFESSIONAL BEHAVIOR

(a) The following standards of professional behavior shall apply to instructional staff, administrative staff and students:

- (1) Conduct shall be in accordance with Standards of Practice set forth in Section .0500 of this Chapter.
- (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this section, "nudity" is defined as exposure of the genital or anal area for men or women, or the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques; and
- (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.

(b) The requirements of this Rule shall apply to all school facilities, as well as any other location where staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0623 SCHOOL COMPLAINT POLICY

The school shall administer an internal complaint policy for students and staff, and shall maintain a complaints file that provides the following information:

- (1) Person(s) filing complaint and date filed;
- (2) Nature of complaint and person(s) involved;
- (3) Response(s) to complaint by school; and
- (4) Resolution of complaint.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0624 STUDENT COMPENSATION PROHIBITED

A student enrolled in a Board-approved school shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0625 TRANSFER OF CREDIT; ADVANCED PLACEMENT

(a) A school shall not grant transfer credit from another institution unless the following standards are met:

- (1) The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;
- (2) The school from where credit is being transferred shall provide an official transcript;
- (3) Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and
- (4) Documentation of previous training shall be included in each student's permanent file.

(b) A school may only grant advanced placement to a student, or exempt the student from curriculum requirements, based on the student's performance on an examination that the school administers to determine competency in that subject area. Such advanced placement or exemption shall not exceed 35% of the total number of hours in the program.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0626 ETHICAL REQUIREMENTS IN ADVERTISING

The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:

- (1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public;
- (2) All statements and representations made shall be clearly worded, factually accurate, and current. Supporting information shall be kept on file and available for review for at least three years. All advertising and promotional materials shall include the correct name and location of the school;
- (3) The school shall not falsely represent its facilities in photographs, illustrations, or through other means;
- (4) The school catalog or bulletin shall contain all information required in Rule .0628 of this Section;
- (5) All advertising and promotional activities shall clearly indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field of massage and bodywork as a result of the completion of the course of study shall be used to solicit students;
- (6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with

the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection;

- (7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data;
- (8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they also indicate the normal range or starting salaries for graduates;
- (9) Schools offering programs that are not approved by the Board shall clearly identify which programs are Board approved;
- (10) Schools shall describe requirements for state licensure.
- (11) The school shall not defame competitors by falsely imputing to them dishonorable conduct, inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0627 STUDENT ENROLLMENT AGREEMENT

The school shall execute a Student Enrollment Agreement for training with every student. A copy of the executed agreement shall be provided to the student, and a copy shall be placed in the student's permanent file. At a minimum, such agreement shall contain the following:

- (1) Name and telephone number of the school; location of where the student will attend classes;
- (2) Student's name, address, telephone number, social security number;
- (3) Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date;
- (4) Program tuition and all related costs, including application and registration fees, and estimated cost of books and supplies;
- (5) Refund and cancellation policies, including student's right to cancel;
- (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition;
- (7) Placement guarantee disclaimer;
- (8) Grounds for dismissal from the school;
- (9) Statement referencing the school catalog and student handbook as a part of the enrollment agreement;
- (10) Statement certifying that student has read and understands all terms of the enrollment agreement; and

- (11) Signature lines for school official and student.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0628 SCHOOL CATALOG

The school shall publish a catalog or bulletin that is certified by an authorized official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

- (1) School name, location address, phone number;
- (2) Volume number and date of publication;
- (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions;
- (4) Names and titles of all instructional and key administrative staff;
- (5) Statement of school mission, philosophy, and educational program objectives;
- (6) School history and identification of all licenses, approvals or accreditations that the school maintains;
- (7) Definition of measurement of program, whether in clock hours or credit hours;
- (8) Detailed course descriptions, including number of hours for each course;
- (9) Graduation requirements, including type of credential issued upon graduation;
- (10) Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates;
- (11) Standards for admission, description of the school's admissions process, and requirement of a signed Student Enrollment Agreement;
- (12) School calendar, including beginning and ending dates of all programs, all holidays and days off;
- (13) Length of time required for completion of the program;
- (14) Program tuition and all associated costs, including textbooks, supplies, and other expenses;
- (15) Refund policy;
- (16) Description of facilities and learning resources;
- (17) Student services;
- (18) Policy regarding prohibition of compensation to student for performing massage and bodywork therapy; and
- (19) Academic policies, including the following:
 - (a) Grading system;
 - (b) Standards of satisfactory academic progress;
 - (c) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;
 - (d) Transfer of credit from other institutions;

- (e) Attendance requirements, make-up work, tardiness, leave of absence;
- (f) Standards of conduct, including a sexual harassment policy; and
- (g) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.

- room, specifications on lighting, ventilation, and temperature control;
- (7) Equipment list, including furniture, office equipment, and instructional equipment for classroom;
- (8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility;
- (9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval;
- (10) Statement of Financial Affirmation; the following financial documentation:

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0629 BOARD APPROVAL NOT TRANSFERABLE

(a) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. Provided, however, the Board may issue temporary operating approval for a period of up to 180 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.

(b) For the purposes of this Section, "change of ownership" is defined as, but not limited to the following situations:

- (1) Sale of the school;
- (2) Transfer of controlling interest of stock of the school or its parent corporation;
- (3) Merger of two or more schools;
- (4) Transfer of controlling interest of stock to parent corporation;
- (5) Transfer of assets or liabilities of school to parent corporation or owners; or
- (6) Change from profit to non-profit status.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0630 INITIAL APPLICATION FOR BOARD APPROVAL

The school shall submit an application for approval on a form provided by the Board, that shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606, made payable to the Board;
- (2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person;
- (3) Job descriptions for school director, administrative staff, instructors, and teaching assistants;
- (4) Examples of contracts for administrative and instructional staff;
- (5) Detail of ownership structure of the school, and organizational chart;
- (6) Facility plan, including detailed floor plans with dimensions and fixtures, uses of each

- (a) A plan setting forth the sources, kinds and amounts of both current and anticipated financial resources. The plan shall include a budget for the school's first year of operation, identifying sources of revenue to ensure effective operations;
- (b) A pro forma balance sheet prepared in accordance with Generally Accepted Accounting Principles for the type of institution making application;
- (c) If the corporation that controls the school is ongoing, the school shall provide a financial statement of the parent corporation, reviewed or audited in accordance with Generally Accepted Accounting Principles, prepared by an independent certified public accountant; and
- (d) Schools that are new and do not have a history of educational operations shall provide financial statements of the controlling principals, compiled, reviewed, or audited by an independent certified public accountant. These statements must demonstrate sufficient resources to ensure institutional development.
- (11) Copy of the application for admission that is submitted by prospective students; copies of materials used to document the admission process with applicants;
- (12) Copies of the forms used for documentation of attendance, missed class make-up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action;
- (13) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school;
- (14) Documentation of program requirements, including copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year;

PROPOSED RULES

- (15) List of student to instructor ratios for each course offered;
- (16) List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library. If the school has no library, include copy of the agreement for use of another facility, with its list of resources;
- (17) Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements;
- (18) Copy of the Student Enrollment Agreement issued by the school;
- (19) Catalog Certification Form; copy of the current school catalog or bulletin, with accompanying student handbook (if applicable);
- (20) Agenda for a student orientation program, and a personnel orientation program provided by the school; and
- (21) As applicable pursuant to Rule .0608 of this Section, copy of license or approval to operate school, or citation of statutory exemption; copy of certificate of accreditation.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0631 APPLICATION FOR BOARD APPROVAL OF ADDITIONAL PROGRAMS

An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606 of this Section, made payable to the Board;
- (2) Documentation of program requirements, including copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year;
- (3) List of student to instructor ratios for each course offered;
- (4) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school;
- (5) Copy of the school catalog or bulletin that describes the additional program; and
- (6) Complete documentation of any other requirement set forth in Rule .0629 of this Section, that is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0632 CLOSURE OF SCHOOL; TERMINATION OF A PROGRAM

(a) An approved school which intends to cease operations completely, or which intends to terminate the offering of a program if it offers more than one approved program, shall submit to the Board a written plan for such cessation or termination at least 90 days before such action.

(b) The plan shall include the following information:

- (1) The projected date of cessation or termination;
- (2) The means by which the school will maintain standards for approval until the last student has completed their training or transferred to another institution; and
- (3) The arrangement for storage of permanent student records.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0633 SCHOOL STAFF MEMBERS AS STUDENTS

If a member of the administrative or instructional staff at an approved school is enrolled as a student in a any course within the program, the staff member shall not have any administrative or academic authority over that course.

Authority G.S. 90-626(9); 90-631.

SECTION .0700 - CONTINUING EDUCATION

21 NCAC 30 .0701 CONTINUING EDUCATION REQUIREMENTS

(a) Pursuant to G.S. 90-632, a licensee, when renewing a license, shall document that they have completed a minimum of at least 25 contact hours of approved continuing education as defined herein during the immediately preceding licensure period.

(b) For the purposes of this Section, "approved continuing education" means a course that meets the subject matter requirements defined in Rule .0703 of this Section, and that is offered by an approved provider that meets the requirements defined in Rule .0704 of this Section.

~~(b)~~(c) Distance learning, as defined herein, in Rule .0702 of this Section, shall not comprise more than 12 hours of the required continuing education hours per licensure period.

~~(c)~~(d) Documented hours of continuing education in excess of the 25 hour requirement shall not be carried over to the following licensure period.

(e) Licensees shall document that they have completed at least 3 contact hours of continuing education in professional ethics as defined in this Section out of the minimum of 25 hours of approved continuing education required for license renewal. This may be obtained through supervised classroom instruction or distance learning.

~~(d) The Board may audit licensees at random to assure compliance with these requirements.~~

(e) The following definitions apply to this Section:

- (1) Continuing education. — Learning experiences which enhance and expand the skills, knowledge, and attitudes of massage and bodywork therapists that enable them to render competent professional service to clients, the profession and the public.

- ~~(2) Distance learning. — Courses taken by home-study which are produced by an approved provider, whether delivered by videotape, audiotape, printed materials, or computer-based means. The licensee shall be required to demonstrate course completion and comprehension of learning to the provider before documentation is given.~~
- ~~(3) One “hour” of continuing education. — At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of an instructor, or in a distance learning activity designed by an approved provider. One semester credit hour at an accredited post-secondary institution shall be equivalent to 25 clock hours.~~
- ~~(4) It shall be the licensee’s responsibility to ensure that each course for which they claim credit is consistent with these definitions.~~

(f) Licensees shall ensure that each continuing education course for which they claim credit on their application for renewal of licensure is consistent with the definitions and requirements set forth in this Section.

(g) The Board may audit licensees at random to assure compliance with these requirements.

Authority G.S. 90-626(9); 90-632.

21 NCAC 30 .0702 CONTINUING EDUCATION DEFINITIONS

~~An approved continuing education provider is one which meets one of the following criteria:~~

- ~~(1) The provider has been granted the designation of “Approved Provider of Category A Continuing Education Programming” by the National Certification Board for Therapeutic Massage and Bodywork. The provider shall maintain this status without interruption, and shall follow all regulations set forth by NCBTMB; or~~
- ~~(2) The provider is a regionally accredited post-secondary institution of higher learning, and offers courses which meet the Board’s definition of continuing education for massage and bodywork therapists.~~

The following definitions apply to this Section:

- (1) Continuing education. -- Learning experiences that enhance and expand the skills, knowledge, and attitudes of massage and bodywork therapists that enable them to render competent professional service to clients, the profession and the public.
- (2) Distance learning. -- Courses taken by home study that are produced by an approved provider, whether delivered by videotape, audiotape, printed materials, or computer-based means. The licensee shall demonstrate achievement of learning objectives and completion of course requirements to the provider before credit is given.

- (3) One "contact hour" of continuing education. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of an instructor, or in a distance learning activity designed by an approved provider. One semester credit hour at a post-secondary institution shall be equivalent to 16 contact hours.
- (4) Professional ethics. -- A system of conduct guided by principles which are intended to ensure the safe and effective practice of massage and bodywork therapy.

Authority G.S. 90-626(9); 90-632.

21 NCAC 30 .0703 SUBJECT MATTER FOR APPROVED CONTINUING EDUCATION COURSES

(a) Pursuant to the definitions of continuing education set forth in Rules .0701(a) and .0702(1), approved continuing education courses shall have stated learning objectives that relate directly to the scope of practice for massage and bodywork therapy set forth in G.S. 90-622(3).

(b) Subject matter for approved courses may include:

- (1) Theory, philosophy or methodology of manual or movement-based techniques that are utilized with clients for therapeutic, educational, or relaxation purposes;
- (2) The structure, function, or pathologies of the body;
- (3) Applications of massage and bodywork therapy for specific needs, conditions, or client populations;
- (4) Client assessment protocols, skills for client record keeping and case management, strategies for interfacing with other licensed health care providers;
- (5) The use of external adjunctive agents such as water, light, sound, heat, cold, or topical applications of plant or mineral-based substances;
- (6) Body-centered or somatic psychology, psychophysiology, interpersonal skills - that may include communication skills, boundary functions, and the phenomena of transference, countertransference and projection;
- (7) Standards of practice, professional ethics or laws that relate to the Practice Act and Rules of the Board;
- (8) Strategies for the marketing or development of massage and bodywork therapy practices;
- (9) Theory or practice of ergonomics as applied to therapists or clients;
- (10) Hygiene, methods of infectious disease control, organization and management of the treatment environment;
- (11) Development of research protocols for massage and bodywork therapy;
- (12) Courses in teaching methods which prepare licensees to meet or maintain the qualifications for instructional staff at approved massage and

bodywork therapy schools, pursuant to Rule .0610(b).

(c) Approved continuing education courses shall not include:

- (1) Courses in practices which are prohibited pursuant to G.S. 90-622(5), including electrical stimulation, ultrasound, chiropractic adjustive procedures or medical diagnostic procedures;
- (2) Courses in psychological counseling or diagnostic methods, emotional release-based cathartic therapies, or regression-oriented therapies;
- (3) Courses taken by licensees for personal development or self-care, including dance, yoga, t'ai chi, martial arts, strength training or fitness classes, meditation, astrology, religious or spiritual practices;
- (4) Courses in business management skills, including bookkeeping, accounting, tax preparation, insurance billing, use of computer hardware or software, technical writing, or graphic design;
- (5) Participation in supervision groups, whether facilitated by a peer or mentor;
- (6) Apprenticeship with another licensee or another licensed health care provider;
- (7) Teaching experiences, where the licensee is either a presenter or a teaching assistant;
- (8) In-service trainings or orientations for faculty or staff of Board-approved massage and bodywork therapy schools that do not meet the criteria of approved continuing education, and that are not delivered by an approved continuing education provider;
- (9) Volunteer service work, or participation in professional membership organizations;
- (10) Therapeutic experiences where the licensee is in the role of client receiving the professional service;
- (11) Courses in nutrition or nutritional supplements; homeopathic or botanical medicines which are taken internally; and
- (12) Courses in First Aid or Cardiopulmonary Resuscitation.

(d) Acceptable subject matter for professional ethics courses required by Rule .0701(e) of this Section may include compliance with Practice Act and Rules of the Board, management of the therapist/client relationship, boundary functions, professional communication skills, conflict resolution, cultural diversity issues, infectious disease control guidelines, and standards of practice.

Authority G.S. 90-626(9); 90-632.

21 NCAC 30 .0704 APPROVED CONTINUING EDUCATION PROVIDER

An approved continuing education provider is one that meets one of the following criteria:

- (1) The provider has been granted the designation of "Approved Provider for Continuing Education" by the National Certification Board

for Therapeutic Massage and Bodywork (NCBTMB). The provider shall have this designation when the course begins and shall maintain this designation continuously until the course is completed. The Board does not recognize any retroactive designation of provider approval by NCBTMB. Except as herein stated, the provider shall follow all regulations set forth by NCBTMB; or

- (2) The provider is a post-secondary institution of higher learning that is accredited by one of the six regional institutional accrediting agencies recognized by the United States Department of Education.

Authority G.S. 90-626(9); 90-632.

SECTION .0900 - COMPLAINTS, DISCIPLINARY ACTION AND HEARINGS

21 NCAC 30 .0901 PURPOSE AND SCOPE

~~The Practice Act authorizes the Board to conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under the Act. The Board may issue, review, deny, suspend, revoke or refuse to issue or renew any license under the Act. This law was enacted to protect the public health, safety and welfare; therefore, it is the policy of the Board to discipline incompetent and fraudulent practitioners.~~

The Rules in this Section establish the procedures for the Board to use in disciplining practitioners, schools and other persons or entities who are in violation of the Practice Act or the Rules in this Chapter.

Authority G.S. 90-626(5), (6), (7).

21 NCAC 30 .0902 COMPLAINTS

~~(a) A complaint regarding a violation of the Practice Act or Rules and Regulations the Rules in this Chapter shall be submitted in writing and shall document:~~

- ~~(1) The name of the licensee licensee, school, or other person or entity involved;~~
- ~~(2) A description of the alleged behavior or incident; and~~
- ~~(3) The name, mailing address and phone number of the person filing the complaint.~~

~~(b) The complaint shall be delivered to the Board administrative offices by mail, private carrier or in person. Complaints transmitted by facsimile or electronic mail will shall not be accepted.~~

~~(c) An incomplete complaint may be corrected and resubmitted.~~

Authority G.S. 90-626(13).

21 NCAC 30 .0903 ACTION ON A COMPLAINT

Action on a complaint consists of the following:

- (1) The Board shall receive and acknowledge complaints, open a file and initiate complaint tracking.

PROPOSED RULES

- (2) Complaints ~~will shall~~ be screened to determine jurisdiction and the type of response appropriate for the complaint.
 - (3) Investigation:
 - (a) If the facts ~~do not clearly~~ indicate a Practice Act ~~violation,~~ violation which cannot be verified and the complaint can be handled without an investigation, the Board ~~shall may~~ request that the licensee or school cease conduct that could result in a Practice Act violation.
 - (b) If the facts ~~clearly~~ indicate a Practice Act violation, the Board shall commence an investigation. The Board may utilize additional personnel such as licensees, law enforcement officials, or other technical personnel that may be required in a particular case. If a Board member is utilized in the investigation, ~~care must be taken to observe~~ due process must be observed by separating (1) investigation, (2) prosecution, and (3) hearings and final decision-making. No Board member shall participate in more than one of these three steps in the enforcement process.
 - (c) A confidential report of each investigation shall be prepared for the Board's review.
 - (4) Formal and Informal Hearings:
 - (a) The Board, after review of an investigative file, may schedule an informal meeting.
 - (b) If the matter cannot be resolved informally, then a formal hearing shall be held.
 - (c) Members of the Board shall not make ex parte communication with parties to a hearing.
 - (5) Final Orders: ~~As soon as possible, but at least within sixty (60) days,~~ Within 60 days, the Board will issue its final decision in writing specifying the date on which it will take effect. The Board will serve one copy of the decision on each party to the hearing.
 - (6) Compliance: The Board Chair will cause a follow-up inquiry to determine that the orders of the Board are being obeyed.
- (a) The following types of disciplinary sanctions regarding massage and bodywork therapists may, among others, be utilized by the Board:
 - (1) Denial of Application: Refusal to license the applicant;
 - (2) Letter of Reprimand: An expression of displeasure. The mildest form of administrative action. This formal expression of disapproval will be retained in the licensee's file but shall not be publicly announced. It is not published, but is released upon request;
 - (3) Probation: A period of time where ~~certain~~ restrictions or conditions are imposed on a license. Continued licensure is subject to fulfillment of specified conditions;
 - (4) Suspension of license: A condition of probation. Loss of license for a ~~certain duration of time period~~ after which the individual ~~may shall~~ be required to reapply for licensure or remain on probation;
 - (5) Refusal of License Renewal: A refusal to reinstate or renew a license;
 - (6) Revocation of license: An involuntary termination of a license;
 - (7) Injunction: A court action prohibiting or compelling conduct by a ~~licensee,~~ licensee; and
 - (8) Assessment of a civil penalty.
 - (b) The following types of disciplinary sanctions regarding schools of massage and bodywork therapy may, among others, be utilized by the Board:
 - (1) Denial of Application: Refusal to grant approval to the applicant school;
 - (2) Letter of Reprimand: An expression of displeasure. A formal expression of disapproval will be retained in the school's file but shall not be publicly announced. It is not published, but is released upon request;
 - (3) Probation: A period of time where ~~certain~~ restrictions or conditions are imposed on an approved school. Continued approval is subject to fulfillment of specified conditions;
 - (4) Suspension of approval: A condition of probation. Loss of approval status for a ~~certain duration of time period~~ after which the school ~~may shall~~ be required to reapply for approval or remain on probation;
 - (5) Refusal of Approval: A refusal to reinstate or renew a school's approval status;
 - (6) Revocation of Approval: An involuntary termination of school's approval status;
 - (7) Injunction: A court action prohibiting or compelling conduct by a ~~school,~~ school; and
 - (8) Assessment of a civil penalty.
 - (c) The Board may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a licensee performs professional services, on possible chemical abuse, or incompetent or unethical behavior.

Authority G.S. 90-626(5), (6), (7), (13).

21 NCAC 30 .0904 FORMAL HEARING

Formal hearings shall be conducted in accordance with ~~G.S. 150B-38 et seq.~~ G.S. 150B, Article 3A.

Authority G.S. 90-626(6); 150B-38.

21 NCAC 30 .0905 DISCIPLINARY SANCTIONS

PROPOSED RULES

(d) The Board may request information from state regulatory agencies, accrediting commissions, or other institutions that oversee the activities of a school.

(e) The Board will shall provide notice of sanction taken by it to other public entities as necessary to ensure that other state boards, national certification boards, professional associations, enforcement authorities, and accrediting agencies receive the names of licensees and schools disciplined.

Authority G.S. 90-626(4), (14); 90-634.1.

CHAPTER 30 – NC BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Massage and Bodywork intends to amend the rule cited as 21 NCAC 30 .0606.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: February 18, 2004

Time: 9:00a.m.-2:00p.m.

Location: 150 Fayetteville Street Mall, Ste. 1300, Raleigh, NC

Reason for Proposed Action: To update rules to current definitions, practices, and financial requirements and make technical, grammatical changes.

Procedure by which a person can object to the agency on a proposed rule: Write to NCBMBT at P.O. Box 2539, Raleigh, NC 27602.

Written comments may be submitted to: Charles P. Wilkins, P.O. Box 2539, Raleigh, NC 27602

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with GS. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)

None

SECTION .0600 - MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0606 SCHOOL APPROVAL FEES

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

(b) Fees for initial application for Board approval of schools within the State are as follows:

- (1) Request for Approval Application Package \$ 100.00
(2) Initial application for Board approval (one program) 3000.00
(3) Initial application for Board approval of additional programs 1500.00
(4) at same location

(c) Fees for annual renewal of approval for schools within the State are as follows:

- (1) The annual renewal fee shall be Two Thousand Dollars (\$2000.00), or One Hundred Dollars (\$100.00) per student enrollment, whichever is greater. This per-enrollment fee is calculated according to a formula that is based on Board's total cost of administering the approval program in the 2003-04 Fiscal Year, divided by the aggregate number of student enrollments at approved schools in the 2003-04 Fiscal Year.
(2) The annual renewal fee for additional programs shall be One Thousand Dollars (\$1000.00), or Fifty Dollars (\$50.00) per student enrollment, whichever is greater.
(3) For Fiscal Years 2004-05 and thereafter, the Board may increase or decrease these annual fees in Subparagraphs (1) and (2) of this Paragraph no more than 15% from the previous Fiscal Year's level, based on the formula stated herein.
(4) A school that is required to have more than one school inspection in a Fiscal Year in order to investigate or verify areas of noncompliance with the standards for school approval shall pay a fee of Five Hundred Dollars (\$500.00) plus expenses, for each such inspection.

(d) Fees for schools outside the State that are licensed or approved by the educational regulatory authority in the jurisdiction in which it operates are as follows:

- (1) Request for Approval Application Package \$50.00
(2) Fee for initial application for Board approval 1000.00
(3) Fee for application for Board approval of additional programs 500.00

PROPOSED RULES

- (4) Fee for annual renewal of Board approval (one program); 500.00
(5) Fee for annual renewal of Board approval (each additional program) 200.00

- Local
Substantive (>=\$3,000,000)
None

SUBCHAPTER 32A – ORGANIZATION

SECTION .0101 – ORGANIZATION

21 NCAC 32A .0101 LOCATION

The location of the office of the North Carolina Medical Board is 1201 1203 Front Street, Raleigh, North Carolina 27609

Authority G.S. 90-2.

SUBCHAPTER 32B – LICENSE TO PRACTICE MEDICINE

SECTION .0100 – GENERAL

21 NCAC 32B .0101 DEFINITIONS

The following definitions apply to Rules within this Subchapter:

- (1) ACGME – Accreditation Council for Graduate Medical Education.
(2) AOA – American Osteopathic Association.
(3) Board – Board of Medical Examiners of the State of North Carolina The North Carolina Medical Board.
(4) ECFMG – Educational Commission for Foreign Medical Graduates.
(5) Fifth Pathway – an avenue for licensure as defined in the Directory of Accredited Residencies 1977-1978, American Medical Association, pp. 30-32.
(6) FLEX – Federation Licensing Examination (not administered after December 1993).
(7) LCME – Liaison Commission on Medical Education.
(8) SPEX – Special Purpose Examination.
(9) AMA Physician’s Recognition Award – American Medical Association recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
(10) American Specialty Boards ABMS— specialty boards approved by the American Board of Medical Specialties.
(11) USMLE – United States Medical Licensing Examination.
(12) CAQ – Certificate of Added Qualification.
(13) NBOME – National Board of Osteopathic Medical Examiners.
(14) COMLEX – Comprehensive Osteopathic Medical Licensure Examination.
(15) FCVS – Federation Credential Verification Service.
(16) FSMB – Federation of State Medical Boards.
(17) AOIA – American Osteopathic Information Association.
(18) CME – Continuing Medical Education.
(19) AMA – American Medical Association.

Authority G.S. 90-626(8); 90-631.

CHAPTER 32 - NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rules cited as 21 NCAC 32A .0101; 32B .0101-.0102, .0204, .0206-.0207, .0209-.0214, .0301-.0302, .0304-.0307, .0309, .0311-.0315, .0608, .0705, .0808 and repeal the rules cited as 21 NCAC 32B .0215, .0310, .0316.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: February 17, 2004

Time: 10:00 a.m.

Location: North Carolina Medical Board, 1203 Front St., Raleigh, NC

Reason for Proposed Action: To streamline and clarify the license application process, amend the requirement for a personal interview for licensure applicants, and amend the information and documents that must be submitted with a license application.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted via e-mail to Brian Blankenship and at the public hearing.

Written comments may be submitted to: Brian L. Blankenship, 1203 Front St., Raleigh, NC 27609 and email brian.blankenship@ncmedboard.org.

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

State

Authority G.S. 90-6.

21 NCAC 32B .0102 DISCARDING APPLICATION MATERIAL

~~An application~~ Applications must be completed within one year of the date received by the requirements are mailed from the Board's office. If not completed within one year, any application materials received will be considered invalid and may be discarded.

Authority G.S. 90-6.

SECTION .0200 – LICENSE BY WRITTEN EXAMINATION

21 NCAC 32B .0204 CERTIFIED PHOTOGRAPH AND CERTIFICATION OF GRADUATION

An applicant for written examination must submit a recent photograph, at least 2 ½ inches by 2 3/4 inches, affixed to the Board's Medical Education Certification form certified on the back as a true likeness of the applicant by the dean or other official of the applicant's medical school, school indicating the applicant's date of graduation from medical school. This certification must bear the original signature of the dean or other official of the medical school in the designated space and the seal of the medical ~~school,~~ school partially over the photograph.

Authority G.S. 90-9.

21 NCAC 32B .0206 APPLICATION FORMS

~~An applicant for written examination must complete the following application forms which request information regarding the applicant's personal, educational, and professional background:~~

- ~~(1) the Board's Questionnaire;~~
- ~~(2) the Federation of State Medical Board's application form~~

(a) An applicant for written examination must complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.

(b) An applicant for written examination may use the FSMB's FCVS process. This does not exclude the requirement of other documentation required by the Board as outlined in this subsection that is not included in the FCVS profile.

Authority G.S. 90-9; 90-11.

21 NCAC 32B .0207 LETTERS OF RECOMMENDATION

An applicant for written examination must request that three letters of recommendation be submitted to the Board on his behalf. The letters must be originals addressed to the Board and must contain the original signature of the author. One of the letters must be from someone who has known the applicant for a period of ten ~~years.~~ years and two Two of the letters must be from ~~physicians.~~ physicians and shall be on the Board forms. Recommendations shall not be from relatives.

Authority G.S. 90-9; 90-11.

21 NCAC 32B .0209 EXAMINATION FEE

~~(a) FLEX fee:~~

~~(1) The fee for both components of the FLEX written examination taken together is two hundred and fifty dollars (\$250.00), plus the cost of test materials, due at the time of application.~~

~~(2) If the two FLEX components are taken separately, the fee for each component is due at the time of application for that component as follows:~~

~~(A) for the first component, two hundred and fifty dollars (\$250.00) plus the cost of test materials;~~

~~(B) for the second component, one hundred and fifty dollars (\$150.00) plus the cost of test materials.~~

~~(b) USMLE fee— The fee for USMLE is four hundred dollars (\$400.00), plus the cost of test materials, due at the time of the application.~~

~~(c) Fee is non-refundable~~

(a) A fee of two hundred and fifty dollars (\$250.00) is due at the time of application.

(b) In the event the applicant does not appear for the exam licensure is denied, or the application is withdrawn no portion of the fee may be refunded.

Authority G.S. 90-15.

21 NCAC 32B .0210 REQUIRED APPLICATION MATERIALS

~~All application materials must be in the Board's office at least 90 days prior to the written examination. The 90 day deadline may be waived on the certification of graduation requirement, Rule.0203 of this Section, if the applicant is either in attendance at a medical school approved by LCME or AOA located in North Carolina or is a citizen of the State of North Carolina. However, before the examination, the applicant must satisfy the certificate of graduation requirement as follows:~~

~~(1) Not less than 90 days before the date of the examination, the Board must receive a letter from the dean of the applicant's medical school stating that the applicant is expected to complete all requirements for graduation prior to the date of the examination.~~

~~(2) Prior to the date of the examination, the Board must receive a letter from the dean of the applicant's medical school stating that the applicant has completed all requirements for, and will receive, the M.D. degree from the medical school.~~

~~(3) After the applicant's graduation, the Board must receive a letter from the applicant's medical school certifying the date on which the applicant received the M.D. degree. This certification must bear the signature of the dean or other official and the seal of the medical school.~~

An applicant for the written examination must provide:

(1) Reports from all relative state agencies in which the applicant has ever held a professional license, to include medical, dental, nursing and law, indicating the status of the applicant's license and whether or not

the license has been revoked, suspended, surrendered, or placed on probation must be mailed directly from other state agencies to the Board.

- (2) AMA Physician Profile (requested by applicant of AMA);
- (3) FSMB Data Bank inquiry (requested by applicant of FSMB);
- (4) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician; and
- (5) FSMB USMLE certified transcript of scores showing a score of at least 75 on USMLE Step 1 and USMLE Step 2 (requested by applicant of FSMB).

Authority G.S. 90-9.

21 NCAC 32B .0211 PASSING SCORE

~~To pass the FLEX written examination, the applicant is required to attain a score of at least 75 on FLEX Component I and a score of at least 75 on FLEX Component II. Components may be taken in tandem. Any component that is failed may be retaken; however, Component II may not be taken alone unless the applicant has passed Component I within the last seven years. Both components must be passed within seven years of the date of taking the initial examination.~~

To pass Step 3 of the USMLE the applicant is required to attain a score of at least 75. Step 3 must be passed within seven years of passing Step 1 OR within 10 years if the reason for the delay is based on applicant obtaining an MD/PhD degree.

Authority G.S. 90-9; 90-12; 90-15.

21 NCAC 32B .0212 EXAMINATION TIMES

~~Two licensing examinations may be held each year, one in June and one in December.~~

The examination is available on a daily basis at centers established by the FSMB.

Authority G.S. 90-5.

21 NCAC 32B .0213 GRADUATE MEDICAL EDUCATION AND TRAINING FOR LICENSURE

~~Before licensure, physicians who pass the written examination must furnish the following: following current credentials:~~

- (1) Board application questionnaire;
- (2) Proof of graduate medical education and training taken after graduation from medical school school, (except for a dentist as permitted in G.S. 90-9(2)), as follows:
 - (a) A graduate Graduates of a medical school schools approved by LCME or AOA must have satisfactorily completed one year of graduate medical education and training approved by ACGME or AOA.
 - (b) A graduate Graduates of a medical school schools not approved other than those approved by LCME or AOA must have satisfactorily

completed three years of graduate medical education and training approved by ACGME or AOA;

- (c) A graduate of a medical school not approved by LCME or AOA may satisfy the three-year postgraduate training requirement with at least one year of LCME or AOA approved training in combination with certification by a specialty board recognized by the ABMS or AOA.

- (3) ~~Letters from all training program directors since passing the written examination; examination regarding standing and length of training;~~

- (4) ~~Reports from all states relative state agencies in which the applicant has ever held a professional license to include medical, dental, nursing and law, been licensed to practice medicine indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probationary terms (must be mailed directly from other state agencies boards to the Board);~~

- (5) AMA Physician Profile (requested by applicant of AMA); AMA by the Board); and
- (6) FSMB Data Bank Inquiry Federation inquiry (requested of the Federation of State Medical Boards by the Board);(requested by applicant of FSMB); and

- (7) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician).

Authority G.S. 90-9.

21 NCAC 32B .0214 PERSONAL INTERVIEW

~~To be eligible for the written examination, an An applicant may be required to appear, in person, for an interview with who is a graduate of a medical school not approved by the LCME or AOA must appear before the Executive Director or the Director of Finance /Operations/Human Resources Director, a Board Member, an agent of the Board, or the full Board for a personal interview upon completion of all application credentials after passing the examination and prior to a license being issued. This interview must be conducted at least 75 days prior to the date of the examination.~~

Authority G.S. 90-6.

21 NCAC 32B .0215 EXAMINATION COMBINATIONS

~~(a) To be eligible to take Step 3 of USMLE, an applicant must supply certification of a passing score on one of the examination combinations listed in Paragraph (c) of this Rule.~~

~~(b) The routine examination sequences are as follows:~~

- (1) ~~National Boards Part I
National Boards Part II
National Boards Part III~~
- (2) ~~FLEX Component I~~

FLEX Component 2

(3) ~~USMLE Step 1~~

~~USMLE Step 2~~

~~USMLE Step 3~~

(c) ~~The following combinations are acceptable for licensure if completed prior to the year 2000:~~

~~(1) National Board Part I or USMLE Step 1 plus~~

~~National Board Part II or USMLE Step 2 plus~~

~~National Board Part III or USMLE Step 3~~

~~(2) FLEX Component 1 plus USMLE Step 3~~

~~(3) National Board Part I or USMLE Step 1 plus~~

~~National Board Part II or USMLE Step 2 plus~~

~~FLEX Component 2~~

Authority G.S. 90-6; 90-9; 90-11.

SECTION .0300 - LICENSE BY ENDORSEMENT

21 NCAC 32B .0301 MEDICAL EDUCATION

~~An applicant~~ Applicants for license by endorsement of credentials must have the medical education required by G.S. 90-9. To be eligible for license by endorsement of credentials, an applicant must have the following medical education:

- (1) be a graduate of a medical school approved by either LCME or AOA and meet the requirements regarding graduate medical education and training under Rule .0313 of this Section.
- (2) be a graduate of a medical school not approved by LCME or AOA and meet the requirements regarding:
 - (a) graduate medical education and training under Rule. 0313 of this Section, and
 - (b) ECFMG certification under Rule .0302 of this Section.

No applicant graduated from a medical school which has been disapproved by the Board shall be eligible for licensure in North Carolina. The burden of proof of medical education is on the applicant.

Authority G.S. 90-13.

21 NCAC 32B .0302 ECFMG CERTIFICATION

To be eligible for license by endorsement of credentials, ~~an applicant~~ applicants who ~~is a graduate~~ are graduates of a medical school ~~schools not approved other than those approved~~ by LCME or AOA must furnish a an original photocopy ECFMG Certification Status Report of a currently valid standard certificate of ECFMG. ECFMG certification may be waived by the Board if the applicant has either:

- (1) passed the ECFMG examination and successfully completed an approved Fifth Pathway ~~Program; Program (original ECFMG Certification Status Report from the ECFMG required);~~ or
- (2) been licensed in another state on the basis of written examination prior to the establishment of ECFMG in 1958.

Authority G.S. 90-6; 90-9; 90-10.

21 NCAC 32B .0304 APPLICATION FORMS

(a) ~~An applicant for license by endorsement of credentials must complete the Board's application forms requesting form which requests information regarding the applicant's personal, education, and professional background.~~
 (b) ~~An applicant for license by endorsement may use the FSMB's FCVS process. This does not exclude the requirement of other documentation required by the Board as outlined in this subsection that is not included in the FCVS profile.~~

Authority G.S. 90-10; 90-13.

21 NCAC 32B .0305 EXAMINATION BASIS FOR ENDORSEMENT

(a) ~~To be eligible for license by endorsement of credentials, a physician must possess a valid and unrestricted license to practice medicine in another state based on an examination testing general medical knowledge or passed an examination for license testing general medical knowledge (examination determined by the Board to be equivalent to the Board's examination). Original certification of passing scores must be provided to the Board from the examination source. graduates of medical schools approved by the LCME or AOA must supply certification of passing scores on one of the following written examinations:~~

- ~~(1) National Board of Medical Examiners;~~
- ~~(2) FLEX under Rule .0314 of this Section~~
- ~~(3) Written examination administered by an allopathic or composite state medical board which issued the original license on the basis of written examination other than FLEX;~~
- ~~(4) National Board of Osteopathic Examiners, Part 1 taken after January 1, 1987 and Parts 2 & 3 taken after January 1, 1990; or~~
- ~~(5) USMLE Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215 (c) of this Subchapter.~~

(b) ~~Graduates of medical schools not approved by LCME or AOA must supply certification of passing scores on one of the following written examinations:~~

- ~~(1) FLEX under Rule.0314 of this Section;~~
- ~~(2) Written examination other than FLEX from the state board which issued the applicant's original license by written examination together with American Specialty Board certification; or~~
- ~~(3) USMLE Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215 (c) of this Subchapter.~~

(c) ~~A Physician who has a valid and unrestricted license to practice medicine in another state, based on a written examination testing general medical knowledge, and who within the past five years has become, and is at the time of application, certified or recertified by an American Specialty Board or an AOA approved Specialty Board, is eligible for license by endorsement.~~

(d) ~~Applicants for license by endorsement of credentials with FLEX scores that do not meet the requirements of Rule. 0314 of this Section must meet the requirements of Paragraph (c) in this Rule.~~

Authority G.S. 90-10; 90-13.

21 NCAC 32B .0306 LETTERS OF RECOMMENDATION

An applicant for license by endorsement of credentials must request that three letters of recommendation be submitted to the Board on his behalf. The letters must be originals addressed to the Board and must contain the original signature of the author. One of the letters must be from someone who has known the applicant for a period of 10 ~~years~~ years and two ~~Two~~ of the letters must be from ~~physicians~~ physicians and shall be on Board forms. Recommendations shall not be from relatives.

Authority G.S. 90-11; 90-13.

21 NCAC 32B .0307 CERTIFIED PHOTOGRAPH AND CERTIFICATION OF GRADUATION

An applicant for license by endorsement of credentials must submit a recent photograph, at least 2 ½ inches by ~~3 ¼~~ 2 inches, affixed to the Board's Medical Education Certification form, certified on the back as a true likeness of the applicant by the dean or other official of the applicant's medical school indicating the applicant's date of graduation from medical school. This certification must bear the original signature of the dean or other official of the medical school in the designated space and the seal of the medical school, school over the photograph.

Authority G.S. 90-13.

21 NCAC 32B .0309 PERSONAL INTERVIEW

~~To be eligible for license by endorsement of credentials, An applicant applicants may be required to appear, in person, for an interview with must appear before the Executive Director, Director of Finance/Operations/Human Services, a Board member, an agent of the Board, or the full Board for a personal interview upon completion of all credentials.~~

Authority G.S. 90-13.

21 NCAC 32B .0310 DEADLINE

~~For an applicant to be eligible for license by endorsement of credentials at a given Board meeting, all application materials must be in the Board's office at least 15 days prior to the meeting.~~

Authority G.S. 90-6.

21 NCAC 32B .0311 ENDORSEMENT RELATIONS

An Applicant under G.S. 90-13 is required to have license in another state. The Board does not grant a license by endorsement of credentials on the basis of practice in any government service nor on the basis of licensing by medical boards outside the United States and its territories.

Authority G.S. 90-13.

21 NCAC 32B .0312 ROUTINE INQUIRIES

An applicant for license by endorsement must request that the following reports be submitted to the Board:

- ~~(1) If affiliated with a county or state medical society, a letter of current standing must be submitted on the applicant's behalf.~~
- ~~(1)(2) Reports from all states relative state Medical Boards or agencies in which the applicant has ever held a professional license been licensed to include medical, dental, nursing, and law, practice medicine indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation probationary terms must be mailed directly from other state boards or agencies to the Board.~~
- ~~(2) An AMA Physician Profile is requested of AMA by the Board. (requested by applicant of AMA).~~
- ~~(3) FSMB Data Bank inquiry (requested by applicant of FSMB).~~
- ~~(4) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician.~~

Authority G.S. 90-13.

21 NCAC 32B .0313 GRADUATE MEDICAL EDUCATION AND TRAINING

To be eligible for license by endorsement of credentials, an applicant applicants must furnish proof of graduate medical education and training taken after graduation from medical ~~school school~~ (except for a dentist as permitted in G.S. 90-9(2)), as follows:

- ~~(1) A graduate Graduates of a medical school schools approved by LCME or AOA must have satisfactorily completed one year of graduate medical education and training approved by ACGME or AOA.~~
- ~~(2) A graduate Graduates of a medical school schools other than those not approved by LCME or AOA must have satisfactorily completed three years of graduate medical education and training approved by ACGME or AOA.~~
- ~~(3) A graduate of a medical school not approved by LCME or AOA may satisfy the three-year postgraduate training requirement with at least one year of LCME or AOA approved training in combination with certification by a specialty board recognized by the ABMS or AOA specialty boards.~~

Authority G.S. 90-13.

21 NCAC 32B .0314 PASSING EXAM SCORE

~~(a) FLEX Physicians who have taken the FLEX examination may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:~~

- ~~(1) FLEX taken before January 1, 1983 a FLEX weighted average of 75 or more on a single three day examination is required.~~

~~(2) FLEX taken after January 1, 1983 — A FLEX weighted average of 75 or more on a single three day examination, with a score not less than 70 on Day I, a score not less than 75 on Day II and a score of not less than 75 on Day III, is required.~~

~~(3) FLEX taken after January 1, 1985;~~

~~(A) A score of at least 75 on FLEX Component I and a score of at least 75 on FLEX Component II is required~~

~~(B) Components may be taken in tandem. Any component that is failed may be retaken; however, Component II may not be taken alone unless the applicant has passed Component I within the last seven years.~~

~~(C) Both components must be passed within seven years of the date of taken the initial examination.~~

~~(b) — USMLE — Physicians who have taken the USMLE may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:~~

~~(1) A score of least 75 is required on Step 3~~

~~(2) The USMLE Step 3 must be passed within seven years of the date of taking Step 1.~~

~~(3) Examination Combinations — Physicians who have taken combinations of examinations as set out in Rule .0215 of this Subchapter may be eligible to apply for a license by endorsement of credentials if they meet the score requirements of this Rule.~~

USMLE – An applicant who has taken USMLE may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

(1) A score of at least 75 is required on Step 3

(2) The USMLE Step 3 must be passed within seven years of the date of passing Step 1 OR within 10 years if the reason for the delay is based on applicant obtaining a MD/PhD degree.

Authority G.S. 90-6; 90-10; 90-13.

21 NCAC 32B .0315 TEN-YEAR QUALIFICATION

Pursuant to the discretion granted in G.S. 90-13, the Board may issue a license to any applicant without examination using the following guidelines.

(1) In addition to all other requirements for licensure, an applicant who has not met one of the following qualifications within the past 10 years of the date of the application to the Board, must take the SPEX, or other examination as determined by the Board, and attain a score of at least 75:

(a) National Board of Medical Examiners certification;

(b) National Board of Osteopathic Medical Examiners certification;

~~(b)(c) Examination for license testing general medical knowledge; Exam~~

~~scores as required under Rule .0314 of this Section;~~

~~(e)(d) SPEX score of at least 75;~~

~~(d)(e) certification or re-certification from a specialty board recognized by the ABMS American Board of Medical Specialties or the AOA American Osteopathic Association; or certification or re-certification with added qualifications from a specialty or subspecialty board recognized by the ABMS or AOA; or~~

~~(f) — examination combinations as set out in Rule .0215(e) of this Subchapter.~~

~~(f) Completion of formal postgraduate medical education as required under Rule .0313 of this Section;~~

(2) The SPEX requirement may be waived by the Board upon receipt of a current AMA Physician's Recognition Award, Award or acceptable AOA CME.

Authority G.S. 90-11; 90-13.

21 NCAC 32B .0316 SPEX FEE

(a) The fee for taking SPEX, or other examination as determined by the Board, will be the Board's cost of the test materials and is due at the time of application.

(b) In the event the applicant fails to make a passing score, the fee will not be refunded.

(c) In the event the applicant does not appear for the regularly scheduled examination or the application is withdrawn, no portion of the fee will be refunded.

Authority G.S. 90-15.

SECTION .0600 - SPECIAL LIMITED LICENSE

21 NCAC 32B .0608 PERSONAL INTERVIEW

An applicant for special limited license ~~is required to appear in person~~ may be required to appear, in person, for an interview ~~with before the Executive Director, a board member, an agent of the Board or the full Board~~ at a regular meeting.

Authority G.S. 90-12.

SECTION .0700 - CERTIFICATE OF REGISTRATION FOR VISITING PROFESSORS

21 NCAC 32B .0705 PERSONAL INTERVIEW

~~The An applicant for a visiting professor license applicant is required to appear in person before~~ may be required to appear, in person, for an interview with the Executive Director, a board member, an agent of the Board or the full Board.

Authority G.S. 90-12.

SECTION .0800 - MEDICAL SCHOOL FACULTY LICENSE

21 NCAC 32B .0808 PERSONAL INTERVIEW

PROPOSED RULES

The ~~An applicant for a medical school faculty license~~ must appear for a personal interview before ~~may be required to appear, in person, for an interview with the Executive Director, Director of Finance/Operations/Human Resources,~~ a Board member, an agent of the Board or the full Board.

Authority G.S. 90-12.

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to adopt the rule cited as 21 NCAC 32M .0103 and amend the rules cited as 21 NCAC 32M .0101-.0102, .0104-.0112, .0115-.0116.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 17, 2004

Time: 12:30 p.m.

Location: NC Board of Nursing, 3724 National Drive, Raleigh, NC

Reason for Proposed Action: To clarify the process for registration and approval to practice as a nurse practitioner, to revise requirements for nurse practitioner program curricula, collaborative practice agreements and continuing education.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Alexa Kapetanakis, PE Coordinator, NC Medical Board, PO Box 20007, Raleigh, NC 27619, voice mail (919) 326-1100, fax (919) 326-1100, and email alexa.kapetanakis@ncmedboard.org.

Written comments may be submitted to: Alexa Kapetanakis, PE Coordinator, NC Medical Board, PO Box 20007, Raleigh, NC 27619, voice mail (919) 326-1100, fax (919) 326-1100, and email alexa.kapetanakis@ncmedboard.org

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

21 NCAC 32M .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Medical Board" means the North Carolina Medical Board.
(2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
(3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
(4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts in the area of advanced academic educational preparation and national certification acts, consultation, collaboration and evaluation of the medical acts performed. Only are under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of medical acts performed. supervision of a registered nurse approved by the Medical Board and the Board of Nursing may legally identify oneself as a Nurse Practitioner. It is understood that the The nurse practitioner, by virtue of RN registered nurse (RN) licensure, is independently accountable for those nursing acts which he or she may perform.
(5) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Subchapter.
(6) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her/his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Subchapter.
(7)(5) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Rule .0104(f) .0102(b)(4) of this Subchapter.
(8)(6) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
(9)(7) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician

continuous availability to each other for ~~on-going~~ ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.

~~(10)~~(8) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the on-going supervision, ~~consultation, collaboration~~ collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement, site specific written protocols.

(a) The primary supervising physician shall assume the responsibility of assuring the Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement, site specific written protocols.

(b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.

(c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training ~~situation~~ situation if fully licensed.

~~(11)~~(9) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s), shall be held accountable for supervision, ~~consultation, collaboration~~ collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement, site specific written protocols when the Primary Supervising Physician is not available.

(a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.

(b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.

(c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician, may be a back-up supervising physician ~~to~~ for a nurse practitioner in the non-training ~~situation~~ situation if fully licensed

and has signed an agreement with the nurse practitioner and the primary supervising physician.

~~(10)~~ "Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Subchapter.

~~(11)~~ "Written protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting. Clinical practice issues that are not covered by the written protocols require nurse practitioner/physician consultation, and documentation related to the treatment plan.

(12) "Volunteer Approval practice" means approval to practice consistent with this Subchapter except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner ~~practitioner either directly or indirectly.~~

(13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.

(14) "Interim Status" means ~~the privilege limited~~ privileges granted by the Boards to a graduate of an approved nurse practitioner educational program meeting the requirements in Rule .0105(a) of this Subchapter or a registered nurse seeking initial approval in North Carolina, Carolina with limited privileges, as defined in Rule ~~.0104(f) .0103(b)(4)~~ of this Subchapter, while awaiting final approval to practice as a nurse practitioner.

(15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule for a period not to exceed ~~18~~ six months while awaiting notification of successful completion of the national certification examination.

(16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and the National Certification Board of Pediatric Nurse Practitioners and Nurses (PNP/N).

Authority G. S. 90-6; 90-18(14); 90-18.2.

21 NCAC 32M .0102 SCOPE OF PRACTICE

The nurse practitioner shall be responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner is educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Rule .0110 of this Subchapter. ~~21 NCAC 32M .0109.~~ These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

Authority G.S. 90-18(14).

21 NCAC 32M .0103 NURSE PRACTITIONER REGISTRATION

(a) The Board of Nursing shall register an applicant who:

- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States.
- (2) has successfully completed a nurse practitioner education program as outlined in Rule .0105 of this Subchapter; and
- (3) has supplied any additional information deemed necessary to evaluate the application.

(b) Beginning January 1, 2005 all registered nurses seeking first-time nurse practitioner registration in North Carolina shall:

- (1) hold a Master's Degree in Nursing or related field;
- (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body, and in addition have met the criteria as outlined in Rule .0105(a) and (c) of this Subchapter; and
- (3) provide documentation of certification by a national credentialing body.

Authority G.S. 90-18(13); 90-18.2; 90-171.36.

21 NCAC 32M .0103.0104 PROCESS FOR APPROVAL TO PRACTICE

(a) Prior to the performance of any medical acts, a nurse practitioner shall: Qualifications for nurse practitioner approval. A registered nurse shall be approved by the Medical Board and the Board of Nursing before the applicant may practice as a nurse practitioner. The Boards may grant approval to practice as a nurse practitioner to an applicant who:

- (1) submit notification of her/his intent to practice on forms provided by the Boards. Such notification of intent to practice shall include: is currently licensed as a registered nurse by the Board of Nursing;
 - (A) the practice name, practice address, and telephone number of the nurse practitioner; and
 - (B) the practice name, practice address, and telephone number of the primary supervising physician(s).
- ~~(2) has successfully completed an approved educational program as outlined in Rule .0103 of this Subchapter; or, as of January 1, 2000, meets the certification requirements set forth in Rule .0103(c) of this Subchapter;~~
- ~~(3) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;~~
- ~~(2)(4) submits submit any additional information deemed necessary to evaluate the application; and application;~~
- ~~(3)(5) has have a collaborative practice agreement with a primary supervising physician, physician; and~~
- ~~(6) pays the appropriate fee.~~

(b) Application for nurse practitioner approval.

- ~~(1) Application for nurse practitioner approval shall be made upon the appropriate forms and shall be submitted jointly by the nurse practitioner and primary supervising physician(s).~~

(b) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

(c) The nurse practitioner who discontinues working within the approved nurse practitioner collaborative practice agreement shall notify the Boards in writing. The nurse practitioner's approval to practice shall terminate. This Rule shall be waived in cases of emergency such as sudden injury, illness or death.

~~(d)(2)~~ Applications for first-time approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- ~~(1)(A)~~ the Board of Nursing will verify compliance with Rule .0103 Subparagraphs (a)(1) — (4) of this Subchapter and Paragraph (a) of this Rule; and
- ~~(2)(B)~~ the Medical Board will verify compliance with Subparagraph (a) Subparagraphs (a)(4) — (6) of this Rule. Rule; and
- ~~(C)~~ the appropriate Board will notify applicant of final approval status.

~~(e)(3)~~ Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- ~~(1)(A)~~ addition or change of primary supervising physician shall be submitted to the Board of Nursing and the Medical Board; and

- ~~(2)(B)~~ request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee; and
- ~~(C)~~ the appropriate Board will notify applicant of final approval status.

~~(f)(4)~~ Interim status for a nurse practitioner applicant may be granted to a registered nurse who is a graduate of an approved a nurse practitioner educational education program meeting the requirements of Rule .0105 and has met the registration requirements as set forth in Rule .0103 of this Subchapter; or a registered nurse seeking first-time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational education requirement and has met the registration requirements as set forth in Rule .0103 and .0105 of this Subchapter; and with the following limitations:

- ~~(1)(A)~~ no prescribing privileges;
- ~~(2)(B)~~ primary or back-up physicians shall be continuously available for appropriate ongoing supervision, collaboration, consultation consultation, collaboration and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- ~~(3)(C)~~ face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0110(e)(3) .0108(d)(4) of this Subchapter; and
- ~~(4)(D)~~ may not exceed a period of six months.

~~(g)(5)~~ Beginning January 1, 2000, first time First-time applicants who meet the qualifications for approval approval to practice, but are awaiting certification from a national credentialing body as referenced in Rule .0101(16) of this Subchapter, approved by the Board of Nursing, may shall be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed 48 six months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.

~~(h)(6)~~ The A registered nurse who was previously approved to practice as a nurse practitioner in this state shall:

- ~~(1)(A)~~ meet the nurse practitioner approval requirements as stipulated in Rule.0108(c) of this Subchapter; Subparagraphs (a)(1), (a)(3) – (a)(6) of this Rule;
- ~~(2)(B)~~ complete the appropriate application;
- ~~(3)(C)~~ receive notification of approval; and
- ~~(4)(D)~~ meet the quality assurance standards and consultation requirements as outlined in Rule .0108(d)(3) and (4) .0110(e)(2) –(3)of this Subchapter;Section.
- ~~(5)~~ meet the continuing education requirements as stated in Rules .0107 and .0108(d) of this Subchapter; and
- ~~(6)(7)~~ If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s) arrangement, or experiences an interruption in her/his registered nurse licensure status, the both Boards shall be notified in writing and the

nurse practitioner's approval shall automatically terminate. terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter. Special consideration may be given in an emergency situation.

~~(i)(8)~~ Volunteer Approval to Practice Approval for Nurse Practitioners. The Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina, as outlined in Rule .0102(a)(1) –(6) of this Section.

~~(j)~~ Pays the appropriate fee as outlined in Rule .0105 of this Subchapter.

Authority G.S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42.

21 NCAC 32M .0105.0104 EDUCATION AND CERTIFICATION REQUIREMENTS FOR REGISTRATION AS A NURSE PRACTITIONER

(a) A nurse practitioner applicant who completed a nurse practitioner educational education program prior to December 31, 1999 shall provide evidence of successful completion of a course of formal education which contains a core curriculum including 400 contact hours of didactic education and 400 contact hours of preceptorship or supervised clinical experience.

- (1) The core curriculum shall contain as a minimum the following components:
 - (A) health assessment and diagnostic reasoning including:
 - (i) historical data;
 - (ii) physical examination data;
 - (iii) organization of data base;
 - (B) pharmacology;
 - (C) pathophysiology;
 - (D) clinical management of common health care problems and diseases such as the following shall be evident in the nurse practitioner's academic program; related to:
 - (i) respiratory system;
 - (ii) cardiovascular system;
 - (iii) gastrointestinal system;
 - (iv) genitourinary system;
 - (v) integumentary system;
 - (vi) hematologic and immune systems;
 - (vii) endocrine system;
 - (viii) musculoskeletal system;
 - (ix) infectious diseases;
 - (x) nervous system;
 - (xi) behavioral, mental health and substance abuse problems;
 - (E) clinical preventative services including health promotion and prevention of disease;
 - (F) client education related to Parts (a)(1)(D) and (E) of this Rule; and

- (G) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.
- (2) Nurse practitioner applicants ~~who may be~~ exempt from components of the core curriculum requirements listed in Subparagraph (a)(1) of this Rule are:
 - (A) Any nurse practitioner approved to practice in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
 - (B) A nurse practitioner certified by a national credentialing body prior to January 1, 1998, who also provides evidence of satisfying Parts (a)(1)(A) - (C) of this Rule shall be exempt from core curriculum requirements in Parts (a)(1)(D) - (G) of this Rule. Evidence of satisfying Parts (a)(1)(A) - (C) of this Rule shall include, but may not be limited to:
 - (i) a narrative of course content; and
 - (ii) contact hours.
 - (C) A nurse practitioner seeking initial approval to practice after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in her/his/his/her specialty by a national credentialing body/body and ~~when initial certification was obtained after January 1, 1998.~~
 - (D) ~~A nurse practitioner applicant, whose formal education does not meet all of the stipulations in Subparagraph (b) of this Rule, may appeal to the Joint Subcommittee on the basis of other education and experience.~~

(b) ~~Instead of educational program approval, all Any nurse practitioner applicant/applicants who are applying for or have received, first-time first-time approval to practice as a nurse practitioner on or after between January 1, 2000 and July 31, 2004 shall be certified by a national credentialing body as referenced in Rule .0101(16) of this Subchapter or be awaiting initial certification by a national credentialing body for a period not to exceed 18 months from date temporary approval is granted.~~

(c) Each nurse practitioner applicant applying for approval to practice in North Carolina shall meet the education requirements as specified in Subparagraph (a)(1) of this Rule and shall provide documentation of certification by a national credentialing body within six months from the date temporary approval is granted.

(d) A Nurse Practitioner approved under this Rule shall keep proof of current licensure, registration and approval available for inspection at each practice site and made available for inspection upon request by agents of either Board.

Authority G.S. 90-18(14); 90-171.42.

21 NCAC 32M .0106-.0105 ANNUAL RENEWAL

(a) Each registered nurse who is approved to practice as a nurse practitioner in this state shall annually renew each approval to practice with the Medical Board no later than 30 days after the nurse practitioner's birthday by:

- (1) ~~Verifying-Maintaining~~ current RN licensure;
- (2) Submitting the fee required in Rule .0115 .0111 of this Subchapter; and
- (3) Completing the renewal form.

(b) ~~For the A nurse practitioner who had first-time with first-time approval to practice after January 1, 2000, shall provide evidence of certification or recertification by a national credentialing body.~~

(c) ~~If the A nurse practitioner who has not renewed within 60 days of the nurse practitioner's her/his birthday, the approval to practice as a nurse practitioner shall lapse.~~

Authority G.S. 90-6; 90-18(14); 90-171.23(b).

21 NCAC 32M .0107-.0106 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, ~~beginning no sooner than two years after initial approval has been granted,~~ the nurse practitioner shall earn ~~30~~ 100 contact hours of continuing education every two years. ~~At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs.~~ Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) and Accreditation Council on Continuing Medical Education (ACCME); ~~(ACCME)~~, or other national credentialing bodies or practice relevant courses in an academic institution/bodies. Documentation shall be maintained by the nurse practitioner ~~at each practice site~~ and made available upon request to either Board.

Authority G.S. 90-6; 90-18(14); 90-171.23(14).

21 NCAC 32M .0108-.0107 INACTIVE STATUS

(a) Any nurse practitioner who wishes to place ~~his or her her or his~~ approval to practice on an inactive status ~~may shall~~ notify the Boards by completing the form supplied by the Boards;

(b) ~~The registered A nurse practitioner with inactive nurse practitioner approval to practice status shall not practice as a nurse practitioner.~~

(c) ~~The registered A nurse practitioner with an inactive approval to practice nurse practitioner status who reapplies for approval to practice shall be required to meet the qualifications for approval to practice as stipulated in Rules .0103(a)(1), .0104(a); .0106(b); .0107; and .0110(a)(3) - (a)(6) and (b)(1) of this Subchapter and receive notification from both Boards.~~ Section.

(d) A nurse practitioner with an inactive approval to practice status of greater than five years shall complete a nurse practitioner refresher course consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(e) A nurse practitioner seeking first-time approval to practice who has not provided direct patient-care as a nurse practitioner in more than five years shall complete a nurse practitioner

refresher course consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

Authority G.S. 90-18(13); 90-18.2; 90-171.36.

21 NCAC 32M .0109-.0108 PRESCRIBING

AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the ~~written protocols~~ collaborative practice agreement as outlined in Rule ~~.0110(b) .0108(b)~~ of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in ~~written protocols, the collaborative practice agreement~~, providing all of the following requirements are met:
 - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
 - (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
 - (C) the prescription or order for schedules II, IIN, III and IIIN may not be refilled.
- (3) The nurse practitioner may prescribe a drug or device not included in the ~~site specific written protocols collaborative practice agreement~~ only as follows:
 - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year except for schedules II, IIN, III and IIIN ~~controlled substances~~ which may not be refilled.
- (5) Each prescription shall be noted on the patient's chart and include the following information:
 - (A) medication and dosage;
 - (B) amount prescribed;
 - (C) directions for use;

- (D) number of refills; and
- (E) signature of nurse practitioner.
- (6) The prescribing number assigned by the Medical Board to the nurse practitioner ~~must~~ shall appear on all prescriptions issued by the nurse practitioner.
- (7) Prescription Format:
 - (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number.
 - (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (c) The nurse practitioner may obtain approval to dispense the drugs and devices included in the ~~written protocols collaborative practice agreement~~ for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.

Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); 90-171.42; 58 Fed. Reg. 31,171 (1993) (to be codified at 21 C.F.R. 1301);

21 NCAC 32M .0110-.0109 QUALITY ASSURANCE STANDARDS FOR A COLLABORATIVE PRACTICE AGREEMENT

- (a) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.
- (b) ~~Written Protocols: Collaborative Practice Agreement:~~
 - (1) ~~Written protocols~~ shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site.
 - (2) ~~Written protocols~~ shall be reviewed at least ~~yearly~~ yearly, ~~and this~~ This review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, and appended to the ~~written protocol collaborative practice agreement~~ and available for inspection by members or agents of either ~~Board~~ board.
 - (3) ~~The written protocols~~ shall include the drugs, devices, medical ~~treatments, treatment,~~ tests and procedures that may be prescribed, ordered and ~~implemented~~ performed by the nurse practitioner consistent with Rule ~~.0109 .0107~~ of this ~~Subchapter; and Section, and~~ Subchapter, ~~and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting.~~
 - (4) ~~The written protocols~~ shall include a pre-determined plan for emergency services.

PROPOSED RULES

~~(c)(5)~~ The nurse practitioner shall be prepared to demonstrate the ability to perform medical acts as outlined in the ~~written protocols collaborative practice agreement~~ upon request by members or agents of either Board.

~~(d)(e)~~ Quality Improvement Process:

- (1) The primary supervising physician and the nurse practitioner shall develop a process for the on-going review of the care provided in each practice site to include a written plan for evaluating the quality of care provided for one or more frequently encountered clinical ~~problems, problems; and.~~
- (2) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time-frame.
- (3) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
 - (A) identify clinical problems discussed, including progress toward improving outcomes as stated in Subparagraph ~~(d)(2) (e)(2)~~ of this Rule, and recommendations, if any, for changes in treatment plan(s);
 - (B) be signed and dated by those who attended; and
 - (C) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.

~~(e)(d)~~ Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner/primary or back-up supervising physician(s):

- ~~(1) The nurse practitioner with temporary approval shall have:~~
 - ~~(A) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact for the first six months of collaboration. This time frame includes the period of interim status.~~
 - ~~(B) face-to-face consultation with the primary supervising physician on a weekly basis for one month after temporary approval is achieved and at least monthly throughout the period of temporary approval.~~
- ~~(1)(2) The nurse practitioner with first time approval to practice During the first six months of the initial collaborative practice agreement, there shall be:~~
 - (A) review and countersigning of notations of medical acts by a

primary or back-up supervising physician within seven days of nurse practitioner-patient contact. ~~contact for the first six months of collaborative agreement. This time-frame includes the period of interim status.~~

(B) ~~face-to-face consultation meetings with the primary supervising physician on a weekly basis for one month after full approval to practice is received and at least monthly for a period no less than the succeeding five total of six months.~~

~~(2)(3) The~~ During the first six months of a subsequent collaborative practice agreement between a nurse practitioner previously approved to practice in North Carolina who changes and a different primary supervising physician—physician, there shall be meetings ~~have face-to-face consultation with the new primary supervising physician weekly for one month and then monthly for the first six succeeding five months.~~

~~(3)(4)~~ Documentation of ~~consultation—the meetings~~ shall:

- (A) identify clinical issues discussed and actions taken;
- (B) be signed and dated by those who attended; and
- (C) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.

Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14).

21 NCAC 32M .0111-0110 METHOD OF IDENTIFICATION

~~The~~ When providing care to the public, the nurse practitioner or NP shall identify herself/himself as specified in G.S. 90-640 and 21 NCAC 36 .0231 wear an appropriate name tag spelling out the words "Nurse Practitioner."

Authority G.S. 90-18(14); 90-640.

21 NCAC 32M .0112-0111 DISCIPLINARY ACTION

~~The approval of a A nurse practitioner may be restricted, denied or terminated by~~ practitioner's approval to practice shall be in compliance with G.S. 90-18 and G.S. 90-18.2 the Medical Board and the registered nurse license may be restricted, denied, or terminated by shall comply with G.S. 90-171.37; 90-171.44; 90-171.47 and 21 NCAC 36 .0217 the Board of Nursing, if, after After due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, action shall be taken by the appropriate Board shall find—if one or more of the following is found:following:

- (1) that the nurse practitioner has held herself/himself ~~himself/herself~~ out or

CHAPTER 34 - BOARD OF FUNERAL SERVICE

- permitted another to represent the nurse practitioner as a licensed physician;
- (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the ~~written protocols and~~ collaborative practice agreement;
- (3) that the nurse practitioner has been convicted in any court of a criminal offense;
- (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
- (5) that the nurse practitioner has failed to comply with any of the provisions of this Subchapter.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Funeral Service intends to amend the rules cited as 21 NCAC 34A .0101-.0104, .0107-.0109, .0117-.0118, .0122-.0124, .0126; 21 NCAC 34C .0101-.0105, .0202-.0205, .0302-.0303, .0305-.0306 and repeal the rules cited as 21 NCAC 34C .0203-.0204, .0301, .0304.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 17, 2004

Time: 9:00 a.m.

Location: NC Board of Funeral Service, 1003 Wade Avenue, Suite 106, Raleigh, NC

Reason for Proposed Action: *To make technical corrections under Session Law 2003-420; to change the Board's mailing address; to amend the rules promulgated by the Office of Administrative Hearings for proceedings before the Board; to amend standards for the definition of solicitation; to make changes to the Board's disciplinary investigation and action processes; to amend forms to reflect changes to crematory license applications authorized by Session Law 2003-420; to amend standards for refrigeration units required for crematory licensure; to adopt forms for cremation tracking procedures authorized by Session Law 2003-420.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections can be mailed to Paul Harris, P.O. Box 27368, Raleigh, NC 27611-7368, faxed to Paul Harris at (919)-733-8271, or emailed to Paul Harris at wpharris@ncbfs.org. A person may also object by attending the public hearing and addressing the Board.*

Written comments may be submitted to: *Paul Harris, NC Board of Funeral Service, P.O. Box 27368, Raleigh, NC 27611-7368. Fax number (919)733-9380 and email address wpharris@ncbfs.org.*

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

Authority G.S. 90-18(14); 90-171.37; 90-171.44; 90-171.47.

21 NCAC 32M .0115-.0112 FEES

- (a) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval to practice, and each subsequent application for approval to practice and annual renewal of approval to practice. ~~All initial, subsequent and volunteer application fees shall be equally divided between the Board of Nursing and the Medical Board. No other fees shall be shared.~~ The application fee shall be twenty dollars (\$20.00) for the volunteer approval.
- (b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (d) No portion of any fee in this Rule shall be refundable.

Authority G.S. 90-6.

21 NCAC 32M .0116-.0115 PRACTICE DURING A DISASTER

A nurse practitioner approved to practice in ~~the~~ this State or another state is authorized to perform medical acts, tasks, or functions as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster ~~within~~ in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared. The nurse practitioner shall notify the Boards in writing of the names, practice locations and telephone number for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts, tasks, or functions as a nurse practitioner during the disaster. Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and ~~instructions plans~~ instructions plans for prescriptive authority as otherwise required pursuant to Rules .0109 .0108 and .0110 .0109 of this Subchapter. ~~Section.~~

Authority G.S. 90-18(c)(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42.

- State
- Local
- Substantive (>\$3,000,000)
- None

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34A .0101 AGENCY NAME AND ADDRESS: OFFICE HOURS: MEETINGS: FORM

The name of the agency promulgating the rules in this Chapter is the North Carolina Board of Funeral Service. As used in these Rules, the word "Board" shall refer to this agency. The office of the Board is located at 801 Hillsborough Street, Suite 405, 1033 Wade Avenue, Suite 106, Raleigh, North Carolina 27604, 27605, and its mailing address is Post Office Box 27368, Raleigh, North Carolina, 27611-78368. Office hours are 8:30 a.m. until 4:30 p.m., Monday through Friday, with the exception of closings on those holidays observed by agencies of the State of North Carolina. Meetings of the Board may be called by the President or a majority of its members. Forms and information may be obtained at the office of the Board during regular office hours. Checks are to be made payable to "North Carolina Board of Mortuary Science."

Authority G.S. 90-210.22; 90-210.23(a);

21 NCAC 34A .0102 PURPOSE OF BOARD

The purpose and function of the Board are to examine, license and regulate the practice of funeral service, the operation of crematories, ~~and~~ the sale of preneed funeral contracts in North Carolina, and the operation of Mutual Burial Associations, pursuant to the authority granted by Articles 13A, 13C, ~~and 13D-13D,~~ and 13E, Chapter 90, General Statutes of North Carolina.

Authority G.S. 90-210.23(a); 90-210.50(a); 90-210.69(a).

21 NCAC 34A .0103 PETITION FOR NOMINATION

(a) Form ~~BMS-4~~ BFS-1 is the petition for nomination of a person for election to the Board. It contains space for the name of the nominee, the seat to which he is nominated and the signatures of 20 persons licensed to practice embalming, funeral directing or funeral service. The form is filed with the Board when making nominations pursuant to G.S. 90-210.18(c)(4).

(b) Form ~~BMS-1a~~ BFS-1a is the petition for nomination of a person for election to the North Carolina Crematory Authority. It contains space for the name of the nominee and the signatures of three crematory operators licensed by the Board. The form is filed with the Board when making nominations pursuant to G.S. 90-210.42(c).

Authority G.S. 90-210.23(a); 90-210.18(c)(4); 90-210.42(c); 150B-11(1).

21 NCAC 34A .0104 VOTING RECORDS

(a) Form ~~BMS-3~~ BFS-3 is the voting record for elections to the Board. It is used to maintain in the office of the Board a record for each licensee for the purpose of showing that a ballot has been mailed to the licensee and to show whether a ballot-enclosing envelope has been returned. It contains the

name, address and license number of the licensee and space for indicating the mailing of the ballot and the return of the ballot-enclosing envelope.

(b) Form ~~BMS-3a~~ BFS-3a is the voting record for elections to the North Carolina Crematory Authority. It is used to maintain in the office of the Board a record for each crematory operator for the purpose of showing that a ballot has been mailed to it and to show whether a ballot-enclosing envelope has been returned. It contains the name, address and license number of the crematory operator and space for indicating the mailing of the ballot and the return of the ballot-enclosing envelope.

Authority G.S. 90-210.23(a); 90-210.18(c)(6); 90-210.42(c); 150B-11(1).

21 NCAC 34A .0107 REQUESTS FOR PROMULGATION: AMENDMENT OR REPEAL

For the purpose of dealing with a petition of any person requesting ~~the promulgation, amendment or repeal of a rule, pursuant to G.S. 150B-16, an agency to adopt a rule, pursuant to G.S. 150B-20,~~ the following procedures shall apply:

- (1) The petition shall be in writing and dated and verified by the petitioner and shall be submitted in person or by mail to the office of the Board.
- (2) The petition shall contain the name and address of the petitioner; his license number or numbers if licensed by the Board; his current employment; a description of the existing rule sought to be amended or repealed; a statement of the proposed rule or amendment to a rule; an argument in support of the petition; and a statement of how the proposed rule, amendment or repeal of a rule would affect the petitioner, if at all.
- (3) Within the time limits prescribed by G.S. ~~150B-16~~ 150B-20 the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the petition. At such meeting the Board shall decide, by majority vote of those present, whether to deny the petition or to initiate rule-making proceedings in accordance with G.S. ~~150B-12~~ 150B-21.1 and G.S. ~~150B-13, 150B-21.2.~~ Rule-making shall be initiated if the Board concludes, based on a study of the facts involved, that the public interest will be served thereby. The Board shall consider all of the contents of the submitted petition, plus any additional information it deems relevant. The Board shall, within the time limits prescribed by G.S. ~~150B-16,~~ 150B-20, deposit in the United States mail, postage prepaid, a written statement addressed to the petitioner informing him as to whether the Board denied or approved the petition. If the decision is to deny the petition, such written statement shall include the Board's reasons for the denial. If the decision is to approve the petition, the Board shall proceed to issue notices of

proposed rule-making within the time limits prescribed by G.S. ~~150B-16~~, 150B-20.

least a quorum of its members shall be present and by majority vote of those present.

Authority G.S. 90-210.23(a); 150B-11(1); 150B-16.

Authority G.S. 90-210.23(a); 150B-11(1); 150B-17.

21 NCAC 34A .0108 REQUESTS FOR DECLARATORY RULING

For the purpose of dealing with a request by a person aggrieved for a declaratory ruling, pursuant to G.S. ~~150B-17~~ 150B-4, the following procedures shall apply:

- (1) The request shall be in writing and dated and verified by the person submitting the same and shall be submitted in person or by mail to the office of the Board.
- (2) The request shall contain the name and address of the person submitting the same; his license number or numbers if licensed by the Board; his current employment; a description of the rule or statute referred to; a statement of any facts the applicability of which to a rule or statute the person is questioning; and a statement of the manner in which the person is aggrieved by the rule or statute or its potential application to him.
- (3) Within 30 days after receiving such a request the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the request. At such meeting the Board shall make a decision by majority vote of those present as to whether to issue the ruling. The Board shall issue a ruling except:
 - (a) when it finds that the person making the request is not a "person aggrieved", as defined in G.S. 150B-2(6); or
 - (b) when it finds, in a request concerning the validity of a rule, that the circumstances are so unchanged since the adoption of the rule in question that a ruling would not be warranted; or
 - (c) when it finds, in a request concerning the validity of a rule, that the rulemaking record shows that the Board considered all specified relevant factors when it adopted the rule in question.

The Board shall, not later than the 60th day after it received such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the Board's ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. If the Board decides to make the ruling, it may make the ruling at the meeting convened to consider the request, or it may defer its ruling until a later date, but not later than the 60th day after the request for a ruling is received. Before making the ruling the Board may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in such notice. Such ruling shall be made by the Board at a meeting at which at

21 NCAC 34A .0109 ADMINISTRATIVE HEARING PROCEDURES

The following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby adopted by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h): ~~.0001(1), .0005, .0006, .0012, .0013, .0014, .0015, .0016, .0017, .0018, .0019, .0020, .0021, and .0024. .0101(1), .0105, .0106, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0119, .0120, .0121, .0122 and .0125.~~ This adoption is made under G.S. 150B-14(b) 21.2 and applies to the listed rules in 26 NCAC 03 as amended as of ~~July 1, 1988~~ January 1, 2004. References in such rules to the Office of Administrative Hearings shall be deemed for this purpose to be references to the Board, and the presiding officer for board hearings shall have the powers and duties given in such rules to the administrative law judge. Copies of the rules adopted by reference are on file in the Board's office and may be obtained there.

Authority G.S. 90-210.23(a),(d); 150B-11; 150B-14(a),(b); 150B-38(h).

21 NCAC 34A .0117 FORM OF SUBPOENA

Form ~~BMS-5~~ BFS-5 is the Board subpoena. It is used to command a witness to appear before the Board to testify in a contested case. It contains space for the name of the contested case; the name of the person subpoenaed; the date, time and place to appear; the name of the person or persons applying for the subpoena; the date issued; the signature of an authorized representative of the Board; and the return of the person serving the subpoena.

Authority G.S. 90-210.23(a); 150B-11(1).

21 NCAC 34A .0118 FORM OF SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

Form ~~BMS-5a~~ BFS-5a is the Board subpoena to produce a document or object. It is used to command a witness to appear before the Board to testify in a contested case and to bring with him documents or objects. It contains space for the name of the contested case; the name of the person subpoenaed; the date, time and place to appear; a description of documents or objects to bring; the name of the person or persons applying for the subpoena; the date issued; the signature of an authorized representative of the Board; and the return of the person serving the subpoena.

Authority G.S. 90-210.23(a); 150B-11(1);

21 NCAC 34A .0122 CHARACTER AFFIDAVIT FORM

Form ~~BMS~~ BFS-2 is the character affidavit. It is used as evidence of good moral character of an applicant. It contains space for the name and address of the affiant, the name of the applicant, the length of time the affiant has been acquainted with

the applicant, an affirmation of the good moral character of the applicant, space for comments of the affiant, and space for certification by a notary public. The form is filed with the Board when making an application requiring evidence of good moral character.

Authority G.S. 90-210.23(a); 90-210.26; 150B-11(1).

21 NCAC 34A .0123 CONSUMER COMPLAINT FORM

Form ~~BMS-50~~ BFS-50 is the consumer complaint form. It contains space for the names and addresses of all parties involved, a description of the complaint, the signature of the complainant and information on procedures concerning consumer complaints, including a summary of acts and omissions which are legitimate subjects of complaints. The form is filed with the Board when a consumer wishes to make a complaint against a funeral establishment, crematory operator or individual licensed by the Board.

Authority G.S. 90-210.23(a); 90-210.18(a); 90-210.25(e); 90-210.50(a); 150B-11(1).

21 NCAC 34A .0124 DEFINITIONS

Solicitation, as the term used in G.S. 90-210.25(e)(1)d, shall be interpreted to mean an uninvited, intentional contact with an individual, in person or by telephone, for the purpose of procuring the right to provide funeral services or merchandise, either immediately or at a future date. All licensees of the Board must comply with the following in order to avoid committing solicitation as prohibited by G.S. 90-210.25(e)(1)d:

- (1) A licensee of the Board shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective customer when a significant motive for the licensee's doing so is the licensee's pecuniary gain, unless the person contacted:
 - (a) is a licensee; or
 - (b) has a family, close personal, or prior professional relationship with the licensee.
- (2) A licensee shall not solicit professional employment from a prospective customer by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by Item (1)(a) or (1)(b) of this Rule if:
 - (a) the prospective customer has made known to the licensee a desire not to be solicited by the licensee; or
 - (b) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.
- (3) Every written, recorded or electronic communication from a licensee soliciting professional employment from a prospective client known to be in need of funeral services in a particular matter shall include the words "This is an advertisement for funeral services"

on the outside envelope, if a written communication sent by mail, and at the beginning of the body of a written or electronic communication in print as large or larger than the licensee's or licensees's business name, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in Items (1)(a) or (1)(b) of this Rule.

Authority G.S. 90-210.23(a).

21 NCAC 34A .0126 COMPLAINTS; PRELIMINARY DETERMINATIONS

(a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 13A, 13C, ~~or 13D,~~ or 13E, or Title 21, Chapter 34, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.

~~(b) A complaint shall be handled initially by the Board's Executive Director, Director, of Preneed Regulation or their staff designees, who may dismiss it as unfounded, frivolous, or trivial, or staff designated by him or her. Complaints against persons subject to the Board's jurisdiction pursuant to G.S. 90, Article 13A and 13C, shall be handled by the Executive Director or staff designated by him or her, and complaints against persons subject to the Board's jurisdiction pursuant to G.S. 90, Article 13D, shall be handled by the Director of Preneed Regulation or staff designated by him or her.~~

~~(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, The Executive Director, Director of Preneed Regulation, Director or their his or her staff designees shall notify the accused of the complaint in writing. Such notice shall be sent by certified mail, return receipt requested; shall state the allegations as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit a response in writing within 10 days from the date the notice of the complaint is received by the accused.~~

~~(d) If the accused admits the allegations, and if, in the opinion of the Executive Director, Director of Preneed Regulation or their staff designees, the matter does not merit review by the Board's disciplinary committee, the Executive Director, Director of Preneed Regulation, or their staff designees shall accept the admission of guilt and shall acknowledge the admission in a letter to the accused.~~

~~(e)-(d) If the accused admits the allegations, and if, in the opinion of the Executive Director, Director of Preneed Regulation or their staff designees, the matter merits review by the Board's disciplinary committee, the Executive Director, Director of Preneed Regulation, or their staff designees shall refer the matter to the committee. After reviewing the allegations and response, responds to the allegations, the Executive Director or his or her staff designees shall forward a summary of the response, or the response itself, to the person who filed the complaint and give him or her 15 days to respond. Following a receipt of a rebuttal by the consumer or after 15 days without having received a rebuttal, the matter shall then be referred to the disciplinary committee. The disciplinary committee shall review the file and may request additional investigation. Following a~~

~~review of the file. to include any information received pursuant to its additional investigation, the disciplinary committee shall make a preliminary determination of the charges and shall recommend to the Board which of the actions in Paragraph (h) (f) of this Rule should be taken.~~

~~(f)(e) If the accused does not respond to or denies the allegations, the Board's Executive Director Director of Preneed Regulation or their his or her staff designees shall investigate the allegations, and they may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, response, if any, and any other available evidence to the Board's disciplinary committee for review. From such review, the committee shall make a preliminary determination and shall recommend to the Board which of the actions in Paragraph (h) (f) of this Rule should be taken.~~

~~(g) The complaint, response, if any, other evidence and disposition of each case shall be placed in a permanent file of the accused. When a second complaint, is filed against the accused during a period of twelve months, or a third complaint is filed against the accused during any period of time, the Executive Director, Director of Preneed Regulation, or their staff designees shall present the file to the disciplinary committee for a review. From such review, the committee shall make a preliminary determination of the new complaint and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.~~

~~(h) (f) In accordance with Paragraphs (e) through (g) (d) through (e) of this Rule, the disciplinary committee shall review the complaint and the file, if applicable, shall make a preliminary determination, and shall recommend to the Board that one of the following actions be taken:~~

- ~~(1) that the complaint be dismissed as unfounded, frivolous or trivial;~~
- ~~(2) that a letter of caution be issued;~~
- ~~(2)(3) that the case be compromised pursuant to G.S. 90-210.25(e)(1), 90-210.43(f), 90-210.43(g), or 90-210.69(c); or~~
- ~~(3)(4) that the case be set for a contested case hearing.~~

~~(i) (g) The Board may accept or reject, in whole or in part, the recommendations of the disciplinary committee.~~

Authority G.S. 90-210.23(a); 90-210.25(e); 90-210.43(f),(g); 90-210.50(a); 90-210.69;

SUBCHAPTER 34C - CREMATORIES

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34C .0101 ELECTION TO CREMATORY AUTHORITY

The nomination and election of members of the North Carolina Crematory Authority shall be conducted simultaneously with the nomination and election of members of the Board, and the procedures in G.S. 90-210.18(c) shall apply, except that nomination shall be made by a written petition signed by at least three crematory operators licensed by the Board, licensees.

Authority G.S. 90-210.42(c); 90-210.50(a); 150B-11(1).

21 NCAC 34C .0102 FORM OF DOCUMENTS

When any provision of Article 13C, Chapter 90, of the North Carolina General Statutes or any rule in this Subchapter requires a crematory operator-licensee to obtain any death certificate, report, authorization, waiver, statement or other document prior to cremation, it shall be deemed that such requirements are complied with if the crematory operator-licensee receives the applicable document or documents, in the time specified, in the form of the original, a photocopy or by facsimile transmission.

Authority G.S. 90-210.44; 90-210.50(a).

21 NCAC 34C .0103 APPLICATION FORM FOR CREMATORY LICENSE

Form ~~BMS-52~~ BFS-52 is the application form for a crematory operator's licensee's license. It is designed for the applicant to furnish his or its name; address; type of business entity; location of crematory; description of crematory, facilities and equipment; name and address of crematory manager; each crematory technician, name and address of crematory manager; and criminal convictions of applicant and manager. Three affidavits of the moral character of the owners, partners or officers and of the manager, in compliance with G.S. 90-210.26, shall accompany the application.

Authority G.S. 90-210.43; 90-210.50(a); 150B-11(1).

21 NCAC 34C .0104 CREMATORY LICENSE CERTIFICATE

Form ~~BMS-53~~ BFS-53 is the crematory license certificate. It is used for certifying that the holder thereof is a licensed crematory operator licensee. It contains the name of the crematory operator, licensee, signatures of the Board members and the date of issuance.

Authority G.S. 90-210.43; 90-210.50(a); 150B-11(1).

21 NCAC 34C .0105 CREMATORY INSPECTION FORM

Form ~~BMS-54~~ BFS-54 is the crematory inspection report form. It is used by the Board and its inspectors to record the results of crematory inspections for the Board files. It contains space for the name and address of the crematory, names of the owner and manager, check list of facilities and equipment, condition of facilities and equipment, recommendations and signatures of the inspector and an official of the crematory.

Authority G.S. 90-210.43; 90-210.50(a); 150B-11(1).

SECTION .0200 - EQUIPMENT AND PROCESSING

21 NCAC 34C .0202 REFRIGERATION

Unembalmed human remains retained in the custody of a crematory licensee for more than 24 hours prior to cremation shall be kept in a refrigeration unit. ~~Crematory operators in business on July 1, 1991, shall have such a unit in their holding facility or available for their use on another premises owned or operated by the same entity which operates the crematory. When any crematory operator's refrigeration unit is replaced, the new unit shall be capable of storing at least three adult human bodies. Every crematory operator which begins business after July 1, 1991, shall have in its holding~~

~~facility at least one refrigeration unit, capable of storing at least three adult human bodies. Crematory licensees shall have a refrigeration unit, capable of storing at least three adult human bodies, in the holding facility.~~ Each refrigeration unit required by this Rule shall meet the following minimum standards:

- (1) Capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed.
- (2) Sealed concrete, stainless steel, galvanized, aluminum or other easily cleaned flooring in walk-in units.
- (3) Stainless steel, aluminum or other non-corrosive and easily cleaned materials for the remainder of the interior of all units.

Authority G.S. 90-210.41(9),(12); 90-210.50(a).

21 NCAC 34C .0203 PULVERIZATION

~~Unless otherwise directed by the authorizing agent, cremated remains recovered after cremation shall be pulverized in the processor required by Rule .0201 of this Section, and the cremated remains shall then be immediately placed in a temporary closed container or in an urn or other permanent closed container.~~

Authority G.S. 90-210.41(9); 90-210.45(e); 90-210.50(a).

21 NCAC 34C .0204 CREMATION CONTAINERS

~~Cremation containers shall be closed, rigid and leak resistant.~~

Authority G.S. 90-210.41(8); 90-210.50(a).

21 NCAC 34C .0205 LABELS

~~The crematory operator~~ In addition to the requirements of G.S. 90-210.29A, the crematory licensee shall attach a typed or printed label to the temporary container, urn or other permanent container at the time the cremated remains are placed therein. If an inside and outside container are used, then both shall be labelled. The label shall contain the name of the decedent, the date of cremation and the name of the crematory.

Authority G.S. 90-210.46; 90-210.50(a).

SECTION .0300 - AUTHORIZATIONS, REPORTS, RECORDS

21 NCAC 34C .0301 AUTHORIZATION TO CREMATE

~~(a) No human remains shall be cremated before the crematory operator receives a written statement signed by an authorizing agent, containing the following:~~

- ~~(1) Express authorization to cremate;~~
- ~~(2) The ultimate disposition of the cremated remains, if known;~~
- ~~(3) The name of the party who will accept the cremated remains, if known; and~~

~~(4) A declaration that the information requested in Subparagraph (a)(2) or (3) of this Rule is unknown at this time if such is the case.~~

~~(b) The crematory operator shall retain the statement and shall make it available to the Board or its agents upon request.~~

Authority G.S. 90-210.44; 90-210.46(a),(e); 90-210.50(a).

21 NCAC 34C .0302 WAIVER FORM

Form ~~BMS-55~~ BFS-55 is the waiver of waiting period for cremation form. It is used by a person so authorized, pursuant to ~~G.S. 90-210.45(b)~~ 90-210.49(e), to notify a crematory ~~operator~~ licensee that the 24-hour waiting period for cremation is waived for one of the reasons stated in that statute.

Authority G.S. 90-210.44; 90-210.45(b); 90-210.50(a); 150B-11(1).

21 NCAC 34C .0303 RECORDS OF CREMATION AND DELIVERY

~~Every crematory operator shall make a separate written record, on a form provided by the Board, of each cremation it performs and of the delivery of each cremated remains, including evidence by signature, postal receipt or its equivalent, of the receipt thereof. The crematory operator shall retain the completed forms and shall make them available to the Board or its agents upon request.~~

(a) Form 56A is the receipt for human remains. Every crematory licensee shall furnish this receipt to the person who delivers the human remains to the crematory licensee.

(b) Form 56B is issued to the person who receives the cremated remains from the crematory licensee. Crematory licensees must provide evidence by signature, postal receipt or its equivalent, of the receipt of the cremated remains.

(c) A copy of Form 56C is issued to the person who receives the cremated remains from a funeral establishment when said funeral establishment receives the cremated remains from the crematory. Funeral establishments must provide evidence by signature, postal receipt or its equivalent, of the receipt of the cremated remains.

(d) Form 56D is used by the crematory to track the human remains through the cremation process from the time the remains are received at the crematory until the cremated remains are delivered.

(e) The crematory licensee shall retain the completed forms 56A, 56B and 56D and shall make them available to the Board or its agents upon request. The funeral establishment shall retain the completed form 56C and shall make them available to the Board or its agents upon request.

Authority G.S. 90-210.44; 90-210.50(a); 150B-11(1).

21 NCAC 34C .0304 CREMATION AND DELIVERY FORM

Form ~~BMS-56~~ is the record of cremation and delivery form. It is used, pursuant to Rule .0303 of this Section, to record the name of the decedent and the dates and times of death, delivery to the crematory, cremation, processing and delivery of the cremated remains.

Authority G.S. 90-210.44; 90-210.50(a); 150B-11(1).

21 NCAC 34C .0305 MONTHLY REPORTS

No later than the tenth day of each month, as confirmed by the postmark date, every crematory operator licensee shall remit to the Board the per-cremation fees for the cremations which the licensee performed during the immediately preceding calendar month. The fees shall be accompanied by a statement signed by an authorized representative of the crematory indicating the name of the crematory, each decedent's name, date of each cremation, the person or other entity for whom each cremation was performed, the number of cremations contained in the report and the total amount of fees remitted with the report.

Authority G.S. 90-210.44; 90-210.48; 90-210.50(a); 150B-11(1).

21 NCAC 34C .0306 RETENTION OF RECORDS

A copy of all death certificates, authorizations, waivers, statements, reports and other documents required by G.S. 90-210.45 and 90-210.46 G.S. 90-210.40 through G.S. 90-210.54 and by the rules in this Subchapter shall be retained by the crematory licensee for a period of three years and shall, during that period, be subject to inspection by the Board or its agents.

Authority G.S. 90-210.44; 90-210.50(a).

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0227.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 17, 2004

Time: 12:30 p.m.

Location: NC Board of Nursing, 3724 National Drive, Raleigh, NC

Reason for Proposed Action: To clarify the process for registration and approval to practice as a nurse practitioner; to revise requirements for nurse practitioner program curricula, collaborative practice agreements and continuing education.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC, voice mail (919)782-3211, ext. 252, fax (919)781-9461, and email: jeans@ncbon.com.

Written comments may be submitted to: Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC, (919)782-3211, ext. 252, fax (919)781-9461, and email: jeans@ncbon.com.

Comment period ends: April 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>\$3,000,000)
None

SECTION .0200 - LICENSURE

21 NCAC 36.0227 APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

(a) Definitions:

- (1) "Medical Board" means the North Carolina Medical Board.
(2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
(3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
(4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts in the area of advanced academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of the medical acts performed. Only a registered nurse approved by the Medical Board and the Board of Nursing may legally identify oneself as a Nurse Practitioner. It is understood that the The nurse practitioner, by virtue of RN registered nurse (RN) licensure, is independently accountable for those nursing acts which he or she may perform.
(5) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Subchapter.
(6) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing

- for a nurse practitioner to perform medical acts within her/his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Rule.
- (7) ~~(5)~~ "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Part ~~(d)(6) (e)(2)(D)~~ of this Rule.
- (8) ~~(6)~~ "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (9) ~~(7)~~ "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing ~~on-going~~ supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (10) ~~(8)~~ "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the ongoing ~~on-going~~ supervision, ~~consultation, collaboration~~ collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement, site specific written protocols.
- (A) The primary supervising physician shall assume the responsibility of assuring both the Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement, site specific written protocols.
- (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
- (C) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation, situation if fully licensed.
- (11) ~~(9)~~ "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall be held accountable for the supervision, ~~consultation, collaboration~~ collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement, site specific written protocols when the Primary Supervising Physician is not available.
- (A) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
- (B) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
- (C) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician may be a back-up supervising physician ~~to~~ for a nurse practitioner in the non-training situation, situation if fully licensed and has signed an agreement with the nurse practitioner and the primary supervising physician.
- ~~(10) "Approval means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Subchapter.~~
- ~~(11) "Written Protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting. Clinical practice issues that are not covered by the written protocols require nurse practitioner/physician consultation, and documentation related to the treatment plan.~~
- (12) "Volunteer Approval practice" means approval to practice consistent with this rule except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the practitioner, practitioner either directly or indirectly.
- (13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (14) "Interim Status" means ~~the privilege limited~~ privileges granted by the Board of Nursing Boards to a graduate of ~~a~~ an approved nurse practitioner education program meeting the requirements of Subparagraph (e)(1) of this Rule or a registered nurse seeking initial approval in North Carolina, Carolina with limited privileges, as defined in Part ~~(e)(2)(D)~~ (d)(6) of this Rule while awaiting final approval to practice as a nurse practitioner.
- (15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule for a period not to exceed ~~18~~ six months while awaiting notification of successful completion of the national certification examination.

PROPOSED RULES

(16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric Gynecologic and Neonatal Nursing Specialties (NCC); and the National Certification Board of Pediatric Nurse Practitioners and Nurses (PNP/N).

(b) Scope of Practice. The nurse practitioner shall be responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner shall be educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Paragraph (j) (4) of this Rule. These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

(c) Nurse Practitioner Registration.

- (1) The Board of Nursing shall register an applicant who:
 - (A) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
 - (B) has successfully completed a nurse practitioner education program as outlined in Paragraph (e) of this Rule; and
 - (C) has supplied any additional information necessary to evaluate the application.
- (2) Beginning January 1, 2005 all registered nurses seeking first-time nurse practitioner registration in North Carolina shall:
 - (A) hold a Master's Degree in Nursing or related field;
 - (B) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body, and in addition have met the criteria as

outlined in Subparagraph (e)(3) of this Rule; and

(C) provide documentation of certification by a national credentialing body.

~~(d) (e) Nurse Practitioner Approval. Process for Approval to Practice.~~

~~(1) Qualifications for nurse practitioner approval. A registered nurse shall be approved by the Medical Board and the Board of Nursing before the applicant may practice as a nurse practitioner. The Boards may grant approval to practice as a nurse practitioner to an applicant who:~~

~~(A) is duly licensed to practice as a registered nurse in North Carolina;~~

~~(B) has successfully completed an approved educational program as outlined in Paragraph (d) of this Rule; or, as of January 1, 2000, meets the certification requirements set forth in Subparagraph (d)(2) of this Rule;~~

~~(C) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;~~

~~(1) Prior to the performance of any medical acts, a nurse practitioner shall:~~

~~(A) submit notification of her/his intent to practice on forms provided by both Boards. Such notification of intent to practice shall include:~~

~~(i) the practice name, practice address, and telephone number of the nurse practitioner; and~~

~~(ii) the practice name, practice address, and telephone number of the primary supervision physician(s).~~

~~(B) (D) submits submit any additional information deemed necessary to evaluate the application; application; and~~

~~(C) (E) has have a collaborative practice agreement with a primary supervising physician, physician; and~~

~~(F) pays the appropriate fee.~~

~~(2) Application for nurse practitioner approval.~~

~~(A) Application for nurse practitioner approval shall be made upon the appropriate forms and shall be submitted jointly by the nurse practitioner and primary supervising physician(s).~~

~~(2) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.~~

- (3) The nurse practitioner who discontinues working within the nurse practitioner collaborative practice agreement shall notify both Boards in writing. The nurse practitioner's approval to practice shall terminate. This Rule shall be waived in cases of emergency such as injury, sudden illness or death.
- (4) ~~(B)~~ Applications for first-time approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:
- (A) ~~(i)~~ the Board of Nursing will verify compliance with ~~Parts (e)(1)(A) — (D) Subparagraphs (c)(1); (c)(2) and (d)(1) of this Rule; and~~
- (B) ~~(ii)~~ the Medical Board will verify compliance with Subparagraph (d)(1) Parts (e)(1)(D) — (F) of this Rule.
- ~~(iii) — the appropriate Board will notify applicant of final approval status.~~
- (5) ~~(C)~~ Applicants for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:
- (A) ~~(i)~~ addition or change of primary supervision physician shall be submitted to both Boards; and the Medical Board;
- (B) ~~(ii)~~ request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee. Subcommittee; and
- ~~(iii) — the appropriate Board will notify applicant of final approval status.~~
- (6) ~~(D)~~ Interim status for a nurse practitioner applicant may be granted to: a registered nurse who is a new graduate of a an approved nurse practitioner education educational program meeting the requirements of Subparagraph (e)(1) of this Rule and has met the registration requirements as set forth in ~~Paragraph (d) Paragraphs (c) and (e) of this Rule;~~ or a registered nurse seeking first-time first-time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational education requirement and has met the registration requirements as set forth in ~~Paragraphs (c) and (e) Paragraph (d) of this Rule~~ with the following limitations:
- (A) ~~(i)~~ no prescribing privileges;
- (B) ~~(ii)~~ primary or back-up physicians shall be continuously available for ongoing supervision, consultation, collaboration, consultation and countersigning of notations of medical acts in all patient

charts within two working days of nurse practitioner applicant-patient contact;

- ~~(C) (iii)~~ face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Part ~~(j)(5)(C) (i)(4)(D)~~ of this Rule; and
- ~~(D) (iv)~~ may not exceed period of six months.
- (7) ~~(E)~~ ~~Beginning January 1, 2000, first-time First-time~~ applicants who meet the qualifications for approval, approval to practice, but are awaiting certification from a national credentialing body as referenced in Subparagraph (a)(16) of this Rule, may shall be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed ~~18~~ six months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.
- (8) ~~(F)~~ The A registered nurse who was previously approved to practice as a nurse practitioner in this state shall:
- (A) ~~(i)~~ meet the nurse practitioner approval requirements as stipulated in ~~Parts (e)(1)(A), (C) — (F) Subparagraph (h)(3) of this Rule; Paragraph;~~
- (B) ~~(ii)~~ complete the appropriate application;
- ~~(C) (iii)~~ receive notification of approval; and
- ~~(D) (iv)~~ meet the quality assurance standards and consultation requirements as outlined in Parts ~~(j)(5)(B) — (C) (i)(4)(C) — (D) of this Rule. Rule; and~~
- ~~(E)~~ meet the continuing education requirements as stated in Paragraph (g) and Subparagraph (h)(4) of this Rule.
- ~~(F) (G)~~ If or any reason a nurse practitioner discontinues working within the approved nurse practitioner supervising physician(s) arrangement, or experiences an interruption in her/his registered nurse licensure status, ~~the both~~ Boards shall be notified in writing and the nurse practitioner's approval shall automatically terminate, terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter. Special consideration may be given in an emergency situation.
- (9) ~~(H)~~ Volunteer Approval to Practice. Approval for Nurse Practitioners. ~~The Both~~ Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina, as outlined in

PROPOSED RULES

~~Parts (e)(1)(A) — (F) and (2)(A) — (G) of this Rule.~~

(10) Pays the appropriate fee as outlined in Paragraph (m) of this Rule.

(e) (4) Education and Certification Requirements for Approval of Registration as a Nurse Practitioner. Practitioner Educational Programs.

(1) A nurse practitioner applicant who completed a nurse practitioner ~~educational~~ education prior to December 31, 1999 shall provide evidence of successful completion of a course of formal education which contains a core curriculum including 400 contact hours of didactic education and 400 hours of preceptorship or supervised clinical experience.

(A) The core curriculum shall contain as a minimum the following components:

(i) health assessment and diagnostic reasoning including:

- (I) historical data;
- (II) physical examination data;
- (III) organization of data base;

(ii) pharmacology;

(iii) pathophysiology;

(iv) clinical management of common health ~~care~~ problems and diseases such as the following shall be evident in the nurse practitioner's academic program: related to:

- (I) respiratory system;
- (II) cardiovascular system;
- (III) gastrointestinal system;
- (IV) genitourinary system;
- (V) integumentary system;
- (VI) hematologic and immune systems;
- (VII) endocrine system;
- (VIII) musculoskeletal system;
- (IX) infectious diseases;
- (X) nervous system;
- (XI) behavioral, mental health and substance abuse problems;

(v) clinical preventative services including health promotion and prevention of disease;

(vi) client education related to ~~Parts (d)(1)(A)(iv) Subparts~~

~~(e)(1)(A)(iv) and (v) of this Rule; and~~

(vii) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.

(B) Nurse practitioner applicants ~~who may be~~ exempt from components of the core curriculum requirements listed in ~~Subparagraph (d)(1)(A) Part (e)(1)(A)~~ of this Rule are:

(i) Any nurse practitioner approved to practice in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.

(ii) A nurse practitioner certified by a national credentialing body prior to January 1, 1998, who also provides evidence of satisfying ~~Parts (d)(1)(A)(i) Subparts (e)(1)(A)(i) – (iii)~~ of this Rule shall be exempt from core curriculum requirements in ~~Parts (d)(1)(A)(iv) Subparts (e)(1)(A)(iv) – (vii)~~ of this Rule. Evidence of satisfying ~~Parts (d)(1)(A)(i) Subparts (e)(1)(A)(i) – (iii)~~ of this Rule shall include, but may not be limited to:

- (I) a narrative of course content; and
- (II) contact hours.

(iii) A nurse practitioner seeking initial approval to practice after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in ~~her/his his/her~~ specialty by a national credentialing body, ~~body when initial certification was obtained after January 1, 1998.~~

~~(iv) A nurse practitioner applicant, whose formal education does not meet all of the stipulations in Subparagraph (d)(1) of this Rule, may appeal to the Joint Subcommittee on the basis of other education and experience.~~

PROPOSED RULES

- (2) ~~Instead of educational program approval, all Any nurse practitioner applicant applicants who are applying for or have received, first time first-time approval to practice as a nurse practitioner on or after between January 1, 2000 and July 31, 2004 shall be certified by a national credentialing body as referenced in Subparagraph (a)(16) of this Rule or be awaiting initial certification by a national credentialing body approved by the Board of Nursing for a period not to exceed 18 months from date temporary approval is granted.~~
- (3) ~~Each nurse practitioner applicant applying for approval to practice in North Carolina shall meet the education requirements as specified in Part (e)(1)(A) of this Rule and shall provide documentation of certification by a national credentialing body within six months from the date temporary approval is granted.~~
- (4) ~~A Nurse Practitioner approved under this Rule shall keep proof of current licensure, registration and approval available for inspection at each practice site and made available for inspection upon request by agents of either Board.~~

(f) (e) Annual Renewal.

- (1) Each registered nurse who is approved to practice as a nurse practitioner in this state shall annually renew each approval to practice with the Medical Board no later than 30 days after the nurse practitioner's birthday by:
 - (A) ~~Maintaining~~ Verifying current RN licensure;
 - (B) Submitting the fee required in Paragraph (m) (4) of this Rule; and
 - (C) Completing the renewal form.
- (2) ~~For the A nurse practitioner with first-time who had first-time approval to practice after January 1, 2000, shall provide evidence of certification or recertification by a national credentialing body.~~
- (3) ~~If the A nurse practitioner who has not renewed within 60 days of the nurse practitioner's her/his birthday, the approval to practice as a nurse practitioner shall lapse.~~

(g) (f) Continuing Education (CE). In order to maintain nurse practitioner approval to practice, ~~practice beginning no sooner than two years after initial approval has been granted,~~ the nurse practitioner shall earn ~~30~~ 100 contact hours of continuing education every two years. ~~At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs.~~ Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME) (ACCME); ~~or other national credentialing bodies or practice relevant courses in an academic institution.~~ bodies. Documentation shall be maintained by the nurse practitioner at each practice site and made available upon request to either Board.

(h) (g) Inactive Status.

- (1) Any nurse practitioner who wishes to place her or his ~~his or her~~ approval to practice on an inactive status ~~may~~ shall notify ~~the~~ both Boards by completing the form supplied by ~~the~~ both Boards
- (2) ~~The registered A nurse practitioner with an inactive approval to practice nurse practitioner status shall not practice as a nurse practitioner.~~
- (3) ~~The registered A nurse practitioner with an inactive approval to practice nurse practitioner status shall be required to meet the qualifications for approval to practice as stipulated in Parts Part (c)(1)(A), Subparagraphs (d)(1) and (f)(2) and Paragraphs (g) and (j) (e)(1)(C) (F) and Part (e)(2)(A) of this Rule; and receive notification from both Boards, shall provide documentation to the Boards of 30 contact hours of practice relevant continuing education during the preceding two years.~~
- (4) ~~A nurse practitioner with an inactive approval to practice status of greater than five years shall complete a nurse practitioner refresher course consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.~~
- (5) ~~A nurse practitioner seeking first-time approval to practice who has not provided direct patient-care as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.~~

(i) (h) Prescribing Authority.

- (1) The prescribing stipulations contained in this Paragraph apply to writing prescriptions and ordering the administration of medications.
- (2) Prescribing and dispensing stipulations are as follows:
 - (A) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement written protocols as outlined Paragraph (i), Subparagraph (j)(2) (2) of this Rule.
 - (B) Controlled Substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, written protocols, providing all of the following requirements are met:
 - (i) the nurse practitioner has an assigned DEA number which is entered on each

PROPOSED RULES

- (ii) prescription for a controlled substance;
 - (iii) dosage units for schedules 2, 2N, 3 and 3N are limited to a 30 day supply; and
 - (iii) the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled.
- (C) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement site specific written protocols only as follows:
- (i) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (ii) the verbal or written order as described in Subpart ~~(i)(2)(C)(i)~~ ~~(h)(2)(C)(i)~~ of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (D) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N ~~controlled substances~~ which may not be refilled.
- (E) Each prescription shall be noted on the patient's chart and include the following information:
- (i) medication and dosage;
 - (ii) amount prescribed;
 - (iii) directions for use;
 - (iv) number of refills; and
 - (v) signature of nurse practitioner.
- (F) The prescribing number assigned by the Medical Board to the nurse practitioner shall appear on all prescriptions issued by the nurse practitioner.
- (G) Prescription Format:
- (i) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number;
 - (ii) the nurse practitioner's assigned DEA number shall
- be written on the prescription form when a controlled substance is prescribed as defined in ~~Paragraph (h) Part (B) Part (i)(2)(B)~~ of this ~~Rule. Rule;~~ ~~and~~
- (3) The nurse practitioner may obtain approval to dispense the drugs and devices included in ~~written protocols~~ the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 36.1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.
- ~~(j) (4)~~ Quality Assurance Standards ~~standards~~ for a Collaborative Practice Agreement.
- (1) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.
- (2) ~~Written Protocols:~~ Collaborative Practice Agreement:
- (A) ~~Written protocols~~ shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site.
- (B) ~~Written protocols~~ shall be reviewed at least yearly. ~~yearly, and this~~ This review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the collaborative practice agreement ~~written protocol~~ and available for inspection by members or agents of either Board.
- (C) ~~The written protocols~~ shall include the drugs, devices, medical ~~treatment, treatments,~~ tests and procedures that may be prescribed, ordered and ~~implemented~~ performed by the nurse practitioner consistent with Paragraph ~~(i) (h)~~ of this ~~Rule, Rule;~~ ~~and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting.~~
- (D) ~~The written protocols~~ shall include a pre-determined plan for emergency services.
- ~~(3) (E)~~ The nurse practitioner shall be prepared to demonstrate the ability to perform medical acts as outlined in the ~~written protocols~~ collaborative practice agreement upon request by members or agents of either Board.
- ~~(4) (3)~~ Quality Improvement Process.

PROPOSED RULES

- (A) The primary supervising physician and the nurse practitioner shall develop a process for the on-going review of the care provided in each practice site to include a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems. ~~problems; and~~
 - (B) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time-frame.
 - (C) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
 - (i) identify clinical problems discussed, including progress toward improving outcomes as stated in Part ~~(j)(4)(B)~~ ~~(j)(3)(B)~~ of this Rule, and recommendations, if any, for changes in treatment plan(s);
 - (ii) be signed and dated by those who attended; and
 - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.
- (5) ~~(4)~~ Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner/primary or back-up supervising physician(s):
- ~~(A) The nurse practitioner with temporary approval shall have:~~
 - ~~(i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner patient contact for the first six months of collaborative agreement. This time frame includes the period of interim status.~~
 - ~~(ii) face-to-face consultation with the primary supervising physician on a weekly basis for one month after temporary approval is achieved and at least~~
 - ~~monthly throughout the period of temporary approval.~~
 - ~~(A)(B) The nurse practitioner with first time approval to practice During the first six months of the initial collaborative practice agreement, there shall be:~~
 - ~~(i) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner patient contact for the first six months of collaborative agreement. This time frame includes the period of interim status.~~
 - ~~(ii) face-to-face consultation meetings with the primary supervising physician on a weekly basis for one month after full approval to practice is received and at least monthly for a total of six period no less than the succeeding five months.~~
 - ~~(B)(C) The During the first six months of a subsequent collaborative practice agreement between a nurse practitioner previously approved to practice in North Carolina who changes Primary and a different primary supervising physician, there shall be face-to-face consultation meetings with the new primary supervising physician weekly for one month and then monthly for the first six succeeding five months.~~
 - ~~(C)(D) Documentation of consultation the meetings shall:~~
 - ~~(i) identify clinical issues discussed and actions taken;~~
 - ~~(ii) be signed and dated by those who attended; and~~
 - ~~(iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and physician.~~
 - ~~(k) (j) Method of Identification. The When providing care to the public, the nurse practitioner or NP shall identify themselves herself/himself as specified in G. S. 90-640 and 21 NCAC 36.0231.~~
 - ~~(l) (k) Disciplinary Act. The approval of a A nurse practitioner may be restricted, denied or terminated by practitioner's approval to practice shall comply with G.S. 90-18 and G.S. 90-18.2 the Medical Board and the registered nurse license may be restricted, denied, or terminated by shall comply with G.S. 90-~~

PROPOSED RULES

~~171.37; 90-171.44; 90-171.47 and 21 NCAC 36.0217, the Board of Nursing, if after~~ After due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, action shall be taken by the appropriate Board shall find if one or more of the following is found; following:

- (1) that the nurse practitioner has held herself or himself ~~himself or herself~~ out or permitted another to represent the nurse practitioner as a licensed physician.
- (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the ~~written protocols and~~ collaborative practice agreement;
- (3) that the nurse practitioner has been convicted in any court of a criminal offense;
- (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
- (5) that the nurse practitioner has failed to comply with any of the provisions of this Rule.

(m) ~~(h)~~ Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval to practice, ~~and~~ each subsequent application for approval to practice and annual renewal of approval to practice.

The application fee shall be twenty dollars (\$20.00) for volunteer approval.

- (2) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (3) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (4) No portion of any fee in this Rule is refundable.

(n) ~~(m)~~ Practice During a Disaster. A nurse practitioner approved to practice in this State or another state is authorized to perform medical acts, tasks, or functions as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared. The nurse practitioner shall notify the Boards in writing of the names, practice locations and telephone numbers for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts, tasks, or functions as a nurse practitioner during the disaster. Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and ~~instructions~~ plans for prescriptive authority as otherwise required pursuant to Paragraphs (i) ~~(h)~~ and (j) ~~(i)~~ of this Rule.

Authority G.S. 90-6; 90-18(c)(13), (14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.36; 90-171.37; 90-171.42; 90-171.83;

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting December 19, 2003, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2004 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION

**REGISTER CITATION TO THE
NOTICE OF TEXT**

01	NCAC	30J	.0102-.0103*	18:05 NCR
01	NCAC	30J	.0202*	18:05 NCR
01	NCAC	30J	.0301*	18:05 NCR
01	NCAC	30J	.0303-.0306*	18:05 NCR
10A	NCAC	13P	.0101*	18:05 NCR
10A	NCAC	13P	.0108	18:05 NCR
10A	NCAC	13P	.0114	18:05 NCR
10A	NCAC	13P	.0119*	18:05 NCR
10A	NCAC	13P	.0121-.0122	18:05 NCR
10A	NCAC	13P	.0202*	18:05 NCR
10A	NCAC	13P	.0203	18:05 NCR
10A	NCAC	13P	.0204*	18:05 NCR
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10A	NCAC	13P	.0207-.0208*	18:05 NCR
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15A	NCAC	18A	.3404*	18:05 NCR
15A	NCAC	18A	.3405-.3407	18:05 NCR
19A	NCAC	02C	.0108*	18:03 NCR
19A	NCAC	02E	.0216-.0218	18:05 NCR
19A	NCAC	02E	.0219-.0220*	18:05 NCR
19A	NCAC	02E	.0222	18:05 NCR
20	NCAC	03	.0112*	18:06 NCR

APPROVED RULES

21	NCAC	10	.0206-.0207	18:06 NCR
21	NCAC	16A	.0101*	17:20 NCR
21	NCAC	16B	.0304	17:20 NCR
21	NCAC	16B	.0401*	17:20 NCR
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21	NCAC	16Y	.0102*	17:20 NCR
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25	NCAC	01E	.1701	18:04 NCR
25	NCAC	01J	.0701-.0703	18:04 NCR
25	NCAC	01K	.0311*	18:03 NCR
25	NCAC	01K	.0314*	18:03 NCR
25	NCAC	01K	.0317*	18:03 NCR

TITLE 1 - DEPARTMENT OF ADMINISTRATION

For purposes of this subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual or designee authorized by each funded agency to coordinate all capital improvement projects and related matters for the agency with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of this Subchapter may have other titles within his agency but shall carry out the duties assigned by the rules in this Subchapter to the capital projects coordinator.
- (2) "Construction Manager-at-Risk" means a person, corporation, or entity that provides construction management-at-risk services.
- (3) "Construction Management-at-Risk Services" means services provided by a person, corporation, or entity that:
 - (a) provides construction management services for a project throughout the preconstruction and construction phases,

01 NCAC 30J .0102 POLICY

The State Building Commission shall select construction manager-at-risk for State capital improvement projects as defined in G.S. 143-128.1, based on criteria contained in this Subchapter and make available to every firm, licensed as a general contractor in the State of North Carolina, the opportunity to be considered for providing construction management-at-risk services for those departments and agencies under its jurisdiction. The State Building Commission shall select a construction manager-at-risk for State capital improvement project who is in compliance with the minority business participation requirements as prescribed in G.S. 143-128.2. The construction manager-at-risk shall use a standard form of contract authorized by the SBC for the public owner, construction manager-at-risk, and first-tier subcontractor.

*History Note: Authority: G.S. 143-135.26;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004.*

01 NCAC 30J .0103 DEFINITIONS

- (b) who is licensed as a general contractor, and
- (c) who guarantees the cost of the project.
- (4) "First-Tier Subcontractor" means a subcontractor who contracts directly with the Construction Manager-at-Risk.
- (5) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
- (6) "Funded agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and construction project.
- (7) "Using agency" means the subdivision of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus or similar body, as determined by the administrative head of the funded agency.
- (8) "Minority Business" means a business:
 - (a) in which at least 51% is owned by one or more minority persons, or in the case of corporation, in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - (b) of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (9) "Socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

History Note: Authority: G.S. 143-135.26; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

01 NCAC 30J .0202 PUBLIC ANNOUNCEMENT

- (a) Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for construction management-at-risk services, a designated contact person in the using agency and the closing date on the State Construction Office website. This public announcement shall be published prior to Construction Manager-at-Risk selection.
- (b) The closing date for being considered for construction management-at-risk services shall be at least 21 days from date of publication on the State Construction Office website. Responses to Request For Proposal (RFP) for each project must be received by the Capital Project Coordinator prior to a firm's being considered for construction management-at-risk services.

History Note: Authority G.S. 143-135.26;

Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

01 NCAC 30J .0301 CONSTRUCTION MANAGER-AT-RISK QUALIFICATIONS

All firms desiring to provide construction management-at-risk services shall submit all information required in the RFP for the public owner's review and evaluation. Firms shall submit evidence of compliance with the requirements of the RFP. Each firm shall meet the requirements of the RFP prior to being considered by the pre-selection committee as one of the firms most qualified to perform construction manager-at-risk services. Failure of any firm to furnish all required information in the RFP shall disqualify the firm from consideration.

History Note: Authority G.S. 143-135.26; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

01 NCAC 30J .0303 SELECTING CRITERIA

In selecting the three firms to be presented to the SBC, the pre-selection committee shall take into consideration in the evaluation of the Proposals such factors as:

- (1) Workload that is able to accommodate the addition of this project.
- (2) Record of successfully completed projects of similar scope without legal or technical problems.
- (3) Previous experience with the public owner, a good working relationship with owner representatives, projects completed in a timely manner and an acceptable quality of work.
- (4) Key personnel that have appropriate for contract experience and qualifications.
- (5) Relevant and easily understood graphic or tabular presentations.
- (6) Completion of - Construction Manager-At-Risk projects in which there were few differences between the guaranteed maximum price and final cost.
- (7) Projects that were completed on or ahead of schedule.
- (8) Recent experience with project costs and schedules.
- (9) Construction administration capabilities.
- (10) Proximity to and familiarity with the area where the project is located.
- (11) Quality of compliance plan for minority business participation as required by G.S. 143-128.2.

History Note: Authority G.S. 143-135.26; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

01 NCAC 30J .0304 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR UNC SYSTEM PROJECTS

In selecting Construction Manager-at-Risk for its projects, the UNC system shall comply with the rules in this Subchapter except that:

- (1) the pre-selection committee need not include a representative of the State Construction Office; and
- (2) the final selection of Construction Manager-at-Risk shall be made by the Board of Trustees of the funded institution.

History Note: Authority G.S. 143-135.26; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

01 NCAC 30J .0305 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS

(a) Upon receipt of a letter from the capital projects coordinator listing three firms in priority order along with recommendations and selection information, the secretary of the SBC, upon determination that all information has been submitted, shall place the request for consideration on the agenda for the next SBC meeting.

(b) The capital projects coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the rules in this Subchapter have been followed, the SBC shall:

- (1) Affirm the selection of the firms in the priority order recommended by the agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

History Note: Authority G.S. 143-135.26; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

01 NCAC 30J .0306 CONTRACT NEGOTIATION

After the three firms have been notified of the selection action by the SBC or the University of North Carolina, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency shall discuss with the first ranked construction manager-at-risk services and information about the project. The State Construction Office shall request in writing a detailed fee proposal from the first ranked Construction Manager-at-Risk. The State Construction Office in coordination with the capital projects coordinator and the using agency shall attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process shall be repeated with the third-ranked Construction Manager-at-Risk. If a fee still cannot be agreed upon, the SBC shall review the history of negotiations and make determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the

original selection order, or a call shall be made for the capital projects coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process shall continue until a fee has been determined that is agreed to by the State Construction Office, the using agency and the Construction Manager-at-Risk. Following execution of the contract, the State Construction Office shall publish on the State Construction Office website, the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

History Note: Authority G.S. 143-135.26; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES

10A NCAC 13P .0101 ABBREVIATIONS

As used in this Subchapter, the following abbreviations mean:

- (1) AHA: American Heart Association;
- (2) CPR: Cardiopulmonary Resuscitation;
- (3) EMD: Emergency Medical Dispatcher;
- (4) EMDPRS: Emergency Medical Dispatch Priority Reference System;
- (5) EMS: Emergency Medical Services;
- (6) EMS-NP: EMS Nurse Practitioner;
- (7) EMS-PA: EMS Physician Assistant;
- (8) EMT: Emergency Medical Technician;
- (9) EMT-I: EMT-Intermediate;
- (10) EMT-P: EMT-Paramedic;
- (11) MICN: Mobile Intensive Care Nurse;
- (12) MR: Medical Responder;
- (13) NHTSA: National Highway Traffic Safety Administration;
- (14) OEMS: Office of Emergency Medical Services; and
- (15) US DOT: United States Department of Transportation.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0119 EMS PEER REVIEW COMMITTEE

As used in this Subchapter, "EMS Peer Review Committee" means a committee as defined in G.S. 131E-155(a)(6b).

History Note: Authority G.S. 131E-155(a)(6b); 143-508(b); 143-518(a)(5); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0202 MODEL EMS SYSTEMS

(a) Some EMS Systems may choose to move beyond the minimum requirements in Rule .0201 of this Section and receive designation from the OEMS as a Model EMS System. To

APPROVED RULES

receive this designation, an EMS System shall document that, in addition to the system requirements in Rule .0201 of this Section, the following criteria have been met:

- (1) a uniform level of care throughout the system available 24 hours per day;
- (2) a plan for medical oversight that meets the requirements found in Section .0400 of this Subchapter. Specifically, Model EMS Systems shall meet the additional requirements for medical director and written treatment protocols as defined in Rules .0401(1)(b) and .0405(a)(2) of this Subchapter;
- (3) a mechanism to collect and electronically submit to the OEMS data that use the EMS data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (4) a written plan to address management of the EMS System to include:
 - (A) triage of patients to appropriate facilities;
 - (B) transport of patients to facilities outside of the system;
 - (C) arrangements for transporting patients to appropriate facilities when diversion or bypass plans are activated;
 - (D) a mechanism for reporting, monitoring, and establishing standards for system response times;
 - (E) a disaster plan; and
 - (F) a mass-gathering plan;
- (5) a written continuing education plan for EMS personnel, under the direction of the System Continuing Education Coordinator, developed and modified based on feedback from system data, review, and evaluation of patient outcomes and quality management reviews;
- (6) a written plan to assure participation in clinical and field internship educational components for all EMS personnel;
- (7) operational protocols for the management of equipment, supplies and medications. These protocols shall include a methodology:
 - (A) to assure that each vehicle contains the required equipment and supplies on each response;
 - (B) for cleaning and maintaining the equipment and vehicles; and
 - (C) to assure that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;

- (8) a written plan for the systematic and periodic inspection, repair and maintenance of all vehicles used in the system;
- (9) a written plan addressing the role of the EMS System in the areas of public education, injury prevention, and community health;
- (10) affiliation with at least one trauma Regional Advisory Committee; and
- (11) a system-wide communication system that meets the requirements of Paragraph (a)(13) of Rule .0201 of this Section, and in addition:
 - (A) operates an EMD program; and
 - (B) has an operational E-911 system.

(b) EMS Systems holding current accreditation by a national accreditation agency may use this as documentation of completion of the equivalent requirements outlined in this Rule.

(c) The county shall submit an application for designation as a Model EMS System to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The application shall demonstrate that the system meets the standards found in Paragraph (a) of this Rule. Designation as a Model EMS System shall be awarded for a period of six years. Systems shall apply to OEMS for model system redesignation.

History Note: Authority G.S. 143-508(b); (d)(1), (d)(5), (d)(9); 143-509(1); 143-508(d)(13); Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004.

10A NCAC 13P .0204 EMS PROVIDER LICENSE REQUIREMENTS

(a) Any firm, corporation, agency, organization or association that provides emergency medical services as its primary responsibility shall be licensed as an EMS Provider by meeting the following criteria:

- (1) Be affiliated with an EMS System;
- (2) Present an application for a permit for any ambulance that will be in service as required by G.S. 131E-156;
- (3) Submit a written plan detailing how the Provider will furnish credentialed personnel;
- (4) Where there is a franchise ordinance in effect that covers the proposed service area, be granted a current franchise to operate or present written documentation of impending receipt of a franchise from the county; and
- (5) Present a written plan and method for recording systematic, periodic inspection repair, cleaning, and routine maintenance of all EMS responding vehicles.

(b) An EMS Provider may renew its license by presenting documentation to the OEMS that the Provider meets the criteria found in Paragraph (a) of this Rule.

History Note: Authority G.S. 131E-155.1(c); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0207 GROUND AMBULANCE:

VEHICLE AND EQUIPMENT REQUIREMENTS

- (a) To be permitted as a Ground Ambulance, a vehicle shall have:
- (1) a patient compartment that meets the following interior dimensions:
 - (A) the length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (B) the height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
 - (2) patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle;
 - (3) other equipment to include:
 - (A) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge; and
 - (B) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;
 - (4) the name of the ambulance provider permanently displayed on each side of the vehicle;
 - (5) reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle;
 - (6) emergency warning lights and audible warning devices mounted on the vehicle as required by G.S. 20-125 in addition to those required by Federal Motor Vehicle Safety Standards. All warning devices shall function properly;
 - (7) no structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle;
 - (8) an operational two-way radio that shall:
 - (A) be mounted to the ambulance and installed for safe operation and controlled by the ambulance driver;
 - (B) have sufficient range, radio frequencies, and capabilities to establish and maintain two-way voice radio communication from within the

- (C) defined service area of the EMS System to the emergency communications center or public safety answering point (PSAP) designated to direct or dispatch the deployment of the ambulance;
- (C) be capable of establishing two-way voice radio communication from within the defined service area to the emergency department of the hospital(s) where patients are routinely transported and to facilities that provide on-line medical direction to EMS personnel;
- (D) be equipped with a radio control device mounted in the patient compartment capable of operation by the patient attendant to receive on-line medical direction; and
- (E) be licensed or authorized by the Federal Communications Commission (FCC).

(b) Ground ambulances shall not use a radiotelephone device such as a cellular telephone as the only source of two-way radio voice communication.

(c) Other communication instruments or devices such as data radio, facsimile, computer, or telemetry radio shall be in addition to the mission dedicated dispatch radio and shall function independently from the mission dedicated radio.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0208 CONVALESCENT AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

- (a) To be permitted as a Convalescent Ambulance, a vehicle shall have:
- (1) a patient compartment that meets the following interior dimensions:
 - (A) the length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (B) the height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
 - (2) patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6,

including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle;

- (3) other equipment to include:
- (A) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge; and
 - (B) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance.

(b) Convalescent Ambulances shall:

- (1) not be equipped, permanently or temporarily, with any emergency warning devices, audible or visual, other than those required by Federal Motor Vehicle Safety Standards;
- (2) have the name of the ambulance provider permanently displayed on each side of the vehicle;
- (3) not have emergency medical symbols, such as the Star of Life, block design cross, or any other medical markings, symbols, or emblems, including the word "EMERGENCY," on the vehicle;
- (4) have the words "CONVALESCENT AMBULANCE" lettered on both sides and on the rear of the vehicle body; and
- (5) have reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle.

(c) A two-way radio or radiotelephone device such as a cellular telephone shall be available to summon emergency assistance for a vehicle permitted as a convalescent ambulance.

(d) The convalescent ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0301 PROGRAM CRITERIA

(a) Programs seeking designation to provide specialty care transports shall submit an application for program approval to the OEMS at least 60 days prior to field implementation. The application shall document that the program has:

- (1) a defined service area;
- (2) a medical oversight plan meeting the requirements of Section .0400;
- (3) service continuously available on a 24 hour per day basis;
- (4) the capability to provide the following patient care skills and procedures:
 - (A) advanced airway techniques including rapid sequence induction,

cricothyrotomy, and ventilator management, including continuous monitoring of the patient's oxygenation;

- (B) insertion of femoral lines;
 - (C) maintaining invasive monitoring devices to include central venous pressure lines, arterial and venous catheters, arterial lines, intra-ventricular catheters, and epidural catheters; and
 - (D) interpreting 12-lead electrocardiograms;
- (5) a written continuing education plan for EMS personnel, under the direction of the Specialty Care Transport Program Continuing Education Coordinator, developed and modified based on feedback from program data, review and evaluation of patient outcomes, and quality management reviews.
- (6) a mechanism to collect and electronically submit to the OEMS data that uses the EMS data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. EMS Specialty Care Transport Programs shall comply with this requirement by July 1, 2004.

(b) Applications for specialty care transport program approval shall document that the applicant meets the requirements for the specific program type or types applied for as specified in Rules .0302, .0303 or .0304 of this Section.

(c) Specialty care transport program approval shall be valid for a period to coincide with the EMS Provider License, not to exceed six years. Programs shall apply to the OEMS for reapproval.

History Note: Authority G.S. 143-508(d)(1), (d)(8), (d)(9); 143-508(d)(13); Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004.

10A NCAC 13P .0303 GROUND SPECIALTY CARE TRANSPORT PROGRAMS

(a) When transporting patients that have a medical need for one or more of the skills or procedures as defined for specialty care transport programs in .0301(a)(4) of this Section, staffing for the vehicle used in the ground specialty care transport program shall be at a level to ensure the capability to provide in the patient compartment, when the patient condition requires, two of the following personnel approved by the medical director as medical crew members:

- (1) EMT-Paramedic;
- (2) nurse practitioner;
- (3) physician
- (4) physician assistant;

- (5) registered nurse; and
 - (6) respiratory therapist.
- (b) When transporting patients that do not require specialty care transport skills or procedures, staffing for the vehicles used in the ground specialty care transport program shall be at a level to ensure compliance with G.S. 131E-158(a).
- (c) In addition to the requirements of specialty care transport programs in Rule .0301 of this Section, ground programs providing specialty care transports shall document that the program has:
- (1) a communication system that will provide two-way voice communications to medical crew members anywhere in the service area of the program. The medical director shall verify that the communications system is satisfactory for on-line medical direction;
 - (2) medical crew members that have all completed training regarding:
 - (A) operation of the EMS communications system used in the program; and
 - (B) the medical and safety equipment specific to the vehicles used in the program. This training shall be conducted every six months;
 - (3) operational protocols for the management of equipment, supplies and medications. These protocols shall include:
 - (A) a standard equipment and supply listing for all ambulance vehicles used in the program. This listing shall meet or exceed the requirements for each category of ambulance used in the program as found in Rules .0207, .0208, .0209, and .0210 of this Subchapter;
 - (B) a standard listing of medications for all ambulance and EMS nontransporting vehicles used in the system. This listing shall be based on the local treatment protocols and be approved by the medical director;
 - (C) a methodology to assure that each vehicle contains the required equipment and supplies on each response;
 - (D) a methodology for cleaning and maintaining the equipment and vehicles; and
 - (E) a methodology for assuring that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
 - (4) a written plan for providing emergency vehicle operation education for program personnel who operate emergency vehicles; and
 - (5) a written plan specifying how EMS Systems will request ambulances operated by the program.

(d) Ground Specialty Care Transport programs based outside of North Carolina may be granted approval by the OEMS to operate in North Carolina by submitting an application for program approval. The application shall document that the program meets all criteria specified in Rules .0204 and .0301 of this Subchapter and Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 143-508(d)(1), (d)(8), (d)(9); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0403 RESPONSIBILITIES OF THE MEDICAL DIRECTOR FOR EMS SYSTEMS

(a) The Medical Director for an EMS System shall be responsible for the following:

- (1) ensure that medical control is available 24 hours a day;
- (2) the establishment, approval and annual updating of treatment protocols;
- (3) EMD programs, the establishment, approval, and annual updating of the EMDPRS;
- (4) medical supervision of the selection, system orientation, continuing education and performance of EMS personnel;
- (5) medical supervision of a scope of practice performance evaluation for all EMS personnel in the system based on the treatment protocols for the system;
- (6) the medical review of the care provided to patients;
- (7) providing guidance regarding decisions about the equipment, medical supplies, and medications that will be carried on ambulances or EMS nontransporting vehicles within the scope of practice of EMT-I or EMT-P; and
- (8) keeping the care provided up to date with current medical practice.

(b) Any tasks related to Paragraph (a) of this Rule may be completed, through written delegation, by assisting physicians, physician assistants, nurse practitioners, registered nurses, EMD's, or EMT-P's.

(c) The Medical Director may suspend temporarily, pending due process review, any EMS personnel from further participation in the EMS System when it is determined the activities or medical care rendered by such personnel may be detrimental to the care of the patient, constitute unprofessional behavior, or result in non-compliance with credentialing requirements.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0405 REQUIREMENTS FOR TREATMENT PROTOCOLS FOR EMS SYSTEMS

(a) Written Treatment Protocols:

- (1) Used in EMS Systems shall meet the standard treatment protocols as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data

- Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (2) Used in Model EMS Systems shall also meet the standard treatment protocols for Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (3) Shall not contain medical procedures, medications, or intravenous fluids that exceed the scope of practice defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the level of care offered in the EMS System and any other applicable health care licensing board.

(b) Treatment protocols developed locally shall meet the requirements of Paragraph (a) of this Rule, shall be reviewed annually and any change in the treatment protocols shall be submitted to the OEMS Medical Director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0408 EMS PEER REVIEW COMMITTEE FOR EMS SYSTEMS

- (a) The EMS Peer Review Committee for an EMS System shall:
- (1) be composed of membership as defined in G.S. 131E-155(6b).
 - (2) appoint a physician as chairperson;
 - (3) meet at least quarterly;
 - (4) analyze system data to evaluate the ongoing quality of patient care and medical direction within the system;
 - (5) use information gained from system data analysis to make recommendations regarding the content of continuing education programs for EMS personnel;
 - (6) review treatment protocols of the EMS System and make recommendations to the medical director for changes;
 - (7) establish a written procedure to guarantee reviews for EMS personnel temporarily suspended by the medical director; and
 - (8) maintain minutes of committee meetings throughout the approval period of the EMS System.

(b) The EMS Peer Review Committee shall adopt written guidelines that address:

- (1) structure of committee membership;
- (2) appointment of committee officers;
- (3) appointment of committee members;
- (4) length of terms of committee members;
- (5) frequency of attendance of committee members;
- (6) establishment of a quorum for conducting business; and
- (7) confidentiality of medical records and personnel issues.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0409 EMS PEER REVIEW COMMITTEE FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) The EMS Peer Review Committee for a Specialty Care Transport Program shall:

- (1) be composed of membership as defined in G.S. 131E-155(6b);
- (2) appoint a physician as chairperson;
- (3) meet at least quarterly;
- (4) analyze program data to evaluate the ongoing quality of patient care and medical direction within the program;
- (5) use information gained from program data analysis to make recommendations regarding the content of continuing education programs for medical crew members;
- (6) review treatment protocols of the Specialty Care Transport Programs and make recommendations to the medical director for changes;
- (7) establish a written procedure to guarantee reviews for medical crew members temporarily suspended by the medical director; and
- (8) maintain minutes of committee meetings throughout the approval period of the Specialty Care Transport Program.

(b) Each EMS Peer Review Committee For Specialty Care Transport Programs shall adopt written guidelines that address:

- (1) structure of committee membership;
- (2) appointment of committee officers;
- (3) appointment of committee members;
- (4) length of terms of committee members;
- (5) frequency of attendance of committee members;
- (6) establishment of a quorum for conducting business; and
- (7) confidentiality of medical records and personnel issues.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

APPROVED RULES

10A NCAC 13P .0501 EDUCATIONAL PROGRAMS

(a) An educational program approved to qualify credentialed EMS personnel to perform within their scope of practice shall be offered by an EMS educational institution.

(b) Educational programs approved to qualify EMS personnel for credentialing shall meet the educational objectives of the:

- (1) "US DOT NHTSA First Responder: National Standard Curriculum" for MR personnel;
- (2) "US DOT NHTSA EMT-Basic: National Standard Curriculum" for EMT personnel;
- (3) "US DOT NHTSA EMT-Paramedic: National Standard Curriculum" for EMT-I and EMT-P personnel. For EMT-I personnel, the educational objectives shall be limited to the following:

(A) Module 1: Preparatory

SECTION	TITLE	LESSON OBJECTIVES
1-1	EMS Systems / Roles & Responsibilities	1-1.1 – 1-1.46
1-2	The Well Being of the Paramedic	1-2.1 – 1-2.46
1-4	Medical / Legal Issues	1-4.1 – 1-4.35
1-5	Ethics	1-5.1 – 1-5.11
1-6	General Principles of Pathophysiology	1-6.3; 1-6.5 – 1-6.9; 1-6.13 – 1-6.16; 1-6.19 – 1-6.25; 1-6.27 – 1-6.31
1-7	Pharmacology	1-7.1 – 1-7.31
1-8	Venous Access / Medication Administration	1-8.1 – 1-8.8; 1-8.10 – 1-8.17; 1-8.19 – 1-8.34; 1-8.36 – 1-8.38; 1-8.40 – 1-8.43
1-9	Therapeutic Communications	1-9.1 – 1-9.21

(B) Module 2: Airway

SECTION	TITLE	LESSON OBJECTIVES
2-1	Airway Management & Ventilation	2-1.1 – 2-1.10; 2-1.12 – 2-1.40; 2-1.42 – 2-1.64; 2-1.69; 2-1.73 – 2-1.89;

		2-1.93 – 2-1.103; 2-1.104a-d; 2-1.105 – 2-1.106; 2-1.108
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(C) Module 3: Patient Assessment

SECTION	TITLE	LESSON OBJECTIVES
3-2	Techniques of Physical Examination	3-2.1 – 3-2.88

(D) Module 4: Trauma

SECTION	TITLE	LESSON OBJECTIVES
4-2	Hemorrhage and Shock	4-2.1 – 4-2.54
4-4	Burns	4-4.25 – 4-4.30; 4-4.80 – 4-4.81

(E) Module 5: Medical

SECTION	TITLE	LESSON OBJECTIVES
5-1	Pulmonary	5-1.2 – 5-1.7; 5-1.10bcdefjk – 5-1.14
5-2	Cardiology	5-2.1 – 5-2.5; 5-2.8; 5-2.11 – 5-2.12; 5-2.14; 5-2.29 – 5-2.30; 5-2.53; 5-2.65 – 5-2.68; 5-2.70; 5-2.72 – 5-2.73; 5-2.75 – 5-2.77; 5-2.79 – 5-2.81; 5-2.84 – 5-2.89; 5-2.91 – 5-2.95; 5-2.121 –

APPROVED RULES

		5-2.125; 5-2.128 – 5-2.133; 5-2.150; 5- 2.159; 5-2.162; 5- 2.165; 5-2.168; 5-2.179 – 5-2.180; 5-2.184; 5-2.193 – 5-2.194; 5-2.201; 5- 2.205ab; 5- 2.206 – 5- 2.207
5-3	Neurology	5-3.11 – 5- 3.17; 5-3.82 – 5- 3.83
5-4	Endocrinology	5-4.8 – 5- 4.48
5-5	Allergies and Anaphylaxis	5-5.1 – 5- 5.19
5-8	Toxicology	5-8.40 – 5- 8.56; 5-8.62

(F) Module 7: Assessment Based Management

SECTION	TITLE	LESSON OBJECTIVES
7-1	Assessment Based Management	7-1.1 – 7-1.19 (objectives 7-1.12 and 7-1.19 should include only abefhklo)

- (4) "US DOT NHTSA Emergency Medical Dispatcher: National Standard Curriculum" for EMD personnel; or
- (5) "National Guidelines for Educating EMS Instructors" for EMS Instructors.

These documents are incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. These documents are available from NHTSA, 400 7th Street, SW, Washington, D.C. 20590, at no cost.

(c) Educational programs approved to qualify EMS personnel for renewal of credentials shall follow the guidelines of the:

- (1) "US DOT NHTSA First Responder Refresher: National Standard Curriculum" for MR personnel;

- (2) "US DOT NHTSA EMT-Basic Refresher: National Standard Curriculum" for EMT personnel;
- (3) "EMT-P and EMT-I Continuing Education National Guidelines" for EMT-I and EMT-P personnel; or
- (4) "US DOT NHTSA Emergency Medical Dispatcher: National Standard Curriculum" for EMD personnel.

These documents are incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. These documents are available from NHTSA, 400 7th Street, SW, Washington, D.C. 20590, at no cost.

History Note: Authority G.S. 143-508(d)(3), (d)(4); 143-514; Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004.

10A NCAC 13P .0601 CONTINUING EDUCATION EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Continuing Education EMS Educational Institutions shall be credentialed by the OEMS to provide EMS continuing education programs.

(b) Continuing Education EMS Educational Institutions shall have:

- (1) at least a Level I EMS Instructor as program coordinator. The program coordinator shall hold a Level I EMS Instructor credential at a level equal to or greater than the highest level of continuing education program offered in the EMS System or Specialty Care Transport Program;
- (2) a continuing education program consistent with the EMS System or Specialty Care Transport Program continuing education plan for EMS personnel;
 - (A) In an EMS System, the continuing education programs for EMD, EMT-I, and EMT-P shall be reviewed and approved by the medical director of the EMS System.
 - (B) In a Model EMS System, the continuing education program shall be reviewed and approved by the system continuing education coordinator and medical director.
 - (C) In a Specialty Care Transport Program, the continuing education program shall be reviewed and approved by Specialty Care Transport Program Continuing Education Coordinator and the medical director.
- (3) access to instructional supplies and equipment necessary for students to complete educational programs as defined in Rule .0501(c) of this Subchapter;
- (4) educational programs offered in accordance with Rule .0501(c) of this Subchapter;
- (5) an Educational Medical Advisor if offering educational programs that have not been reviewed and approved by a medical director

of an EMS System or Specialty Care Transport Program. The Educational Medical Advisor shall meet the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and

- (6) a written educational plan describing the delivery of educational programs, the record-keeping system detailing student attendance and performance, and the selection and monitoring of EMS instructors.

(c) An application for credentialing as a Continuing Education EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraph (b) of this Rule.

(d) Continuing Education EMS Educational Institution credentials shall be valid for a period of four years.

(e) It is not necessary for Continuing Education EMS Educational Institutions designated as the primary educational delivery agency for a Model EMS System to submit an application for renewal of credentials.

History Note: Authority G.S. 143-508(d)(4), (13); Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004.

10A NCAC 13P .0602 BASIC EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Basic EMS Educational Institutions may offer MR, EMT, and EMD courses for which they have been credentialed by the OEMS.

(b) For initial courses, Basic EMS Educational Institutions shall have:

- (1) at least a Level I EMS Instructor as lead course instructor for MR and EMT courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (2) at least a Level I EMS Instructor credentialed at the EMD level as lead course instructor for EMD courses;
- (3) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a combination of staff who cumulatively meet the requirements of the Level II EMS Instructor referenced in this Paragraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Subparagraph (b)(5) of this Rule. Basic EMS Educational Institutions offering only EMD courses may meet this requirement with a Level I EMS Instructor credentialed at the EMD level;

- (4) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection" incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;

- (5) a written educational plan describing the delivery of educational programs, the record-keeping system detailing student attendance and performance; and the selection and monitoring of EMS instructors; and

- (6) access to instructional supplies and equipment necessary for students to complete educational programs as defined in Rule .0501(c) of this Subchapter.

(c) For EMS continuing education programs, Basic EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .0601 of this Section.

(d) An application for credentialing as a Basic EMS Educational Institution shall be submitted to the OEMS for review. The proposal shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule.

(e) Basic EMS Educational Institution credentials shall be valid for a period of four years.

(f) It is not necessary for Basic EMS Educational Institutions designated as the primary educational delivery agency for a Model EMS System to submit an application for renewal of credentials.

History Note: Authority G.S. 143-508(d)(4), (13); Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004.

10A NCAC 13P .0901 LEVEL I TRAUMA CENTER CRITERIA

To receive designation as a Level I Trauma Center, a hospital shall have the following:

- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;
- (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
- (3) Trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) Have a minimum of three years clinical experience on a trauma service or trauma fellowship training;
 - (b) Serve on the center's trauma service;
 - (c) Participate in providing care to patients with life-threatening or urgent injuries;
 - (d) Participate in the North Carolina Chapter of the ACS Committee on

APPROVED RULES

- and promptly available if requested by the trauma team leader, and
 - (g) Registered nursing personnel trained in the care of trauma patients.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have board certification in general surgery within five years of completing residency;
- (10) Neurosurgeons and orthopaedists serving the trauma service who are currently board certified or eligible. Those who are eligible must be board certified within five years after successful completion of the residency;
- (11) Standard written protocols relating to trauma management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
 - (a) Shock;
 - (b) Respiratory distress;
 - (c) Airway compromise;
 - (d) Unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
 - (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
 - (a) Proximal amputations;
 - (b) Burns meeting institutional transfer criteria;
 - (c) Vascular compromise;
 - (d) Crush to chest or pelvis;
 - (e) Two or more proximal long bone fractures; and
 - (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
 - (a) Falls greater than 20 feet;
 - (b) Pedestrian struck by motor vehicle;
 - (c) Motor vehicle crash with:
 - (i) Ejection (includes motorcycle);
 - (ii) Rollover;
 - (iii) Speed greater than 40 mph; or
 - (iv) Death of another individual at the scene;
 - (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
 - (a) Cardiac surgery;
 - (b) Critical care;
 - (c) Hand surgery;
 - (d) Microvascular/replant surgery;
 - (e) Neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary.)
 - (f) Obstetrics/gynecologic surgery;
 - (g) Ophthalmic surgery;
 - (h) Oral/maxillofacial surgery;
 - (i) Orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
 - (j) Pediatric surgery;
 - (k) Plastic surgery;
 - (l) Radiology;
 - (m) Thoracic surgery; and
 - (n) Urologic surgery.
- (16) An Emergency Department that has:
 - (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
 - (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department such that:
 - (i) At least one physician on every shift in the Emergency Department is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) to serve as the designated member of the trauma team at least until the arrival of the trauma surgeon. Emergency physicians caring only for pediatric patients may, as an alternative, be boarded in pediatric emergency medicine. All emergency physicians must be board-certified within five years after successful completion of the residency;
 - (ii) All remaining emergency physicians, if not board-certified or prepared in emergency medicine as

APPROVED RULES

- outlined in Item (16)(b)(i) of this Rule, are board-certified, or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine, with each being board-certified within five years after successful completion of a residency; and
 - (iii) All emergency physicians practice emergency medicine as their primary specialty.
 - (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices, including capability for cervical traction;
 - (xiii) Arterial catheters;
 - (xiv) Thermal control equipment for patients;
 - (xv) Thermal control equipment for blood and fluids;
 - (xvi) Rapid infuser system;
 - (xvii) Broselow tape;
 - (xviii) Sonography; and
 - (xix) Doppler.
- (17) An operating suite that is immediately available 24 hours per day and has:
- (a) 24-hour-per-day immediate availability of in-house staffing;
 - (b) Equipment for patients of all ages to include:
 - (i) Cardiopulmonary bypass capability;
 - (ii) Operating microscope;
 - (iii) Thermal control equipment for patients
 - (iv) Thermal control equipment for blood and fluids;
 - (v) 24-hour-per-day x-ray capability including c-arm image intensifier;
 - (vi) Endoscopes and bronchoscopes;
 - (vii) Craniotomy instruments;
 - (viii) Capability of fixation of long-bone and pelvic fractures; and
 - (ix) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
- (a) 24-hour-per-day in-house staffing by registered nurses;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Capability for continuous monitoring of intracranial pressure;
 - (iii) Pulse oximetry;
 - (iv) End-tidal carbon dioxide determination capability;
 - (v) Thermal control equipment for patients; and
 - (vi) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
- (a) A designated surgical director for trauma patients;

APPROVED RULES

- (b) A physician on duty in the intensive care unit 24 hours per day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the Emergency Department;
- (c) Ratio of one nurse per two patients on each shift;
- (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary, transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices;
 - (xi) Temperature control devices; and
 - (xii) Intracranial pressure monitoring devices.
- (e) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (20) Acute hemodialysis capability;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) Radiological capabilities that include:
 - (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist;
 - (c) Sonography;
 - (d) Computed tomography;
 - (e) Angiography;
 - (f) Magnetic resonance imaging; and
 - (g) Resuscitation equipment to include: airway management and IV therapy.
- (24) Respiratory therapy services available in-house 24 hours per day;
- (25) 24-hour-per-day clinical laboratory service that must include:
 - (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (26) A rehabilitation service that provides:
 - (a) A staff trained in rehabilitation care of critically injured patients;
 - (b) For major trauma patients, functional assessment and recommendations regarding short- and long-term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) Full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) Physical, occupational, speech therapies, and social services; and
 - (e) Substance abuse evaluation and counseling capability.
- (27) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:
 - (a) The trauma registry agreed to by the North Carolina State Trauma Advisory Committee and OEMS, whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .0801(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);

- (b) Morbidity and mortality reviews to include all trauma deaths;
 - (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
 - (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians, as needed, specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
 - (e) Identification of discretionary and non-discretionary audit filters;
 - (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
 - (g) Documentation and review of response times for trauma surgeons, neurosurgeons, anesthesiologists or airway managers, and orthopaedists. All must demonstrate 80% compliance.
 - (h) Monitoring of trauma team notification times;
 - (i) Review of pre-hospital trauma care to include dead-on-arrivals; and
 - (j) Review of times and reasons for transfer of injured patients.
- (28) An outreach program to include:
- (a) Written transfer agreements to address the transfer and receipt of trauma patients;
 - (b) Programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
 - (c) Development of a Regional Advisory Committee (RAC) as specified in Rule .1102 of this Subchapter;
 - (d) Development of regional criteria for coordination of trauma care;
 - (e) Assessment of trauma system operations at the regional level; and
 - (f) ATLS.
- (29) A program of injury prevention and public education to include:
- (a) Epidemiology research to include studies in injury control, collaboration with other institutions on research, monitoring progress of prevention programs, and consultation with qualified researchers on evaluation measures;
 - (b) Surveillance methods to include trauma registry data, special Emergency Department and field collection projects;
 - (c) Designation of a injury prevention coordinator; and
 - (d) Outreach activities, program development, information resources, and collaboration with existing national, regional, and state trauma programs.
- (30) A trauma research program designed to produce new knowledge applicable to the care of injured patients to include:
- (a) Identifiable institutional review board process;
 - (b) Extramural educational presentations that must include 12 education/outreach presentations over a three-year period; and
 - (c) 10 peer-reviewed publications over a three-year period that could come from any aspect of the trauma program.
- (31) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) A general surgery residency program;
 - (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all attending general surgeons on the trauma service, orthopaedists, and neurosurgeons, with at least 50% of this being extramural;
 - (c) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all emergency physicians, with at least 50% of this being extramural;
 - (d) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
 - (e) 20 contact hours of trauma-related continuing education (beyond in-

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| <p>(f) 16 hours of trauma -registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager for the trauma registrar;</p> <p>(g) At least an 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and</p> <p>(h) 16 hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.</p> | <p>(4) A full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;</p> <p>(5) A full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;</p> <p>(6) A hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;</p> <p>(7) Clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel.</p> |
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*History Note: Authority G.S. 131E-162;
 Temporary Adoption Eff. January 1, 2002;
 Eff. April 1, 2003;
 Amended Eff. January 1, 2004.*

10A NCAC 13P .0902 LEVEL II TRAUMA CENTER CRITERIA

To receive designation as a Level II Trauma Center, a hospital shall have the following:

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| <p>(1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;</p> <p>(2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;</p> <p>(3) A trauma medical director who is a board-certified general surgeon. The trauma medical director must:</p> <p>(a) Have at least three years clinical experience on a trauma service or trauma fellowship training;</p> <p>(b) Serve on the center's trauma service;</p> <p>(c) Participate in providing care to patients with life-threatening urgent injuries;</p> <p>(d) Participate in the North Carolina Chapter of the ACS' Committee on Trauma as well as other regional and national trauma organizations; and</p> <p>(e) Remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma-related instruction to other health care personnel.</p> | <p>(8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes:</p> <p>(a) A trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;</p> <p>(b) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This emergency physician if prepared or eligible must be board-certified within five years after</p> |
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- successful completion of the residency and serves as a designated member of the trauma team until the arrival of the trauma surgeon;
- (c) Neurosurgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending neurosurgeon; a Post Graduate Year 2 (PGY2) or higher in-house neurosurgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for neurosurgical emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgeon is simultaneously on-call at a hospital other than the trauma center; and
- (d) Orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending orthopaedic surgeon; a Post Graduate Year 2 (PGY2) or higher in-house orthopaedic surgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the orthopaedic surgeon is simultaneously on-call at a hospital other than the trauma center; and
- (e) An in-house anesthesiologist or a Clinical Anesthesiology Year 3 (CA3) resident unless an anesthesiologist on-call is advised and promptly available after notification or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have board certification in general surgery within five years of completing residency;
- (10) Neurosurgeons and orthopaedists serving the trauma service who are currently board certified or eligible. Those who are eligible must be board certified within five years after successful completion of the residency;
- (11) Standard written protocols relating to trauma care management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
 - (b) Respiratory distress;
 - (c) Airway compromise;
 - (d) Unresponsiveness (Glasgow Coma Scale less than eight with potential for multiple injuries; and
 - (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
 - (b) Burns meeting institutional transfer criteria;
 - (c) Vascular compromise;
 - (d) Crush to chest or pelvis;
 - (e) Two or more proximal long bone fractures; and
 - (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;
 - (b) Pedestrian struck by motor vehicle;
 - (c) Motor vehicle crash with:
 - (i) Ejection (includes motorcycle);
 - (ii) Rollover;
 - (iii) Speed greater than 40 mph; or
 - (iv) Death of another individual at the scene;
 - (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
- (a) Critical care;
 - (b) Hand surgery;
 - (c) Neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary.);
 - (d) Obstetrics/gynecologic surgery;

- (e) Ophthalmic surgery;
 - (f) Oral maxillofacial surgery;
 - (g) Orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
 - (h) Plastic surgery;
 - (i) Radiology;
 - (j) Thoracic surgery; and
 - (k) Urologic surgery.
- (16) An Emergency Department that has:
- (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
 - (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
 - (i) Are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine). These emergency physicians must be board-certified within five years after successful completion of a residency;
 - (ii) Are designated members of the trauma team; and
 - (iii) Practice emergency medicine as their primary specialty.
 - (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices, including capability for cervical traction;
 - (xiii) Arterial catheters;
 - (xiv) Thermal control equipment for patients;
 - (xv) Thermal control equipment for blood and fluids;
 - (xvi) Rapid infuser system;
 - (xvii) Broselow tape;
 - (xviii) Sonography; and
 - (xix) Doppler.
- (17) An operating suite that is immediately available 24 hours per day and has:
- (a) 24-hour-per-day immediate availability of in-house staffing;
 - (b) Equipment for patients of all ages to include:
 - (i) Thermal control equipment for patients;
 - (ii) Thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;
 - (iv) Endoscopes and bronchoscopes;
 - (v) Craniotomy instruments;
 - (vi) Capability of fixation of long-bone and pelvic fractures; and
 - (vii) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:

APPROVED RULES

- (a) 24-hour-per-day in-house staffing by registered nurses;
- (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Capability for continuous monitoring of intracranial pressure;
 - (iii) Pulse oximetry;
 - (iv) End-tidal carbon dioxide determination capability;
 - (v) Thermal control equipment for patients; and
 - (vi) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
 - (a) A designated surgical director of trauma patients;
 - (b) A physician on duty in the intensive care unit 24 hours per day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the Emergency Department;
 - (c) Ratio of one nurse per two patients on each shift;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices;
 - (xi) Temperature control devices; and
 - (xii) Intracranial pressure monitoring devices.
 - (e) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies.
- (20) Acute hemodialysis capability or utilization of a written transfer agreement;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) Radiological capabilities that include:
 - (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist;
 - (c) Sonography;
 - (d) Computed tomography;
 - (e) Angiography; and
 - (f) Resuscitation equipment to include airway management and IV therapy.
- (24) Respiratory therapy services available in-house 24 hours per day;
- (25) 24-hour-per-day clinical laboratory service that must include:
 - (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to a community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (26) A rehabilitation service that provides:
 - (a) A staff trained in rehabilitation care of critically injured patients;
 - (b) For major trauma patients, functional assessment and recommendation regarding short- and long-term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) Full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) Physical, occupational, speech therapies, and social services; and
 - (e) Substance abuse evaluation and counseling capability.
- (27) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma

Centers,” incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:

- (a) The trauma registry agreed to by the North Carolina State Trauma Advisory Committee and OEMS whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .0801(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
- (b) Morbidity and mortality reviews to include all trauma deaths;
- (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
- (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians, as needed, specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
- (e) Identification of discretionary and non-discretionary audit filters;
- (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
- (g) Documentation and review of response times for trauma surgeons, neurosurgeons, anesthesiologists or airway managers, and orthopaedists. All must demonstrate 80% compliance;
- (h) Monitoring of trauma team notification times;
- (i) Review of pre-hospital trauma care to include dead-on-arrivals; and

- (j) Review of times and reasons for transfer of injured patients.
- (28) An outreach program to include:
- (a) Written transfer agreements to address the transfer and receipt of trauma patients;
 - (b) Programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
 - (c) Development of a Regional Advisory Committee (RAC) as specified in Rule .1102 of this Subchapter;
 - (d) Development of regional criteria for coordination of trauma care; and
 - (e) Assessment of trauma system operations at the regional level.
- (29) A program of injury prevention and public education to include:
- (a) Designation of an injury prevention coordinator; and
 - (b) Outreach activities, program development, information resources, and collaboration with existing national, regional, and state trauma programs.
- (30) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all attending general surgeons on the trauma service, orthopaedics, and neurosurgeons, with at least 50% of this being extramural;
 - (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all emergency physicians, with at least 50% of this being extramural;
 - (c) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS.
 - (d) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;

- (e) 16 hours of trauma-registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar;
 - (f) at least 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
 - (g) 16 contact hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.
- (6) A hospital department/division/section for general surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
 - (7) Clinical capabilities in general surgery with a written posted call schedule that indicates who is on call for both trauma and general surgery. If a trauma surgeon is simultaneously on call at more than one hospital, there must be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency).
 - (8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes:
 - (a) A trauma attending whose presence at the patient's bedside within 30 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (b) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This emergency physician if prepared or eligible must be board-certified within five years after successful completion of the residency and serve as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (c) An anesthesiologist who is on-call and promptly available after notification by the trauma team leader or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist within 20 minutes of notification.

*History Note: Authority G.S. 131E-162;
 Temporary Adoption Eff. January 1, 2002;
 Eff. April 1, 2003;
 Amended Eff. January 1, 2004.*

10A NCAC 13P .0903 LEVEL III TRAUMA CENTER CRITERIA

To receive designation as a Level III Trauma Center, a hospital shall have the following:

- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;
- (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal application;
- (3) A trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) Serve on the center's trauma service;
 - (b) Participate in providing care to patients with life-threatening or urgent injuries;
 - (c) Participate in the North Carolina Chapter of the ACS' Committee on Trauma;
 - (d) Remain a current provider in the ACS' Advanced Trauma Life Support Course in the provision of trauma-related instruction to other health care personnel.
- (4) A designated trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;
- (5) A trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has

- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have board certification in general surgery within five years of completing residency;
- (10) Current board certification or eligibility of orthopaedists, with board certification within five years after successful completion of residency;
- (11) Standard written protocols relating to trauma care management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
 - (b) Respiratory distress;
 - (c) Airway compromise;
 - (d) Unresponsiveness (Glasgow Coma Scale less than eight) with potential for multiple injuries; and
 - (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
 - (b) Burns meeting institutional transfer criteria;
 - (c) Vascular compromise;
 - (d) Crush to chest or pelvis;
 - (e) Two or more proximal long bone fractures; and
 - (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;
 - (b) Pedestrian struck by motor vehicle;
 - (c) Motor vehicle crash with:
 - (i) Ejection (includes motorcycle);
 - (ii) Rollover;
 - (iii) Speed greater than 40 mph; or
 - (iv) Death of another individual at the scene;
 - (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule) to include individuals credentialed in the following:
- (a) Orthopaedics; and
 - (b) Radiology.
- (16) An Emergency Department that has:
- (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
 - (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
 - (i) Are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine. These emergency physicians must be board-certified within five years after successful completion of a residency;
 - (ii) Are designated members of the trauma team; and
 - (iii) Practice emergency medicine as their primary specialty.
 - (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
 - (d) Resuscitation equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy,

APPROVED RULES

- thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices;
 - (xiii) Thermal control equipment for patients; and
 - (xiv) Thermal control equipment for blood and fluids;
 - (xv) Rapid infuser system;
 - (xvi) Broselow tape; and
 - (xvii) Doppler.
 - (17) An operating suite that has:
 - (a) Personnel available 24 hours a day, on-call, and available within 30 minutes of notification unless in-house;
 - (b) Age-specific equipment to include:
 - (i) Thermal control equipment for patients;
 - (ii) Thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;
 - (iv) Endoscopes and bronchoscopes;
 - (v) Equipment for long bone and pelvic fracture fixation; and
 - (vi) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
 - (a) 24-hour-per-day availability of registered nurses within 30 minutes from inside or outside the hospital;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination;
 - (iv) Thermal control equipment for patients; and
 - (v) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
 - (a) A designated surgical director of trauma patients;
 - (b) A physician on duty in the intensive care unit 24-hours-per-day or immediately available from within the hospital (which may be a physician who is the sole physician on-call for the Emergency Department);
 - (c) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices; and
 - (xi) Temperature control devices.
 - (d) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (20) Acute hemodialysis capability or utilization of a written transfer agreement;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) Acute head injury management capability or written transfer agreement with a hospital capable of caring for a head injury;
- (24) Radiological capabilities that include:
 - (a) Radiology technologist and computer tomography technologist available within 30 minutes of notification or documentation that procedures are available within 30 minutes;
 - (b) Computed Tomography;
 - (c) Sonography; and
 - (d) Resuscitation equipment to include airway management and IV therapy.
- (25) Respiratory therapy services on-call 24 hours per day;

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| <p>(26) 24-hour-per-day clinical laboratory service that must include:</p> <ul style="list-style-type: none"> (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate; (b) Blood-typing and cross-matching; (c) Coagulation studies; (d) Comprehensive blood bank or access to a community central blood bank with storage facilities; (e) Blood gases and pH determination; and (f) Microbiology. <p>(27) Full in-house rehabilitation service or written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;</p> <p>(28) Physical therapy and social services.</p> <p>(29) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:</p> <ul style="list-style-type: none"> (a) The trauma registry agreed to by the North Carolina State Trauma Advisory Committee and OEMS, whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .0801(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital); (b) Morbidity and mortality reviews to include all trauma deaths; (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings; (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, emergency medicine, and other specialty physicians as | <ul style="list-style-type: none"> (e) Identification of discretionary and non-discretionary audit filters; (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital; (g) Documentation and review of response times for trauma surgeons, airway managers, and orthopaedists. All must demonstrate 80% compliance; (h) Monitoring of trauma team notification times; (i) Documentation (unless in-house) and review of Emergency Department response times for anesthesiologists or airway managers and computerized tomography technologist; (j) Documentation of availability of the surgeon on-call for trauma, such that compliance is 90% or greater where there is no trauma surgeon back-up call schedule; (k) Trauma performance and multidisciplinary peer review committees may be incorporated together or included in other staff meetings as appropriate for the facility performance improvement rules; (l) Review of pre-hospital trauma care to include dead-on-arrivals; and (m) Review of times and reasons for transfer of injured patients. <p>(30) An outreach program to include:</p> <ul style="list-style-type: none"> (a) Written transfer agreements to address the transfer and receipt of trauma patients; (b) Participation in a Regional Advisory Committee (RAC). <p>(31) Coordination or participation in community prevention activities;</p> <p>(32) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:</p> <ul style="list-style-type: none"> (a) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education every two years for all attending general surgeons on the trauma service, with at least 50% of this being extramural); (b) 20 hours of Category I or II trauma-related continuing medical education |
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- (c) (as approved by the Accreditation Council for Continuing Medical Education every two years for all emergency physicians, with at least 50% of this being extramural; Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
 - (d) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
 - (e) 16 hours of trauma-regis try-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar;
 - (f) At least an 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
 - (g) 16 hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.
- (2) Commissioners in the applicant's trauma primary catchment area of the request for renewal to allow for comment. Hospitals seeking a renewal of trauma center designation shall complete and submit an original and five copies of a bound, page-numbered RFP as directed by the OEMS to the OEMS and the specified site surveyors at least 30 days prior to the site visit. The RFP shall include information that supports compliance with the criteria contained in Rule .0901, .0902, or .0903 of this Section as it relates to the trauma center's level of designation.
 - (3) All criteria defined in Rule .0901, .0902, or .0903 of this Section, as relates to the trauma center's level of designation, shall be met for renewal designation.
 - (4) A site visit shall be conducted within 120 days prior to the end of the designation period. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.
 - (5) The composition of a Level I or II site survey team shall be the same as that specified in Rule .0904(k) of this Section.
 - (6) The composition of a Level III site survey team shall be the same as that specified in Rule .0904(l) of this Section.
 - (7) On the day of the site visit the hospital shall make available all requested patient medical charts.
 - (8) A post-conference report based on consensus of the site review team shall be given verbally during the summary conference. A written consensus report shall be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.
 - (9) The report of the site survey team and a staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 30 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that the request for trauma center renewal be approved; approved with a contingency(ies) due to a deficiency(ies) requiring a focused review; approved with a contingency(ies) not due to a deficiency(ies); or denied.
 - (10) Hospitals with a deficiency(ies) have up to 10 working days prior to the State EMS Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in this period prior to the State EMS Advisory Council meeting, the hospital, instead of a four-year renewal, may be given a time period (up to 12 months) to demonstrate compliance and undergo a focused review, that may

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004.

10A NCAC 13P .0905 RENEWAL DESIGNATION PROCESS

- (a) One of two options may be utilized to achieve trauma center renewal:
 - (1) Undergo a site visit conducted by OEMS to obtain a four-year renewal designation; or
 - (2) Undergo a verification visit arranged by the ACS, in conjunction with OEMS, to obtain a three-year renewal designation;
- (b) For hospitals choosing Subparagraph (a)(1) of this Rule:
 - (1) Prior to the end of the designation period, the OEMS shall forward to the hospital an RFP for completion. The hospital shall, within 10 days of receipt of the RFP, define for OEMS the trauma center's trauma primary catchment area. Upon this notification, OEMS shall notify the respective Board of County

require an additional site visit. The hospital shall retain its trauma center designation during the focused review period. If compliance is demonstrated within the prescribed time period, the hospital shall be granted its designation for the four-year period from the previous designation's expiration date. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit an updated RFP and follow the initial applicant process outlined in Rule .0904 of this Section.

- (11) The final decision regarding trauma center renewal shall be rendered by the OEMS.
 - (12) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
 - (13) The four-year renewal date that may be eventually granted shall not be extended due to the focused review period.
 - (14) Hospitals in the process of satisfying contingencies placed on them prior to December 31, 2001, shall be evaluated based on the rules that were in effect at the time of their renewal visit.
- (c) For hospitals choosing Subparagraph (a)(2) of this Rule:
- (1) At least six months prior to the end of the trauma center's designation period, the trauma center must notify the OEMS of its intent to undergo an ACS verification visit. It must simultaneously define in writing to the OEMS its trauma primary catchment area. Trauma centers choosing this option must then comply with all the ACS' verification procedures, as well as any additional state criteria as outlined in Rule .0901, .0902, or .0903, as apply to their level of designation.
 - (2) If a trauma center currently using the ACS' verification process chooses not to renew using this process, it must notify the OEMS at least six months prior to the end of its state trauma center designation period of its intention to exercise the option in Subparagraph (a)(1) of this Rule.
 - (3) When completing the ACS' documentation for verification, the trauma center must simultaneously submit two identical copies to OEMS. The trauma center must simultaneously complete documents supplied by OEMS to verify compliance with additional North Carolina criteria (i.e., criteria that exceed the ACS criteria) and forward these to OEMS and the ACS.
 - (4) The OEMS shall notify the Board of County Commissioners within the trauma center's trauma primary catchment area of the trauma

- (5) center's request for renewal to allow for comments.
The trauma center must make sure the site visit is scheduled to ensure that the ACS' final written report, accompanying medical record reviews and cover letter are received by OEMS at least 30 days prior to a regularly scheduled State Emergency Medical Services Advisory Council meeting to ensure that the trauma center's state designation period does not terminate without consideration by the State Emergency Medical Services Advisory Council.
- (6) The composition of the Level I or Level II site team must be as specified in Rule .0904(k) of this Section, except that both the required trauma surgeons and the emergency physician may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership shall be required of the surgeons or emergency physician, respectively, if from out-of-state.
- (7) The composition of the Level III site team must be as specified in Rule .0904(l) of this Section, except that the trauma surgeon, emergency physician, and trauma nurse coordinator/program manager may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership shall be required of the surgeon or emergency physician, respectively, if from out-of-state.
- (8) All state trauma center criteria must be met as defined in Rules .0901, .0902, and 0903, for renewal of state designation. An ACS' verification is not required for state designation. An ACS' verification does not ensure a state designation.
- (9) The final written report issued by the ACS' verification review committee, the accompanying medical record reviews (from which all identifiers may be removed), and cover letter must be forwarded to OEMS within 10 working days of its receipt by the trauma center seeking renewal.
- (10) The written reports from the ACS and the OEMS staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting. The State EMS Advisory Council shall recommend to OEMS that the request for trauma center renewal be approved; approved with a contingency(ies) due to a deficiency(ies) requiring a focused review; approved with a contingency(ies) not due to a deficiency(ies); or denied.
- (11) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation

- within 30 days of the Advisory Council meeting.
- (12) Hospitals with contingencies, as the result of a deficiency(ies), as determined by OEMS, have up to 10 working days prior to the State EMS Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in this time period prior to the State EMS Advisory Council meeting, the hospital, instead of a four-year renewal, may undergo a focused review (to be conducted by the OEMS) whereby the trauma center may be given up to 12 months to demonstrate compliance. Satisfaction of contingency(ies) may require an additional site visit. The hospital shall retain its trauma center designation during the focused review period. If compliance is demonstrated within the prescribed time period, the hospital shall be granted its designation for the four-year period from the previous designation's expiration date. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit a new RFP and follow the initial applicant process outlined in Rule .0904 of this Section.

*History Note: Authority G.S. 131E-162; 143-509(3);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003;
Amended Eff. January 1, 2004.*

10A NCAC 13P .1103 REGIONAL TRAUMA SYSTEM POLICY DEVELOPMENT

The RAC shall oversee the development, implementation, and evaluation of the regional trauma system to include:

- (1) Public information and education programs to include system access and injury prevention;
- (2) Written trauma system guidelines to address the following:
 - (a) Regional communications;
 - (b) Triage;
 - (c) Treatment at the scene and in the pre-hospital, inter-hospital, and Emergency Department to include guidelines to facilitate the rapid assessment and initial resuscitation of the severely injured patient, including primary and secondary survey. Criteria addressing management during transport shall include continued assessment and management of airway, cervical spine, breathing, circulation, neurologic and secondary parameters, communication, and documentation.
 - (d) Transport to determine the appropriate mode of transport and

level of care required to transport, considering patient condition, requirement for trauma center resources, family requests, and capability of transferring entity.

- (e) Bypass procedures that define:
 - (i) circumstances and criteria for bypass decisions;
 - (ii) time and distance criteria; and
 - (iii) mode of transport which bypasses closer facilities.
 - (f) Scene and inter-hospital diversion procedures that shall include delineation of specific factors such as hospital census or acuity, physician availability, staffing issues, disaster status, or transportation which would require routing of a patient to another trauma center.
- (3) Transfer agreements (to include those with other hospitals, as well as specialty care facilities such as burn, pediatrics, spinal cord, and rehabilitation) which shall outline mutual understandings between facilities to transfer/accept certain patients. These shall specify responsible parties, documentation requirements, and minimum care requirements.
- (4) A performance improvement plan that includes:
 - (a) A regional trauma peer review committee of the RAC;
 - (i) whose membership and responsibilities are defined in G.S. 131E-162; and
 - (ii) continuously evaluates the regional trauma system through structured review of process of care and outcomes; and
 - (b) The existing trauma registry database and the RAC registry database, once operational, that report quarterly or as requested by the OEMS.

*History Note: Authority G.S. 131E-162;
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003;
Amended Eff. January 1, 2004.*

10A NCAC 70I .0101 LICENSING ACTIONS

- (a) License.
 - (1) The Department of Health and Human Services shall issue a license when it determines that the residential child-care facility is in compliance with rules in Subchapters 70I and 70J.
 - (2) A license shall remain in effect for one year.
 - (3) The Department of Health and Human Services shall automatically provide a 90 day

APPROVED RULES

- grace period at the expiration date of the license.
- (4) If licensure materials are submitted after the license expires, but within the 90 day grace period, the Department of Health and Human Services shall issue a license one year from the expiration date of the previous license.
- (b) Changes in any information on the license.
- (1) The Department of Health and Human Services shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70I and 70J.
- (2) The Department of Health and Human Services shall not change a license during the 90 day grace period.
- (3) A residential child-care facility must notify the Children's Services Section in writing of its request for a change in license, including such information as is necessary to assure that the change is in compliance with the rules in Subchapters 70I and 70J.
- (c) Termination.
- (1) When a residential child-care facility voluntarily discontinues child caring operations, either temporarily or permanently, the residential child-care facility must notify the Children's Services Section in writing of the date, reason and anticipated length of closing.
- (2) If a license is not renewed by the end of the 90 day grace period, the Department of Health and Human Services shall automatically terminate the license.
- (d) Adverse Licensure Action.
- (1) The Department of Health and Human Services shall deny, suspend or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters 70I and 70J unless the child-care provider within 10 working days from the date the child-care facility initially received the deficiency report from the Division of Social Services submits a plan of correction. The plan of correction shall specify the following:
- (A) the measures that will be put in place to correct the deficiency;
- (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
- (C) the individual or individuals who will monitor the corrective action; and
- (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.
- (2) The Department of Health and Human Services shall notify a residential child-care facility in writing of the decision to deny, suspend or revoke a license.
- (3) Appeal procedures specified in 10A NCAC 70L .0107, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, are applicable for persons seeking an appeal to the Department's decision to deny, suspend or revoke a license.
- (e) Licensure Restriction.
- (1) Licensure shall be denied when an applicant meets any of the following conditions:
- (A) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license revoked;
- (B) Owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or
- (C) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.
- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153; Eff. July 1, 1999; Temporary Amendment Eff. July 1, 2003; Amended Eff. August 1, 2004.

TITLE 13 - DEPARTMENT OF LABOR

13 NCAC 12 .0408 DEFINITIONS RELATIVE TO ABC RESTRICTIONS

- (a) For purposes of G.S. 95-25.5(j) and the Rules in this Chapter, and in addition to the definitions promulgated by the NC Alcoholic Beverage Control Commission in 04 NCAC 02S, the following terms are defined:
- (1) Prepare: To make ready; or to put together by combining various elements or ingredients.
- (2) Serve: To supply; or to place before the customer.
- (3) Dispense: To pour; or to draw from a tap.
- (4) Sell: To offer; to accept the order for; to exchange or deliver for money or equivalent; or to handle payment.
- (5) Premises: The building or area of a building plus any other property immediately adjacent to it that forms a component or integral part of the business for which the permit was issued.
- (6) Outside Grounds: The land immediately adjacent to the building or area of a building

- (7) that forms a component or integral part of the business for which the permit was issued.
- (7) **ABC Permit for On-Premises Sale or Consumption:** A written or printed authorization issued by the NC Alcoholic Beverage Control Commission pursuant to G.S. 18B and 04 NCAC 02, that authorizes the consumption of alcoholic beverages on the premises of the business for which the permit was issued..

- (2) **DEFINITIONS.** For the purpose of Rules 15A NCAC 02B .0243 and 15A NCAC 02B .0244, these terms shall be defined as follows:
- (a) "Access Trails" means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including boardwalks, steps, rails, signage, etc.
- (b) "Archaeological Activities" means activities conducted by a Registered Professional Archaeologist (RPA).
- (c) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of

History Note: Authority G.S. 95-25.5; 95-25.19; Eff. March 1, 2001; Amended Eff. January 1, 2004.

13 NCAC 15 .0704 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE

- (a) In the event that an inspection is scheduled and the amusement device operator or owner fails to have all amusement devices scheduled for inspection ready for inspection, any follow up inspection visits requested by the operator or owner shall be charged at two hundred fifty dollars (\$250.00) per amusement device, notwithstanding the provisions of 13 NCAC 15 .0703.
- (b) All inspections conducted outside normal business hours for the North Carolina Department of Labor (7:00 a.m. to 7:00 p.m. Monday through Friday, exclusive of State government holidays) shall be charged at the rate of two hundred fifty dollars (\$250.00) per inspection, plus the amusement device inspection fee, notwithstanding the provisions of 13 NCAC 15 .0703, however, in no instance may the total fee assessed exceed an aggregate of two hundred fifty dollars (\$250.00) for each device inspected.

History Note: Authority G.S. 95-107; 95-111.4(19); Temporary Adoption Eff. October 17, 2001; Eff. July 1, 2003; Amended Eff. January 1, 2004.

TITLE 15A - DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

15A NCAC 02B .0243 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

- (1) **PURPOSE.** The purpose of this Rule shall be to protect and preserve existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.

- airports and restricted landing areas, and the safe and efficient operation thereof; and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "Airport Facilities":
- (i) satellite parking facilities;
 - (ii) retail and commercial development outside of the terminal area, such as rental car facilities; and
 - (iii) other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority.
- (d) "Approved local government" means any government with a riparian buffer ordinance approved by the Division pursuant to Subparagraph (3)(b) of this Rule.
 - (e) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
 - (f) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
 - (g) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
 - (h) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba River. The landward edge of the lakes at full pond level represents the project boundary for each lake.
 - (i) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, signage, etc.
 - (j) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18-inches.
 - (k) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).
 - (l) "Riparian buffer enhancement" is defined as the process of converting a non-forested riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per acre but less than 200 trees per acre) to a forested riparian buffer area. The enhanced, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.
 - (m) "Riparian buffer restoration" is defined as the process of converting a non-forested riparian area, where woody vegetation is absent (less than 100 trees per acre) to a forested riparian buffer area. The restored, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.
 - (n) "Shoreline stabilization" is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
 - (o) "Stream restoration" is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and

profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. "Referenced" or "referenced reach" means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.

- (p) "Stump diameter" means diameter of a tree measured at six inches above ground surface level.
 - (q) "Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.
 - (r) "Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures or water dependent structures, or to maintain public traffic during construction.
 - (s) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter equal to or exceeding six inches.
- (3) **APPLICABILITY.** This Rule shall apply to a 50-foot wide riparian buffer along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands. Wetlands within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506. The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. Riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes shall be subject to this Rule unless one of the following applies.
- (a) **EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING.** This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule. The determination of whether a use is existing and ongoing will be made either by the Division or approved local government; whichever is appropriate according to the administration of the buffer program. A use is existing and ongoing when it is a completed and maintained

activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:

- (i) A use that was present within the riparian buffer as of June 30, 2001 and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of the Rule, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.
- (ii) A use that can be documented to the Division or the appropriate approved local government that meets at least one of the following criteria:
 - (A) Project requires a 401 Certification/404 Permit, these were issued prior to June 30, 2001 and are still valid;
 - (B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin

- construction and had received all required state permits prior to June 30, 2001;
- (C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by June 30, 2003; and
- (D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the DWQ prior to June 30, 2001.
- (iii) A project that can be documented to the Division or the appropriate approved local government that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to July 1, 2001. This Rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.
- (iv) This Rule shall apply at the time an existing use is changed to another use. Change of use shall include the following:
- (A) Impervious surface is added to the riparian buffer in locations where it did not exist previously either on the ground or in proposed site plans showing the locations of proposed impervious surfaces for uses defined as existing and ongoing in Subparagraph (a)(ii) or Subparagraph (a)(iii) of this Rule; or
- (B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.
- (b) **LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES.** All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is

implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.

(c) **RIPARIAN AREAS AND ACTIVITIES NOT REGULATED UNDER AN APPROVED LOCAL GOVERNMENT ORDINANCE.** The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division-approved local government ordinance.

(4) **ZONES OF THE RIPARIAN BUFFER.** The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a forested area that is undisturbed except for uses provided for in Item (6) of this Rule. The location of Zone 1 shall be as follows:

(i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.

(ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the most landward limit of the full pond level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (6) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not

compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to a vertical line marking the outer edge of Zone 1. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.

(5) **DIFFUSE FLOW REQUIREMENT.** Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.

(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

(c) No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Item (6) of this Rule.

(6) **TABLE OF USES.** The following chart sets out the uses and their category designation under this Rule as exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, are prohibited. The requirements for each category listed in the table as well as prohibited uses not set out in the table are given in Item (7) of this Rule.

Use	Exempt	Allowable	Allowable with Mitigation
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities: • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in	X	X	

APPROVED RULES

removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer				or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3			
• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer				Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:	X		
				• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies		X	
Airport facilities:		X		• New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer			X
• Airport or airstrip facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer			X				
• Airport or airstrip facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer							
Archaeological activities	X						
Bridges		X					
Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer	X			• New stormwater discharges to existing man-made conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater outfalls) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances			
Dam maintenance activities:				Driveway crossings of surface waters subject to this Rule:	X		
• Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3	X			• Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb equal to or less than			
• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam			X			X	
							X

APPROVED RULES

<p>25 linear feet or 2,500 square feet of riparian buffer</p> <ul style="list-style-type: none"> • Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturbs greater than 150 linear feet or one-third of an acre of riparian buffer 			X		<p>riparian buffers that meet the requirements of Items (4) and (5) of this Rule are established adjacent to the relocated channels</p> <ul style="list-style-type: none"> • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (4) and (5) of this Rule are not established adjacent to the relocated channels 			X	
<p>Fences:</p> <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule 	X				<p>Non-electric utility lines:</p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only¹ • Impacts other than perpendicular crossings in Zone 1¹ 		X	X	
<p>Forest harvesting - see Item (11) of this Rule</p>		X			<p>Non-electric utility line perpendicular crossings of surface waters subject to this Rule¹:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width 	X	X X	X	X
<p>Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized</p>	X								
<p>Greenway / hiking trails</p>		X							
<p>Historic preservation</p>	X								
<p>Mining activities:</p> <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new 		X							

APPROVED RULES

<ul style="list-style-type: none"> • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer regardless of the width of the maintenance corridor 			
Overhead electric utility lines: <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only¹ • Impacts other than perpendicular crossings in Zone 1^{1,2,3} 	X X		
Overhead electric utility line perpendicular crossings of surface waters subject to this Rule ¹ : <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer² • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer^{2,3} 	X	X	

- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

Use	Exempt	Allowable	Allowable with Mitigation
Playground equipment: <ul style="list-style-type: none"> • Playground equipment provided that installation and use does not result in removal of trees as defined in this Rule • Playground equipment where installation and use requires removal of trees as defined in this Rule 	X	X	
Properties that have been subdivided by a preliminary subdivision plat ⁴ approved by local governments within the Catawba River Basin within 2 years prior to June 30, 2001 for conventional subdivisions and within 5 years prior to June 30, 2001 for phased subdivisions: <ul style="list-style-type: none"> • Uses in Zone 2 provided that the ground is stabilized and diffuse flow is maintained • Uses in Zone 1 provided that the ground is stabilized and diffuse flow is 	X	X	

¹ Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°. New water intakes and new outfall lines which may be required to extend to or cross part of waterbodies will be implemented and enforced under this category.

² Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

APPROVED RULES

maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1				Use	Exempt	Allowable	Allowable with Mitigation
Properties that are included on a recorded subdivision plan prior to June 30, 2001: <ul style="list-style-type: none"> • Uses in Zone 2 provided that the ground is stabilized and diffuse flow is maintained • Uses in Zone 1 provided that the ground is stabilized and diffuse flow is maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1 	X	X		Railroad impacts other than crossings of surface waters subject to this Rule			X
Protection of existing structures, facilities and shoreline when this requires additional disturbance of the riparian buffer or the channel		X		Recreational and accessory structures: <ul style="list-style-type: none"> • Recreational and accessory structures such as decks, gazebos and sheds provided the total cumulative footprint of all structures within the buffer does not exceed 150 square feet, that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance • Recreational and accessory structures such as decks, gazebos, and sheds with a cumulative footprint of more than 150 square feet provided that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance 	X	X	
Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule	X			Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
⁴ The submitted preliminary subdivision plat shall include all the following information: <ul style="list-style-type: none"> • Total acreage of land proposed for platting. • The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines. • Location and use of all existing and proposed easements. This includes easements for drainage and utilities. • Location, width of rights-of-way and all proposed streets. • Location of all utilities installations. • Distance to nearest public water supply and sanitary sewerage systems. • Significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site. • Existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided. 				Road impacts other than crossings of surface waters subject to this Rule			X
				Road crossings of surface waters subject to this Rule: <ul style="list-style-type: none"> • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of 	X	X	X

APPROVED RULES

riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer				with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer • In-stream temporary erosion and sediment control measures for work within a stream channel			
Scientific studies and gauging station	X						
Stormwater management ponds excluding dry ponds: • New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond • New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond • Stormwater constructed wetland and bio-retention area		X	X				
Shoreline stabilization		X					
Temporary roads: • Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads used for culvert installation, bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction	X	X	X	Underground electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ¹ • Impacts other than perpendicular crossings in Zone 1 ^{1,5}	X X		
Temporary sediment and erosion control devices: • In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) of this Rule • In Zones 1 and 2 to control impacts associated	X	X		Underground electric utility line perpendicular crossings of surface waters subject to this Rule: ¹ • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer ⁵ • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer ⁵	X	X	
	X			Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities: • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 10 feet in width • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 10 feet in width		X	X
				View corridors: • Thinning of underbrush, shrubs, and limbs up to 50% of individual tree height to enhance a lake view provided soils are undisturbed, diffuse flow is	X		

- exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.
- (b) **ALLOWABLE.** Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and that disturbance to the buffer is minimized. These uses require prior written authorization from the Division or from a local government with an approved riparian buffer ordinance pursuant to Sub-Item (3)(b) of this Rule.
 - (c) **ALLOWABLE WITH MITIGATION.** Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the approved local government.
 - (d) **PROHIBITED.** All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.
- (8) **DETERMINATION OF "NO PRACTICAL ALTERNATIVES."** Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the approved local government. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the approved local government shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
- (a) For any request for an Authorization Certificate, the Division or the approved local government shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
 - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the approved local government. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:
 - (i) The applicant agrees, in writing, to a longer period;
 - (ii) Applicant fails to furnish requested information necessary to the Division's or approved local government's decision; or
 - (iii) Information necessary to the Division's or approved local government's decision.

The Division or the approved local government may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions to the Division shall use the appropriate Pre-Construction Notification (PCN) Application Form and shall submit the completed form to the Division. Complete submissions to the delegated local government shall include the following unless otherwise identified within an approved local government ordinance:

 - (i) The name, address and phone number of the applicant;

- (ii) The nature of the activity to be conducted by the applicant;
 - (iii) The location of the activity, including the jurisdiction;
 - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
 - (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
 - (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- (c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (9) **VARIANCES.** Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate approved local government shall make all of the following findings of fact and may grant variances. The variance request procedure shall be as follows:
- (a) For any variance request, the Division or the approved local government shall make a finding of fact to insure that the following requirements have been met:
 - (i) There are practical difficulties or hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
 - (A) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or the approved local government shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.
 - (B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.
 - (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
 - (D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.
 - (E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction,

- then granting a variance would be a special privilege denied to others, and would not promote equal justice.
- (ii) The variance is in harmony with the general purpose and intent of the Catawba River Basin's riparian buffer protection requirements and preserves its spirit; and
 - (iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and justice has been done.
- (b) Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the approved local government pursuant to G.S. 153A, Article 18, or G.S. 160A, Article 19. The Division or the approved local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals of decisions made by the approved local government shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345 for determinations made by the approved local government.
- (10) **MITIGATION.** Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Rule.
 - (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0244.
- (11) **REQUIREMENTS SPECIFIC TO FOREST HARVESTING.** The following requirements shall apply for forest harvesting operations and practices.
- (a) The following measures shall apply in Zone 1 of the riparian buffer:
 - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
 - (ii) Timber felling shall be directed away from the water body.
 - (iii) Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.
 - (iv) Individual trees may be treated to maintain or improve their health, form or vigor.
 - (v) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to this Rule. The Division of Forest Resources must notify the Division of all approvals.
 - (vi) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
 - (vii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.
 - (viii) Prescribed burns shall not be allowed.
 - (ix) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
 - (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under

forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

- (i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.
- (ii) Soil disturbing site preparation activities are not allowed.
- (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
- (iv) The following provisions for selective harvesting shall be met:
 - (A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.
 - (B) In the outer 20 feet of Zone 1, trees greater than 12-inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(c) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 – .0200 as enforced by the Division of Forest Resources.

(12) **OTHER LAWS, REGULATIONS AND PERMITS.** In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws. Whichever regulation is more restrictive shall apply.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1; S.B 824-2003; Temporary Adoption Eff. June 30, 2001; (exempt from 270 day requirement - S.L. 2001-418 & S.L. 2003-340). Eff. August 1, 2004.

15A NCAC 02B .0244 CATAWBA RIVER BASIN: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS IN THE CATAWBA RIVER BASIN

The following are the requirements for the Riparian Buffer Mitigation Program for the Catawba River Basin.

- (1) **PURPOSE.** The purpose of this Rule is to set forth the mitigation requirements that apply to maintain and protect existing riparian buffers on the Catawba River mainstem below Lake James and mainstem lakes from and including Lake James to the North Carolina/South Carolina border in the Catawba River Basin, as described in Rule 15A NCAC 02B .0243.
- (2) **APPLICABILITY.** This Rule applies to persons who wish to impact a riparian buffer in the Catawba Basin when one of the following applies:
 - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0243 for a proposed use that is designated as "allowable with mitigation."
 - (b) A person has received a variance pursuant to 15A NCAC 02B .0243 and is required to perform mitigation as a condition of a variance approval.
- (3) **THE AREA OF MITIGATION.** The required area of mitigation shall be determined by either the Division or a local government with an approved riparian buffer ordinance according to the following:
 - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by adding the following:
 - (i) The area of the footprint of the use causing the impact to the riparian buffer.
 - (ii) The area of any clearing and grading activities within the riparian buffer necessary to accommodate the use.

- (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
 - (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Rule:
 - (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 2.
 - (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
- (4) **THE LOCATION OF MITIGATION.** The mitigation effort shall be the same distance from the Catawba River as the proposed impact and as close to the location of the impact as feasible.
- (5) **ISSUANCE OF THE MITIGATION DETERMINATION.** The Division or a local government with an approved buffer program shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) **OPTIONS FOR MEETING THE MITIGATION DETERMINATION.** The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
 - (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
 - (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.
 - (c) Restoration or enhancement of a non-forested riparian buffer as defined in the Rule 15A NCAC 02B .0243. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.
- (7) **PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.** Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
 - (a) **SCHEDULE OF FEES:** The amount of payment into the Fund shall be determined by square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot.
 - (b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, Mail Service Center 1619, Raleigh, NC 27699-1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.
- (c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.
 - (d) The Division shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.
- (8) **DONATION OF PROPERTY.** Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
 - (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.
 - (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
 - (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

APPROVED RULES

- (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin.
- (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
- (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet. For the Catawba River mainstem below Lake James, the width of the riparian buffer shall begin at the most landward limit of the top of the bank and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. For the mainstem lakes located on the Catawba River mainstem, the width of the riparian buffer shall begin at the most landward limit of the full pond level and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.
- (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.
- (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of offsetting the adverse impacts of the requested use.
- (vi) The property shall be suitable to be restored, based on existing hydrology, soils, and vegetation.
- (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
- (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
- (x) The property shall not contain any hazardous substance or solid waste.
- (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
- (xii) The property and adjacent properties shall not have prior, current, or known future land use that would inhibit the function of the restoration effort.
- (xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.
- (d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:
 - (i) Documentation that the property meets the

- (9) **RIPARIAN BUFFER RESTORATION OR RIPARIAN BUFFER ENHANCEMENT.** Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:
- (i) requirements laid out in Sub-Item (8)(c) of this Rule.
 - (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.
 - (iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.
 - (iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.
 - (v) A title certificate.
- (a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - (i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Sub-Item (3)(b) of this Rule.
 - (ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Sub-Item (3)(b) of this Rule.
 - (b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.
 - (c) The riparian buffer restoration or riparian buffer enhancement site shall have a minimum width of 50 feet. For the Catawba River mainstem below Lake James, the width of the riparian buffer shall begin at the most landward limit of the top of the bank and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. For the mainstem lakes located on the Catawba River mainstem, the width of the riparian buffer shall begin at the most landward limit of the full pond level and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.
 - (d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0243. After receiving this determination, the applicant shall submit a riparian buffer restoration or riparian buffer enhancement plan for approval by the Division. The riparian buffer restoration or riparian buffer enhancement plan shall contain the following:
 - (i) A map of the proposed riparian buffer restoration or riparian buffer enhancement site.
 - (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density

- (iii) sufficient to provide 320 trees per acre at maturity. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
- (iv) A fertilization plan.
- (v) A schedule for implementation.
- (e) Within one year after the Division has approved the riparian buffer restoration or riparian buffer enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State and a local riparian buffer ordinance.
- (f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.
- (g) The applicant shall submit annual reports for a period of five years after the riparian buffer restoration or riparian buffer enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1; S.B. 824-2003; Temporary Adoption Eff. June 30, 2001 (exempt from 270 day requirement - S.L. 2001-418 & S.L. 2003-340); Eff. August 1, 2004.

15A NCAC 18A .3404 SWIMMING ADVISORIES FOR POINT SOURCE DISCHARGES INTO SWIMMING AREAS

- (a) A wastewater treatment plant that discharges into swimming waters shall be posted by the Division with at least one sign until the discharge is removed. The sign(s) for a wastewater treatment plant discharge shall convey the following:
 ATTENTION: THESE WATERS MAY BE CONTAMINATED BY HUMAN OR ANIMAL WASTE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.
- (b) A swimming advisory shall be issued by the Division and at least two signs shall be posted at a storm drain or storm water discharge that is actively discharging into a swimming area. Signs shall be placed to advise the public as they enter the area

impacted by the drain. The signs for a storm drain or storm water discharge shall convey the following:

SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

- (c) A swimming advisory shall be issued by the Division and at least two signs shall be posted at a storm drain where flood waters are being pumped into a swimming area. The signs shall remain posted for at least 24 hours after the pumping of flood waters has ceased. The signs shall convey the following:
 SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.
- (d) A swimming advisory shall be issued by the Division and at least two signs shall be posted at an area receiving dredge material on a swimming beach when the dredge material is being pumped from an area closed to shellfish harvesting. The signs shall convey the following:
 SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

History Note: Authority G.S. 130A-233.1; Eff. January 1, 2004.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02C .0108 ACQUISITION OF RIGHT OF WAY FOR SECONDARY ROADS

- (a) For the improvement or paving of unpaved secondary roads, the property owners shall dedicate, at no cost to the Department of Transportation, adequate right of way for construction and maintenance. As an exception, the Department of Transportation may acquire by purchase, donation or condemnation, such right of way as may be determined necessary to make safety improvements to unpaved secondary roads, or to construct, improve, or replace structures thereon, to protect the safety of the traveling public. This Section shall not be construed to limit the authority of the Department of Transportation to exercise its power of eminent domain.
- (b) With respect to paved roads on the state maintained secondary road system, the Department of Transportation may acquire by purchase, donation, or condemnation, such right of way as may be determined necessary to make improvements to protect the safety of the traveling public. The terms of Paragraphs (d) and (e) of this Rule shall not apply to this Paragraph.
- (c) On existing secondary roads which are part of the state highway system and have been approved for paving or general improvement, the Department of Transportation may pay for the cost of moving any existing fences or buildings within the rights of way.
- (d) If one or more property owners refuse to dedicate the necessary right of way in order to pave a secondary road, the

Department of Transportation may allow the remaining property owners to post a bond to cover condemnation costs incurred by the Department of Transportation. The Department of Transportation may then condemn the right of way necessary for paving the road.

(e) The amount of the bond to be posted by the property owners that are willing to give the right of way free of cost to the Department of Transportation may be determined in the following manner: The Department of Transportation may require up to two thousand five hundred dollars (\$2,500) for each parcel to be condemned based upon costs incurred for such condemnations during the previous one-year period in the county involved. If no condemnation precedents have occurred in the previous one-year period in that county, the department shall use the latest condemnation cost for the county involved. In addition, the Department of Transportation may require that the estimated amount of funds for appraised damages, if any, be posted along with the amount to cover court costs. For example, if in a previous one-year period, cost incurred in a particular county for condemning one parcel of property is two thousand one hundred dollars (\$2,100), the amount of two thousand one hundred dollars (\$2,100) may be required per parcel. If cost incurred is three thousand dollars (\$3,000) per parcel, two thousand five hundred dollars (\$2,500) may be required for each parcel to be condemned. If the damages for a parcel are one thousand dollars (\$1,000), a total of three thousand one hundred dollars (\$3,100) may be required for that one parcel. If there are two parcels, one having one thousand dollars (\$1,000) damages and the other having two hundred dollars (\$200.00) damages, three thousand one hundred dollars (\$3,100) may be required for one parcel and two thousand three hundred dollars (\$2,300) may be required for the other.

History Note: Authority G.S. 136-18(26); 136-44.1; 136-44.8; 136-44.16; 136-182; Eff. July 1, 1978; Amended Eff. January 1, 2004; December 1, 1994; December 29, 1993; October 1, 1982.

19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM

Businesses may participate in the program provided said businesses comply with the following criteria:

- (1) The individual business installation whose name, symbol or trademark appears on a business panel shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, age, disability, or national origin.
- (2) An individual business, under construction, may apply to participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within 60 days of the date of application. No business panel shall be displayed for a business which is not open for business and in full compliance with the standards required by the program. A business under construction shall not be

allowed to apply for participation in the program if its participation would prevent an existing open business from participating, unless the existing business qualifies for or has a provisional contract.

- (3) Businesses may apply for participation in the program on a first-come, first-served basis until the maximum number of panels on the logo sign for that service is reached. If a business's panel is removed and space is available on the sign, or one or more of the existing businesses have provisional contracts, the first fully qualifying business to contact the Department shall be allowed priority for the vacant space or the space occupied by a business with a provisional contract.
- (4) The maximum distance that a "GAS", "FOOD", or "LODGING" service may be located from the fully controlled access highway shall not exceed three miles at rural interchange approaches and one mile at urban interchange approaches in either direction via an all-weather road. Where no qualifying services exist within three miles (rural) or one mile (urban), provisional contracts are permitted where the maximum distance may be increased to six miles at rural interchange approaches and three miles at urban interchange approaches, provided the total travel distance to the business and return to the interchange does not exceed twelve miles. A rural interchange is defined as an interchange along a freeway (interstate or other fully-controlled access arterial highway) that is located either in a rural unincorporated area or within the corporate limits of a city or town with a population of less than 40,000. An urban interchange is defined as an interchange along a freeway (interstate or other fully-controlled access arterial highway) that is located either in or within one mile of the corporate limits of a city or town with a population equal to or greater than 40,000. Provisional contracts shall be written with the understanding that if a closer business applies, qualifies, and is within the three miles (rural) or one mile (urban) distance as applicable, and there is not otherwise room on the sign for the new business, then the provisional contract of the furthest business from the intersection shall be cancelled and the business panels shall be removed at the annual contract renewal date. The maximum distance for a "CAMPING" or "ATTRACTION" service shall not exceed 15 miles in either direction via an all-weather road.
- (5) "GAS" and associated services. Criteria for erection of a business panel on a sign shall include:
 - (a) licensing as required by law;

APPROVED RULES

- (b) vehicle services for fuel (gas, diesel, or alternative fuels), motor oil, and water;
 - (c) on premise public restroom facilities;
 - (d) an on premise attendant to collect monies, make change, and make or arrange for tire repairs;
 - (e) year-round operation at least 16 continuous hours per day, seven days a week; and
 - (f) on premise telephone available for emergency use by the public.
- (6) "FOOD" service. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law, and a permit to operate by the health department;
 - (b) businesses shall operate year-round at least eight continuous hours per day six days per week;
 - (c) indoor seating for at least 20 persons;
 - (d) on premise public restroom facilities; and
 - (e) on premise telephone available for emergency use by the public.
- (7) "LODGING" service. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law, and a permit to operate by the health department;
 - (b) overnight sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast" establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall be identified on the Logo signs by a standard message specified by the Department. "Bed and Breakfast" businesses shall only be allowed to participate in the program if the maximum number of qualified Lodging businesses do not request participation in the program and occupy spaces on the Logo signs. All "Bed and Breakfast" businesses shall have provisional contracts;
 - (c) adequate parking accommodations;
 - (d) year-round operation; and
 - (e) on premise telephone available for emergency use by the public.
- (8) "CAMPING" service. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law, including meeting all state and county health and sanitation codes and having water and sewer systems which have been duly inspected and approved by the local health authority
- (the operator shall present evidence of such inspection and approval);
- (b) at least 10 campsites with accommodations (including on premise public restroom facilities in a permanent structure) for all types of travel-trailers, tents and camping vehicles;
 - (c) adequate parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business panel by the department during off seasons, if operated on a seasonal basis; and
 - (f) on premise telephone available for emergency use by the public.
- (9) "ATTRACTION" service. Criteria for erection of a business panel on a sign for any business or establishment shall include:
- (a) licensing as required by law;
 - (b) on premise public restroom facilities in a permanent structure;
 - (c) continuously open to the motoring public without appointment at least eight hours per day, five days per week during its normal operating season or the normal operating season for the type of business;
 - (d) adequate parking accommodations;
 - (e) on premise telephone available for emergency use by the public; and
 - (f) only facilities whose primary purpose is providing amusement, historical, cultural, or leisure activities to the public and are categorized as follows shall be allowed signing:
 - (i) Amusement Parks: Permanent areas open to the general public including at least three of the following activities: roller coasters, entertainment rides, games, swimming, concerts, and exhibitions;
 - (ii) Cultural Centers or Facilities: Locations for cultural events including museums, outdoor theaters, or a facility that exhibits or sells antiques or items painted or crafted by local artists;
 - (iii) Historic Sites: Buildings, structures, or areas listed on the national or state historic register and recognized by the Department as historic attractions or locations;
 - (iv) Leisure or Recreation Activity Areas: Attractions

that provide tourists with opportunities such as golfing (excluding miniature golf, driving ranges, chip and putt areas, and indoor golf), horseback riding, wind surfing, skiing, bicycling, boating, fishing, picnicking, hiking, and rafting;

- (v) **Manufacturing Facilities:** Locations that manufacture or produce products of interest to tourists and offer tours at least four times daily on a regularly scheduled year-round basis such as candy, ice cream, cookie, or pickle manufacturing facilities. Facilities shall produce or manufacture and exhibit or sell their products at the facilities.
- (vi) **Agricultural Facilities:** Locations that provide tours and exhibit or sell their agricultural products or provide on site samples of their products, such as vineyards and regional farmers markets;
- (vii) **Zoological or Botanical Parks and Farms:** Facilities that keep living animals or plants and exhibit them to the public;
- (viii) **Natural Phenomena:** Naturally occurring areas that are of outstanding interest to the public, such as waterfalls or caverns; and
- (ix) **Motor Sports Facilities:** Locations including museums, race tracks, and race team headquarters that exhibit or sell items related to automobile or truck racing.

- (10) Any other "ATTRACTION" not listed in Item (f) of this Rule shall be approved by the State Traffic Engineer.
- (11) Ineligible Attractions include, but are not limited to, shopping malls, furniture stores, drug stores, movie theaters; community business, historic, antique, or other districts; appliance stores, automobile or truck dealerships or garages, houses of worship, colleges, schools, real estate offices, sand and gravel facilities, produce stands, nurseries, grocery stores, restaurants, bars, lounges, adult establishments, and adult video, book, and novelty stores. An attraction is not eligible for

both Travel Services (Logo) Signing and supplemental guide signing, such as Agriculture Tourism signing, at the same interchange.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; October 1, 1991; Temporary Amendment Eff. October 13, 2003; Amended Eff. January 1, 2004.

19A NCAC 02E .0220 COMPOSITION OF BUSINESS PANELS AND LOGO SIGNS

- (a) No business panel shall be displayed that would mislead or misinform the traveling public. Any message, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device is prohibited.
- (b) Each specific service business panel shall include only information that is related to that specific service. No more than one specific service type such as GAS, FOOD, or LODGING shall be allowed on a business panel.
- (c) Combination signs are the large rectangular signs that include space for individual business logo panels with more than one specific service. Provisional contracts for the businesses on combination signs shall be required for all businesses other than the first three fully qualifying GAS panels and the first three fully qualifying FOOD panels. Combination signs shall be allowed if one or more of the following conditions are met:
 - (1) if space is not available for separate sign installations;
 - (2) if the number of businesses desiring to participate exceeds the number of spaces available for business panels on sign; or
 - (3) if the number of businesses desiring to participate does not warrant the installation of separate sign installations.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. August 1, 1998; October 1, 1993; November 1, 1987; Temporary Amendment Eff. October 13, 2003; Amended Eff. January 1, 2004.

TITLE 20 - DEPARTMENT OF THE TREASURER

20 NCAC 03 .0112 FEES

- (a) The following fees shall be charged for services rendered or to be rendered for each category of bonds and notes set forth:
 - (1) Bonds sold pursuant to G.S. 159D, Article 2 \$5,000.00
 - (2) Bonds sold pursuant to G.S. 131A \$3,500.00

APPROVED RULES

- (3) Bonds sold pursuant to G.S. 159B \$5,000.00
- (4) Bonds sold pursuant to G.S. 159C \$2,500.00
(Except for bonds for industrial development or pollution control for which the fee shall be \$1,000.00.)
- (5) Bonds sold for Industrial Facilities and Pollution Control projects, pursuant to G.S. 159D, Article 1 (per participant) \$1,000.00
- (6) All other bonds sold pursuant to G.S. 159D \$1,000.00
- (7) Bonds sold pursuant to G.S. 159I \$5,000.00
- (8) All notes issued in anticipation of issuance of a bond for which a fee is set forth herein \$500.00
- (9) Revenue bonds sold pursuant to G.S. 159, Article 5 and all other approvals and issues of debt receiving Local Government Commission approval, other than general obligation bonds. \$5,000.00

(b) In addition to the fees set forth in this Rule, all travel and subsistence and all other expenses, including telephone and postage, incurred shall be for the account of the issuer. When paid by the state, they shall be billed to the issuer.

(c) In addition to expenses pursuant to Paragraph (b) of this Rule, the following fees shall be charged for the services set forth herein:

- (1) Approvals to counties pursuant to G.S. 105-487(c) \$250.00
- (2) Approvals to municipalities pursuant to G.S. 105-487(c) \$250.00
- (3) Approvals of installment purchase contracts under G.S. 160A-20 where no public offering is proposed \$500.00
- (4) Approvals of installment purchase contracts under G.S. 160A-20 where a public offering, including but not limited to certificates of participation, is proposed \$5,000.00

History Note: Authority G.S. 159-3(f); 159-6; Eff. August 1, 1983; Amended Eff. January 1, 2004; November 1, 1990; August 1, 1987; November 1, 1983.

- (4) "Current license" means a license that is renewed by the licensing board as required;
- (5) "Internship" means practice in an educational training program. Internship does not mean practice under an intern permit while holding an unrestricted general dental or dental specialty license issued by a state, U.S. territory or the District of Columbia; and
- (6) "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.

History Note: 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; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. May 1, 1991; May 1, 1989; September 1, 1988; October 1, 1986; Temporary Amendment Eff. January 1, 2003; Amended Eff. January 1, 2004.

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 form provided by the Board;
- (2) the licensure by credentials fee;
- (3) 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;
 - (B) that the applicant has provided at least 5000 hours of clinical care directly to patients, not including post graduate training, residency programs or an internship;
- (4) if applicable, a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (5) 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;
- (6) a copy of a current course completion certification card in cardiopulmonary resuscitation; and
- (7) a statement disclosing whether or not the applicant holds or has ever held a registration with the federal Drug Enforcement

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16A .0101 DEFINITIONS

As used in this Chapter:

- (1) "Applicant" means a person applying for any license or permit issued by the Board;
- (2) "Board" means the North Carolina State Board of Dental Examiners;
- (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry or dental hygiene in North Carolina;

APPROVED RULES

Administration (DEA) and whether such registration has ever been surrendered, surrendered for cause, or revoked.

(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 envelope sealed by the entity involved:

- (1) official transcripts from the applicant's dental school verifying that the applicant has graduated from a dental school 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 by or under contract with a federal agency, a letter certifying the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
(3) certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority 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 occupational or professional license;
(4) a report from the National Practitioner Databank;
(5) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant must submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
(6) a score certification letter from a dental professional regulatory board or regional testing agency of a passing score on a clinical licensure examination substantially equivalent to the clinical licensure examination required in North Carolina and such examination shall be administered by the dental professional regulatory board or its designated agent other than an educational institution.

(A) Such certification 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 following subject areas:

- (i) periodontics, clinical abilities testing;
(ii) endodontics, clinical abilities testing;
(iii) amalgam preparation and restoration;
(iv) anterior composite preparation and restoration;

- (v) posterior ceramic or composite preparation and restoration;
(vi) cast gold, clinical abilities testing;
(vii) prosthetics, written or clinical abilities testing;
(viii) oral diagnosis, written or clinical abilities testing; or
(ix) oral surgery, written or clinical abilities testing.

(B) In addition to the foregoing requirements, to be eligible for consideration for equivalency, a licensure examination after January 1, 1998 shall include:

- (i) anonymity between candidates and examination raters;
(ii) standardization and calibration of raters; and
(iii) a mechanism for post exam analysis;

(7) the applicant's passing score on the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations; and

(8) the applicant's passing score on 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 as set out in Subparagraph (b)(6) of this Rule.

(c) 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.

(d) 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.

(e) An applicant for dental licensure by credentials must successfully complete written examinations as set out in G.S. 90-36 and, if deemed necessary 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.

(f) Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.

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

History Note: Authority G.S. 90-28; 90-36; Temporary Adoption Eff. January 1, 2003; Eff. January 1, 2004.

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 form provided by the Board;
- (2) the limited volunteer dental licensure fee;
- (3) 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 provided at least 1000 hours per year of clinical care directly to patients, for a minimum of five years, not including post graduate training, residency programs or an internship; and
 - (C) that the applicant has provided at least 500 hours of clinical care directly to patients within the last five years, not including post graduate training, residency programs or an internship;
- (4) if applicable, a statement disclosing and explaining periods, within the last 10 years, of observation, assessment, or treatment for substance abuse, with verification from the applicable program 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
- (5) a copy of a current course completion certification card 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 envelope sealed by the entity involved:

- (1) documentation of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and, if applicable, of the applicant's authorization to treat veterans or personnel enlisted in the United States armed services, and information regarding all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;
- (3) a report from the National Practitioner Databank;
- (4) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant must submit a letter

of coverage history from all current and all previous malpractice insurance carriers covering the applicant;

- (5) the applicant's passing score on the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations; and
- (6) the applicant's passing score on a licensure examination in general dentistry substantially equivalent to the clinical licensure examination required in North Carolina, conducted by a regional testing agency or a state licensing board.

(c) 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.

(d) 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.

(e) An applicant for limited volunteer dental license must successfully complete written examinations as set out in G.S. 90-37.1 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.

(f) Should the applicant reapply for a limited volunteer dental license, an additional limited volunteer dental license fee shall be required.

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

(h) The license may be renewed on an annual basis provided that the licensee provides documentation that he or she has practiced a minimum of 100 hours, completed continuing education requirements as required in Subchapter 16R of these Rules and has current CPR certification.

History Note: Authority G.S. 90-28; 90-37.1; Temporary Adoption Eff. January 1, 2003.

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 form provided by the Board;
- (2) the instructor's licensure fee;
- (3) if applicable, a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges; and
- (4) if applicable, a statement disclosing and explaining periods, within the last ten 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 envelope sealed by 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, a certification letter 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) certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and information regarding all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;
- (3) a report from the National Practitioner Databank or its international equivalent, if applicable;
- (4) a report of any pending or final malpractice actions against the applicant, verified by the malpractice insurance carrier covering the applicant. The applicant must submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant; and
- (5) certification letter 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 certification 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.

(c) 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.

(d) 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.

(e) Should the applicant reapply for an instructor's license, an additional instructor's 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 shall be renewed on an annual basis.

History Note: Authority G.S. 90-28; 90-29.5; Temporary Adoption Eff. January 1, 2003;

Eff. January 1, 2004.

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. 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.

History Note: Authority G.S. 90-223; 90-224; 90-229; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 1994; May 1, 1989; October 1, 1986; Temporary Amendment Eff. January 1, 2003; Amended Eff. January 1, 2004.

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 form provided by the Board;
- (2) the licensure by credentials fee;
- (3) an affidavit from the applicant stating:
 - (A) the dates that and locations where the applicant has practiced dental hygiene;
 - (B) that the applicant has provided at least 2000 hours of clinical care directly to patients, during the two years immediately preceding application;
- (4) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (5) 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
- (6) a copy of a current course completion certification card 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 envelope sealed by the entity involved:

- (1) official transcripts certifying 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, a certification letter 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) certificate of the applicant's licensure status from the regulatory authority or other occupational or professional regulatory authority and information regarding all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other occupational or professional license;
- (4) a report from the National Practitioner Databank, if reporting is required or allowed by federal law;
- (5) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant must submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
- (6) the applicant's passing score on the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; and
- (7) the applicant's passing score on 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.

(c) 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.

(d) 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.

(e) An applicant for dental hygiene licensure by credentials must successfully complete written examinations and, if deemed necessary 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.

(f) Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.

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

History Note: Authority G.S. 90-223; 90-224.1; Temporary Adoption Eff. January 1, 2003; Eff. January 1, 2004.

21 NCAC 16D .0104 APPLICATION

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

(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.

History Note: Authority G.S. 90-29.3; 90-41(a); Eff. September 3, 1976; Readopted Eff. September 26, 1977; Temporary Amendment Eff. January 1, 2003; Amended Eff. January 1, 2004.

21 NCAC 16E .0103 APPLICATION

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

(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.

History Note: Authority G.S. 90-226; 90-229(a); Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. May 1, 1989; Temporary Amendment Eff. January 1, 2003; Amended Eff. January 1, 2004.

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) of this Subchapter 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;
- (5) successfully complete written examination(s) administered by the Board; and
- (6) pay the intern 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 determined 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;
- (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;
- (7) successfully complete written examination(s) administered by the Board; and
- (8) pay the intern 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) Intern permits shall expire on an annual basis and are subject to renewal by the Board upon application and payment of the renewal fee.

History Note: Authority G.S.90-28; 90-29.4; Eff. August 1, 2002; Temporary Amendment Eff. January 1, 2003; Amended Eff. January 1, 2004.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

- (a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the last issue of the North Carolina Board of Nursing "Bulletin" for the calendar year, which shall be mailed to the address on record for each North Carolina licensed nurse. The "Bulletin" shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.
- (b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner holds a current North Carolina license to practice nursing. If the nominee is not

currently licensed, the petition shall be declared invalid. If any petitioners are not currently licensed and this decreases the number of petitioners to less than 10, the petition shall be declared invalid.

(c) On forms provided by the Board, each nominee shall:

- (1) indicate the category for which the nominee is seeking election;
- (2) attest to meeting the qualifications specified in G.S. 90-171.21(d); and
- (3) provide written permission to be listed on the ballot.

The forms must be received by the Board by April 15 at midnight.

(d) Minimum on-going employment requirements for the registered nurse or licensed practical nurse member shall include continuous employment equal to or greater than 50% of a full-time position that meets the criteria for the specified Board member position.

(e) This Paragraph applies in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a Board approved nursing program in the specific category as outlined in G.S. 90-171.21(d).
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing services to inpatients, but excludes nursing homes and adult care homes.
- (3) A hospital system is defined as a multihospital system, or a single diversified hospital system that includes a hospital as defined in Subparagraph (e)(2) of this Rule plus non-hospital preacute and postacute client services.
- (4) A nurse accountable for the administration of nursing services shall be the chief nurse executive of a hospital, hospital system, or the director of nursing services for a service division that includes inpatient care within a hospital or hospital system.
- (5) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist includes any advanced practice registered nurse who meets the criteria specified in G.S. 90-171.21(d)(4).

(f) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing at the appropriate licensure level for each category.

(g) A nominee shall be listed in only one category on the ballot.

(h) Separate slates shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the slate for licensed practical nurse nominees and within the categories for registered nurse nominees. Slates shall be published in the "Bulletin" following the Spring Board meeting and shall be accompanied by biographical data on nominees and a passport-type photograph.

(i) The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting.

(j) The Board of Nursing may contract with a computer or other service to receive the votes and tabulate the results.

(k) The tabulation and verification of the tabulation of votes shall include the following:

- (1) The certificate number shall be provided for each individual voting; and
- (2) The certificate number shall be matched with the database from the Board.

(l) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(m) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

- (1) the number of nurses eligible to vote;
- (2) the number of votes cast; and
- (3) the number of votes cast for each person on the slate.

(n) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(o) All petitions to nominate a nurse, signed consents to appear on the slate, verifications of qualifications, and copies of the computerized validation and tabulation shall be retained for a period of three months following the close of an election.

History Note: Authority G.S. 90-171.21; 90-171.23(b); Eff. May 1, 1982;

Amended Eff. August 1, 1998; January 1, 1996; June 1, 1992; March 1, 1990; April 1, 1989;

Temporary Amendment Eff. July 2, 2001;

Amended Eff. January 1, 2004; August 1, 2002.

21 NCAC 36 .0112 DETERMINATION OF VACANCY

(a) Except for the RN At-Large Member, should a registered nurse member of the Board cease to meet the employment criteria as defined in G.S. 90-171.21(d) and Rule .0109 Paragraphs (d) and (e) of this Section, the member shall have 60 days to resume employment in the designated area. If employment criteria for the specified area are not met within 60 days, the seat shall be declared vacant. Provided, however, that if such a change in employment for the specified category of Board member occurs within 18 months of the end of the member's term, such member may continue to serve until the end of the term.

(b) If at any time a registered nurse member no longer meets the eligibility requirements listed in G.S. 90-171.21(d)(1)(a) and (a1), such member shall no longer continue to serve and the position shall be declared vacant.

(c) If at any time a licensed practical nurse member no longer meets the eligibility requirements listed in G.S. 90-171.21(d)(2)(a) and (a1), such member shall no longer continue to serve and the position shall be declared vacant.

(d) Any vacancy of an unexpired term shall be filled according to G.S. 90-171.21(c).

History Note: Authority G.S. 90-171.21(c); 90-171.23(b); Eff. May 1, 1988; Amended Eff. January 1, 2004; August 1, 2002; March 1, 1990; May 1, 1989.

21 NCAC 36 .0202 INACTIVE AND RETIRED STATUS

(a) A registrant whose licensure status is inactive and who desires to resume the practice of nursing in North Carolina shall be removed from inactive status and shall obtain a current license. To this end the registrant shall:

- (1) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (2) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (3) submit evidence showing that the nurse is safe and competent to re-enter the practice of nursing; and
- (4) submit the current fee for renewal.

(b) The registrant whose license has been inactive for a period of five years or more shall also submit:

- (1) self-certification that the registrant is of mental and physical health necessary to competently practice nursing;
- (2) evidence of competency to resume the practice of nursing through:
 - (A) satisfactory completion of a Board-approved course; or
 - (B) an active license in another jurisdiction within the last five years.

(c) If a refresher course is required, the registrant shall apply for reactivation of license within one year of completing the refresher course in order to receive a current license. The application for reactivation shall include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives.

(d) The Board shall decline to reactivate a license if it is not satisfied as to the applicant's competency to practice nursing.

(e) A registrant who has retired from the practice of nursing may request and be granted by the Board retired nurse status, provided the registrant:

- (1) holds a current unencumbered license issued by the North Carolina Board of Nursing;
- (2) is not currently the subject of an investigation by this Board for possible violation of the Nursing Practice Act; and
- (3) pay the application fee pursuant to G.S. 90-171.27(b).

(f) While remaining on retired status, the registrant shall not practice nursing in North Carolina and shall not be subject to payment of the license renewal fee.

(g) The registrant may use the title Retired Registered Nurse or Retired Licensed Practical Nurse once issued retired status.

(h) The registrant whose licensure status is retired shall not be eligible to vote in Board elections.

(i) A registrant whose licensure status is retired and who desires to resume the practice of nursing shall apply for reinstatement of a license to practice nursing and meet the same reinstatement

requirements for a nurse on inactive status as set forth in Paragraphs (b)–(e) of this Rule.

History Note: Authority G.S. 90-171.21; 90-171.23(b); 90-171.27(b); 90-171.36; 90-171.36A; 90-171.37; 90-171.43; Eff. February 1, 1976; Legislative Objection [(g)] Lodged Eff. June 16, 1980; Legislative Objection [(g)] Removed Eff. July 1, 1981; Amended Eff. January 1, 2004; January 1, 1996; January 1, 1990; May 1, 1982; January 1, 1980.

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) Full Approval/Approval with Stipulations:

- (1) The Board shall review approved programs at least every eight years as specified in G.S. 90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board.
- (2) If at any time it comes to the attention of the Board that a program is not complying with all Rules in this Section, the program shall correct the area of noncompliance and submit written evidence of such or submit a written plan for correction to the Board for review and action.
- (3) The Board shall send a written report of the review no more than 30 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Board stipulation must be received in the Board office by the deadline date specified in the letter accompanying the report or notification of stipulation. The specified deadline date shall allow time to meet the rules and shall not exceed 12 months from the review.
 - (A) If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report or testimony of the consultant(s).
 - (B) When a nursing education program has responded by the deadline date, additional materials and documents shall be accepted and reviewed by the Board up to 10 business days before the Education Committee meeting. No materials or documents shall be reviewed during the interval between the Education Committee meeting and the Board meeting.
- (4) If the Board determines that a program has complied with the rules in this Section, the program shall be continued on Full Approval status.
- (5) If the Board determines that a program has substantially but not completely complied with the rules in this Section, the Board shall specify stipulations which shall be met by the program within a designated period of time, which shall not exceed 12 months, and shall

direct that the program be assigned Approved with Stipulations status.

(b) Provisional Approval:

- (1) If the Board determines that a program is not complying with the rules in this Section or stipulations the Board shall assign the program Provisional Approval status, and shall give written notice by certified or registered mail to the program specifying:
 - (A) the areas in which there is noncompliance; and
 - (B) a time no later than 12 months from the date of notice by which the program must comply.
- (2) At the end of the specified time, the Board shall conduct a review to determine the program's compliance with the rules in this Section.
- (3) The Board shall send a written report of the review to the program no more than 30 business days following the completion of the review. Program responses shall follow the receipt deadlines as specified in Subparagraph (a)(3)(A) and (B) of this Rule.
- (4) If the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval status.
- (5) If the Board determines that the program is not complying with the rules in this Section, the Board shall assign the program Probational Approval status.

(c) Probational Approval:

- (1) When the Board has assigned the program Probational Approval status the Board shall:
 - (A) determine if the program may continue to admit students based on evidence that the program can comply with the rules in this Section before the end of the designated period for probational approval;
 - (B) provide the program with written notice of the Board's decision regarding probational approval and admission of students;
 - (C) schedule a hearing if the program submits a written request for such within 10 business days of the receipt of the Board's notice. Such hearing shall be held not less than 20 days from the date on which the request was received.
- (2) If the program does not request a hearing, the program shall remain on Probational Approval and shall be reviewed by within one year of the Board's initial determination of probational approval.
- (3) When a hearing is held at the request of the program:
 - (A) If the Board determines that the program is in compliance with the

APPROVED RULES

- rules in this Section, the Board shall assign the program Full Approval status.
- (B) If the Board determines that the program is not in compliance with the rules in this Section the program shall remain on Probational Approval for no more than one year from the date that the program was placed on Probational Approval. A review by the Board shall be conducted during that time.
- (4) The Board shall send a written report of the review to the program no more than 30 business days following the review.
- (5) If the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval status.
- (6) If the Board determines that the program is not complying with the rules in this Section, the Board shall cause notice to be served on the program and shall specify a date for a hearing to be held not less than 20 days from the date on which notice is given.
- (7) If the Board determines from evidence presented at the hearing that the program is complying with the rules in this Section, the Board shall assign the program Full Approval status.
- (8) If the Board, following a hearing, finds the program is not in compliance with the rules in this Section, the Board shall withdraw approval.
- (A) This action constitutes discontinuance of the program.
- (B) The parent institution shall present a plan to the Board for transfer of students to approved programs. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board.
- (C) The parent institution shall notify the Board of the arrangement for storage of permanent records.
- (d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.
- (e) The record for each enrolled student shall contain up-to-date and complete information, including:
- (1) documentation of admission criteria met by the student;
 - (2) evidence of high school graduation, high school equivalent, or earned credits from an approved post-secondary institution pursuant to G.S. 90-171.38(a); and
 - (3) transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.
- (f) The nursing program shall file with the Board such records, data, and reports as may be required in order to furnish information concerning operation of the program as prescribed in the rules in this Section including:
- (1) an Annual Report received by the Board by November 1 of each year;
 - (2) a Program Description Report received by the Board at least 30 days prior to a scheduled review;
 - (3) notification by institution administration of any change of the registered nurse responsible for the nursing program. This notification must include a vitae for the new individual and must be submitted within 10 business days of the effective date of the change;
 - (4) a curriculum vitae for new faculty submitted by the program director within 10 business days from the time of employment.
- (g) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its associated agencies.
- (h) The Application for Licensure by Examination shall be submitted on forms provided by the Board.
- (1) The part of the application to be submitted by the nursing program shall include a statement verifying satisfactory completion of all requirements for graduation and the date of completion.
 - (2) The verification form is to be submitted as soon as possible following completion of the program.
- (i) When a nursing program closes, the Board shall be notified by the parent institution of the arrangements for storage of permanent records. The storage method shall prevent damage or unauthorized use.

History Note: Authority G.S. 90-171.23(b); 90-171.39; 90-171.40;
Eff. February 1, 1976;
Amended Eff. January 1, 2004; June 1, 1992; January 1, 1989.

21 NCAC 36 .0323 RECORDS AND REPORTS

- (a) The controlling institution's publications shall be current and accurately describe the nursing program.
- (b) There shall be evidence of an accurate and complete system for maintaining official records. Current and permanent student records shall be stored in a manner that prevents damage and unauthorized use.
- (c) Both permanent and current records shall be available for review by representatives of the Board.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; *Eff. February 1, 1976;*
Amended Eff. January 1, 2004; June 1, 1992; January 1, 1989; January 1, 1984.

**CHAPTER 50 - PLUMBING, HEATING & FIRE
SPRINKLER CONTRACTORS**

21 NCAC 50 .0301 QUALIFICATIONS

DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II
- Fuel Piping

(b) Each applicant shall be required to read, interpret and provide answers to both the business and the technical parts of the examinations required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

(d) After July 1, 2004, applicants for initial licensure in the Limited Fire Sprinkler Inspection Technician classification must submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306. Where certification based on NICET Level II certification was not required at the time of initial licensure, such certification must be obtained by December 31, 2005. After December 31, 2005, current NICET Level II certification is required as a condition of license renewal.

(e) After July 1, 2004, applicants for the Limited Fire Sprinkler Inspection Contractor classification must submit evidence of Level III certification in "Inspection and Testing of Water-based Fire Protection Systems" by NICET in lieu of examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306. Persons who obtain license by NICET certification must maintain such certification thereafter as a condition of license renewal.

(f) Applicants for license in the Limited Fire Sprinkler Maintenance classification are qualified based on maintenance of the experience and job classification set forth in Rule. 0306.

History Note: Authority G.S. 87-18; 87-21(a); 87-21(b); Eff. February 1, 1996;

Readopted Eff. September 29, 1977;

Amended Eff. January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; July 1, 1991; May 1, 1989; August 1, 1982.

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for examinations shall file an application in the Board office on a form provided by the Board.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-

time experience in the design and installation of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service, maintenance or repair activity work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. No more than one-half the experience may be in academic or technical training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate experience which involves the kind of work set out above less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors in the unlimited classification shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for licensure in the Limited Fire Sprinkler Inspection Technician classification shall submit evidence adequate to establish that the applicant has either:

- (1) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of an Unlimited Fire Sprinkler Contractor or fire insurance underwriting organization; or
- (2) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25 as a full time employee of a hospital, manufacturing, government or university facility which provides training consistent with NFPA-25 in fire sprinkler inspections by a recognized fire sprinkler organization or institution of higher education with fire suppression curriculum.

(f) Applicants for licensure in the Limited Fire Sprinkler Inspection Contractor classification must submit evidence adequate to establish that the applicant was engaged in business in North Carolina as an independent fire sprinkler inspection company full-time, during three of the five years immediately preceding December 31, 2003, or held license as an unlimited fire sprinkler contractor from this board and was actively and regularly engaged in carrying out fire sprinkler system inspections in North Carolina.

(g) Applicants for licensure in the Limited Fire Sprinkler Maintenance classification prior to July 1, 2004, must submit evidence of 4000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves. Applicants for initial licensure in the Limited Fire Sprinkler Maintenance classification after July 1, 2004, must submit evidence of 2000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of replacing activated or damaged sprinkler heads, lubricating control valves, and resetting dry pipe valves, or other tasks itemized as maintenance in NFPA-25, together with 18 hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service. Applicants who have held Maintenance license previously are not required to demonstrate experience in addition to the experience at the time of initial licensure but will present evidence of six hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service relevant to the systems in the new place of employment.

History Note: Authority G.S. 87-18; 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; September 1, 1994; November 1, 1993; April 1, 1991; May 1, 1990.

21 NCAC 50 .0404 ACTIVE EMPLOYMENT

(a) In each business location, branch or facility of any kind from which work requiring a license pursuant to G.S. 87, Article 2 is solicited or proposed; or from which contracts for such work are negotiated or entered into; or from which requests for such work are received, accepted, or dispatched; and from which such work is carried out, there shall be on duty the lesser of 1500 hours annually, or all hours during which the activities described herein are carried out, at least one individual who holds license in the classification required for the work being proposed or performed, whose license is listed in the name of the particular firm or business at that location, and who is engaged in the work of the firm at the business location or at firm job sites and who has the responsibility to make, modify, terminate and set the terms of contracts, and to exercise general supervision, as defined in Rule .0505 of this Chapter, of all work falling within his license qualification. Evidence of compliance shall be required as a condition of renewal or retention of license, and falsification shall constitute fraud in obtaining license. The standards set forth in Rule 21 NCAC 50 .0512 shall be applied.

(b) A temporary field office used solely to carry out an existing contract or contracts entered into by the main license office and from none of the other activities in Rule .0404(a) are conducted shall not be deemed a separate place of business or branch requiring compliance with Rule .0404(a).

History Note: Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26; Eff. February 1, 1976;

Readopted Eff. September 29, 1977; Amended Eff. January 1, 2004; August 1, 2002; August 1, 2000; July 1, 1998; July 1, 1991; May 1, 1989.

21 NCAC 50 .0405 MULTIPLE LICENSES

(a) In order to maintain the identity of firms and allow effective supervision, each licensed contractor shall qualify only the business location where he is primarily located.

(b) A licensee may be listed on only one contractor license at any given time, whether the license is issued in the name of the individual or in the name of a firm; provided, however, that the fire sprinkler maintenance technician qualification may be listed separately in the name of the employer to which restricted.

(c) The licensee may, upon deletion of his name and qualifications from a firm license, reinstate his personal license, either as an individual or in the name of some other corporation, partnership, or business that has a trade name, upon compliance with G.S. 87-26.

History Note: Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2004; July 1, 1998; May 1, 1989.

21 NCAC 50 .0406 RESPONSIBILITY OF LICENSED PERSON EMPLOYED BY FIRM

(a) The licensed person, whether individually or for a corporation, partnership or business with a trade name, is responsible for all proposals, bids, contracts, supervision to the extent of his qualifications and assurance that permits are obtained.

(b) A contract, and the responsibility imposed on a licensed person to supervise work performed under a contract, may be assumed by another licensee upon written notice to and approval by the property owner and local inspection department.

(c) The license number and qualification of the firm shall be displayed on firm contracts, proposals, permit applications, and telephone yellow page advertising.

History Note: Authority G.S. 87-18; 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2004; August 1, 2000; May 1, 1989.

21 NCAC 50 .0513 LIMITED FIRE SPRINKLER INSPECTION TECHNICIAN LICENSE

License in the Limited Fire Sprinkler Inspection Technician classification is required of the technician who carries out periodic inspection of fire sprinkler systems consistent with NFPA-25. All NFPA-25 reports and system tags must display the name, signature and license number of the Inspection Contractor or Inspection Technician who performed the inspection. Licenses are issued based on demonstrated experience and examination, as described in Rules .0301 and .0306 of this Chapter and expire annually. The duties of inspection technicians may be carried out as employees of inspection contractors or as full-time employees at a manufacturing, government, university or hospital facility which provides training in fire sprinkler inspections consistent with NFPA-25 by a recognized fire sprinkler organization or

institution of higher education with fire suppression curriculum. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

History Note: Authority G.S. 87-21; Eff. January 1, 2004.

21 NCAC 50 .0514 LIMITED FIRE SPRINKLER INSPECTION CONTRACTOR LICENSE

License in the Limited Fire Sprinkler Inspection Contractor classification is required of persons who engage in the business of contracting to perform or performing independent testing and inspections of fire sprinkler systems consistent with NFPA-25. All NFPA-25 reports and system tags must display the name, signature and license number of the Inspection Contractor or Inspection Technician who performed the inspection. Licenses are issued based on experience and examination, as described in Rules .0301 and .0306 of this Chapter and expire annually. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

History Note: Authority G.S. 87-21; Eff. January 1, 2004.

21 NCAC 50 .0515 LIMITED FIRE SPRINKLER MAINTENANCE LICENSE

License in the Limited Fire Sprinkler Maintenance classification is required of the technician who carries out periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinkler heads, lubricating control valves, resetting dry pipe valves and other tasks itemized as maintenance in NFPA-25. Licenses are issued based on experience and training, as described in Rules .0301 and .0306 of this Chapter and expire annually. This license is limited to work on the systems at the locations of the employer of the licensee for which experience was demonstrated. Upon termination of employment at the location for which certified, the Limited Fire Sprinkler Maintenance license shall lapse, and a new license be obtained for the systems at the new place of employment by compliance with the requirements of Rule .0306 of this Chapter.

History Note: Authority G.S. 87-21; Eff. January 1, 2004.

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved continuing education for each calendar year as a condition of license renewal.
(b) As part of and not in addition to the requirements set out in Paragraph (a) of this Rule, at least once every three calendar

years, each applicant for license renewal, other than fire sprinkler licensees, must complete:

- (1) four hours instruction devoted entirely to N.C. building codes including recent changes or amendments to those codes;
- (2) a minimum of two hours instruction in system design;
- (3) a minimum of two hours instruction in system installation; and
- (4) two hours instruction in business courses such as business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects.

(c) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects.

(d) Persons holding multiple qualifications from the Board must complete at least six hours annually, but are not required to take hours each year in each qualification. Licensees with multiple qualifications shall take instruction so as to remain current in all areas of contracting work in which actively engaged.

(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.

(f) Continuing Education shall not be required of holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET), or for persons holding NICET certification in Inspection and Testing of water-based Fire Protection Systems provided such persons submit evidence of continued compliance with the continuing education requirements of NICET.

(g) Beginning with renewals of license on or after January 1, 2003, each holder of a Fire Sprinkler Contractors or Fire Sprinkler Inspection Contractor or Technician license not required to be current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the preceding calendar year as a condition of license renewal. Licensees in the Limited Fire Sprinkler maintenance classification are required to obtain six hours continuing education annually relevant to the systems they maintain.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. January 1, 2004; April 1, 2003.

25 NCAC 01C .0702 AGENCY RESPONSIBILITY

(a) Secondary employment shall not be permitted when it would:

- (1) create either directly or indirectly a conflict of interest with the primary employment;
- (2) impair in any way the employee's ability to perform all expected duties, to make decisions and carry out in an objective fashion the responsibilities of the employee's position.

(b) Each agency shall establish its own specific criteria for approval of secondary employment based on work situation needs. Established criteria shall not be inconsistent with 25 NCAC 01C .0701 and this Rule.

*History Note: Authority G.S. 126-4;
Eff. August 1, 1978;
Amended Eff. January 1, 2004.*

25 NCAC 01C .0901 STATE PERSONNEL RESPONSIBILITY

The Office of State Personnel shall establish Employee Recognition Programs. Agencies shall establish and maintain employee recognition programs that, at a minimum, recognize employee excellence, years of dedicated service, and other employee recognition. Agencies shall develop a plan for employee recognition programs that includes administration in an equitable manner and incorporates how the program will be communicated to employees statewide.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. December 1, 1995;
Recodified from 25 NCAC 01J .0401 Eff. December 29, 2003.*

25 NCAC 01E .0905 ALTERNATIVE HOLIDAY SCHEDULES

The holiday schedule shall be used by all state agencies operating under the rules of the Office of State Personnel unless the following applies:

- (1) Institutions of higher education and agencies requiring a seven-day, 24-hour operation may adopt alternative holiday schedules in keeping with operational needs, provided the employees are given the same number of holidays as approved by the State Personnel Commission. Such special holiday schedules must be filed with the Office of State Personnel.
- (2) When the specific date of the legal holiday observance falls on Saturday or Sunday, agencies with a seven-day a week operation shall adopt an additional holiday schedule for employees scheduled to work on the specific date of the legal holiday observance rather than the State government public holiday.
- (3) Either the State government public holiday(s) or the day(s) designated for observance, pursuant to Item (2) of this Rule, shall be specified as premium pay holidays.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. January 1, 2004; February 1, 1995; April 1, 1982.*

25 NCAC 01E .1005 ADVERSE WEATHER AND EMERGENCY CLOSINGS

(a) The Office of State Personnel shall establish guidelines for accounting for time or releasing employees from work when:

- (1) adverse weather or other conditions of a serious nature prohibit some employees from reporting to work but do not necessitate the closing of state offices or facilities; or
- (2) emergency conditions necessitate the closing of state offices or curtailing of operations.

(b) Definitions

- (1) Adverse weather and other conditions of a serious nature: Adverse weather or other conditions that may prohibit some employees from reporting to work but do not necessitate the closing of facilities or curtailing of operations.
- (2) Emergency closing conditions: Conditions that necessitate the closing of a state facility or the curtailing of operations. Conditions that may be hazardous to life or safety and that may warrant closing of State offices include: catastrophic life threatening weather (snow, ice, hurricane, tornado, earthquake, flood or other natural disaster), fire, equipment failure, disruption of power or water, contamination by hazardous agents, terrorist acts or forced evacuations from the agency or work site.
- (3) Emergency employees: Employees who are required to work during an emergency because their positions have been designated by their agencies as mandatory/essential to agency operations during emergencies.

(c) The geographical location and diversity of state services and programs make it impossible to apply a uniform statewide policy regarding how operations will be affected by weather or other conditions; therefore, decisions must be made on an individual basis. Some operations must continue to provide services without regard to weather or other conditions; therefore, decisions must be made on an individual basis. Some operations must continue to provide services without regard to weather or other conditions. Therefore, agency heads shall predetermine and designate the mandatory operations which will remain open and designate the emergency employees to staff these operations.

*History Note: Authority G.S. 126-4(5); (10);
Eff. February 1, 1976;
Amended Eff. January 1, 2004; May 1, 1989; December 1, 1988;
February 1, 1983; February 1, 1982.*

25 NCAC 01K .0311 PURPOSE

The academic assistance program shall provide reimbursement of academic costs if funds are available at the agency/university level, and time off the job with pay if the course is available only during working hours. If funds are not available to provide reimbursement, the agency may choose to give only time off.

*History Note: Authority G.S. 126-4;
Eff. September 1, 1989;
Amended Eff. January 1, 2004.*

25 NCAC 01K .0314 ACADEMIC LEAVE

If a course can be taken only during working hours, the leave shall not exceed one course up to five hours academic credit per academic term. Travel time as determined by the supervisor may be permitted to attend approved courses.

*History Note: Authority G.S. 126-4;
Eff. September 1, 1989;
Amended Eff. January 1, 2004.*

**25 NCAC 01K .0317 REIMBURSEMENT OF
ACADEMIC COSTS**

Agencies/universities may reimburse all academic costs as specified in 25 NCAC 01K .0316, or reimburse only tuition and other academic related fees, but shall not reimburse for fees that are unrelated to registering for a course or a degree program, such as dorm, student union construction, athletic fees, etc. Agencies may also, with a bona fide business justification, reduce the amount of reimbursement per employee to a set amount less than the tuition and fees and limit the number of courses for which any one employee may be reimbursed in an academic term. Agencies/universities choosing to reimburse an amount less than the academic costs specified in 25 NCAC 01K .0316 shall make this information available to all employees at the beginning of the fiscal year and apply this limitation to all employees requesting academic assistance in that fiscal year.

*History Note: Authority G.S. 126-4;
Eff. September 1, 1989;
Amended Eff. January 1, 2004.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, January 19, 2004, 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, February 13, 2004 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 R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

February 19, 2004

March 18, 2004

Commission Review/Administrative Rules

Log of Filings (Log #206)

December 22, 2003 through January 20, 2004

NC PLANT CONSERVATION BOARD

Endangered Plant Species List	02 NCAC 48F .0301	Amend
Threatened Plant Species List	02 NCAC 48F .0302	Amend
Plant Species of Special Concern	02 NCAC 48F .0304	Amend

DEPARTMENT OF INSURANCE

Disclosure Requirements	11 NCAC 04 .0427	Amend
Replacement Upon Reduction of Market Value	11 NCAC 11B .0104	Repeal
Deposits Required Revocation/License Foreign Co	11 NCAC 11B .0106	Repeal
Right of Company to Receive Interest	11 NCAC 11B .0108	Repeal
Right of the Commissioner to Receive and Hold	11 NCAC 11B .0109	Repeal
Sale of Deposit for Payment of Liabilities	11 NCAC 11B .0110	Repeal
Conversion to Cash Master Trust	11 NCAC 11B .0111	Repeal
Deposit Required Upon Initial Licensing	11 NCAC 11B .0113	Repeal
Deposits Held in Trust by Commissioner of Insurance	11 NCAC 11B .0114	Repeal
Continuation of Deposits of Securities of Merging	11 NCAC 11B .0119	Repeal
Exchange of Deposit procedural Handling	11 NCAC 11B .0122	Repeal
Sale of Securities by the Insurance Company	11 NCAC 11B .0123	Repeal
Master Trust Creation Thereof	11 NCAC 11B .0124	Repeal
Master Trust Use Procedural Handling Step 1	11 NCAC 11B .0125	Repeal
Master Trust Use Procedural Handling Step 2	11 NCAC 11B .0126	Repeal
Master Trust Use Procedural Handling Step 3	11 NCAC 11B .0127	Repeal
Master Trust Use Procedural Handling Step 4	11 NCAC 11B .0128	Repeal
Master Trust Use Procedural Handling Step 5	11 NCAC 11B .0129	Repeal
Master Trust Solvent Companies	11 NCAC 11B .0130	Repeal
Master Trust Insolent Companies	11 NCAC 11B .0131	Repeal
Deposit/Amount Foreign Fire and/or Casualty Insurance	11 NCAC 11B .0133	Repeal
Deposit Required Amount Domestic Life Insurers	11 NCAC 11B .0134	Repeal
Deposit/Amount Domestic Fire and/or Casualty Insurance	11 NCAC 11B .0135	Repeal
Foreign Deposit Required Amount Foreign Misc Insurance	11 NCAC 11B .0136	Repeal
Deposit Required Amount Domestic Miscellaneous Insurance	11 NCAC 11B .0137	Repeal
Deposit Use of Master Trust All New Companies	11 NCAC 11B .0139	Repeal
Master Trust DK Transaction	11 NCAC 11B .0144	Repeal
Master Trust Charges	11 NCAC 11B .0145	Repeal
Master Trust Bank Ability to Register Securities	11 NCAC 11B .0146	Repeal
Use of Federal Book Entry/Depository Trust Corp/	11 NCAC 11B .0147	Repeal
Master Trust Use of DTC	11 NCAC 11B .0149	Repeal

RULES REVIEW COMMISSION

Master Trust-Release of Securities	11 NCAC 11B .0150	Repeal
Master Trust-Payment of Interest	11 NCAC 11B .0151	Repeal
Investment in Gold or Gold Futures by Insurance	11 NCAC 11C .0110	Repeal
Sale of Exchange Traded Call Options	11 NCAC 11C .0122	Repeal
Accounting Procedures	11 NCAC 11C .0124	Repeal
Valuation	11 NCAC 11C .0125	Repeal
Prohibition Against Speculating in Options	11 NCAC 11C .0126	Repeal
Valuation of Debt Securities	11 NCAC 11C .0131	Repeal
Accounting for Premium Over 90 Days Past Due	11 NCAC 11C .0206	Repeal
Admitted Assets HMO	11 NCAC 11C .0309	Repeal
Proxies ETC Domestic Insurers	11 NCAC 11D .0115	Repeal
Proxies Consents and Authorization	11 NCAC 11D .0116	Repeal
Proxies Disclosure of Equivalent Information	11 NCAC 11D .0117	Repeal
Proxies Definitions and Instructions	11 NCAC 11D .0118	Repeal
Proxies Information to be Furnished to Security	11 NCAC 11D .0119	Repeal
Proxies Requirements as to Proxy	11 NCAC 11D .0120	Repeal
Proxies Material Required to be Filed	11 NCAC 11D .0121	Repeal
Proxies False or Misleading Statements	11 NCAC 11D .0122	Repeal
Proxies Prohibition of Certain Solicitations	11 NCAC 11D .0123	Repeal
Proxies Special Provision Applicable to Election	11 NCAC 11D .0124	Repeal
Proxy Information Required Revocability of Proxy	11 NCAC 11D .0125	Repeal
Proxy Information Required Dissenters Right of	11 NCAC 11D .0126	Repeal
Proxy Information Required Subject to 11 NCAC 11D	11 NCAC 11D .0127	Repeal
Proxy Info Required Interest in Matters to be Act	11 NCAC 11D .0128	Repeal
Proxy Information Required Voting Securities	11 NCAC 11D .0129	Repeal
Proxy Information Required Nominee and Directors	11 NCAC 11D .0130	Repeal
Proxy Information Required Transactions with Manag	11 NCAC 11D .0131	Repeal
Proxy Info Required Bonus Profit Sharing Remunerat	11 NCAC 11D .0132	Repeal
Proxy Info Required Pension and Retirement Plans	11 NCAC 11D .0133	Repeal
Proxy Info Required Options Warrants or Rights	11 NCAC 11D .0134	Repeal
Proxy Info Required Authorization or Issuance of	11 NCAC 11D .0135	Repeal
Proxy Info Required Merger Consolidation	11 NCAC 11D .0136	Repeal
Proxy Information Required Restatement of Accounts	11 NCAC 11D .0137	Repeal
Proxy Info Required Matters not Required to be Sub	11 NCAC 11D .0138	Repeal
Proxy Information Required Amendment of Charter by	11 NCAC 11D .0139	Repeal
Proxy Information Required In Election Contest	11 NCAC 11D .0140	Repeal
Proxy Statement in Elec Insurer Identity and Backg	11 NCAC 11D .0141	Repeal
Proxy Statement in Election Interest in Equity Sec	11 NCAC 11D .0142	Repeal
Proxy Statement in Election Contest Further Matter	11 NCAC 11D .0143	Repeal
Proxy Statement in Election Contest Signature	11 NCAC 11D .0144	Repeal
Insider Trading of Stock Definitions	11 NCAC 11D .0145	Repeal
Who Must File Under Insider Trading of Stock	11 NCAC 11D .0146	Repeal
What Must Be Filed Under Insider Trading of Stock	11 NCAC 11D .0147	Repeal
Determining Beneficial Ownership Insider Trading	11 NCAC 11D .0148	Repeal
Disclaimer of Beneficial Ownership Insider Trading	11 NCAC 11D .0149	Repeal
Exemptions From Subsections (a) and (b)	11 NCAC 11D .0150	Repeal
Securities Bought or Sold by Odd-Lot Dealers Exemp	11 NCAC 11D .0151	Repeal
Certain Transactions Subject to Subsection (a) of	11 NCAC 11D .0152	Repeal
Ownership of Securities held in Trust Insider Trad	11 NCAC 11D .0153	Repeal
Exemption for Small Transactions Insider Trading	11 NCAC 11D .0154	Repeal
Exemptions in General Insider Trading of Stock	11 NCAC 11D .0155	Repeal
Exemption Effected in Connection with a Distributi	11 NCAC 11D .0156	Repeal
Exemption Stock Options Stock Bonus or Similar Pla	11 NCAC 11D .0157	Repeal
Other Securities Exemption Received by Redeeming	11 NCAC 11D .0158	Repeal
Exemption of Long Term Profits Within Six Months	11 NCAC 11D .0159	Repeal
Exemptions Acquisitions Dispositions Pursuant to	11 NCAC 11D .0160	Repeal
Exemption Deposit or Withdrawal of Equity Securiti	11 NCAC 11D .0161	Repeal
Exemption Involving the Conversion of Equity Secur	11 NCAC 11D .0162	Repeal
Exemption Involving the Sale of Subscription Right	11 NCAC 11D .0163	Repeal
Exemption of Securities from Subsection (c) of the	11 NCAC 11D .0164	Repeal
Exemption from Subsection (c) Distribution	11 NCAC 11D .0165	Repeal

RULES REVIEW COMMISSION

Exemption from Subsection (c) Sales of Securities	11 NCAC 11D .0166	Repeal
Arbitrage Transactions Under Subsection (e) of the Definitions	11 NCAC 11D .0167	Repeal
CSO Mortality Table as Minimum Standard	11 NCAC 11F .0601	Adopt
Conditions	11 NCAC 11F .0602	Adopt
Applicability of the 2001 CSO Mortality Table to Gender-Blended Tables	11 NCAC 11F .0603	Adopt
Petition for Admission	11 NCAC 11F .0604	Adopt
Filing and Payment of Premium Taxes	11 NCAC 11F .0605	Adopt
NC ALARM SYSTEMS LICENSING BOARD		
Recording and Reporting Continuing Education	11 NCAC 14 .0415	Repeal
DENR	11 NCAC 14 .0705	Repeal
Fees	12 NCAC 11.0505	Amend
DEPARTMENT OF TRANSPORTATION		
Ferry Toll Operations	15A NCAC 01R .0101	Amend
NC BOARD OF DENTAL EXAMINERS		
Dentists	19A NCAC 02D .0532	Amend
Dental Hygienists		
NC LOCKSMITH LICENSING BOARD		
Petitions for adoption, amendment or repeal of Declaratory Rulings	21 NCAC 16M .0101	Amend
Right to Hearing	21 NCAC 16M .0102	Amend
Request for Hearing		
Granting or denying hearing request	21 NCAC 29 .0601	Adopt
Notice of Hearing	21 NCAC 29 .0602	Adopt
Who shall hear contested cases	21 NCAC 29 .0603	Adopt
Informal Procedures	21 NCAC 29 .0604	Adopt
Petition for Intervention	21 NCAC 29 .0605	Adopt
Types of Intervention	21 NCAC 29 .0606	Adopt
Disqualification of Board Members	21 NCAC 29 .0607	Adopt
Failure to Appear	21 NCAC 29 .0608	Adopt
Subpoenas	21 NCAC 29 .0609	Adopt
Witnesses	21 NCAC 29 .0610	Adopt
Final Decision	21 NCAC 29 .0611	Adopt
Proposals for Decisions	21 NCAC 29 .0612	Adopt
NC BOARD OF MORTUARY SCIENCE		
Fees and Penalties	21 NCAC 29 .0613	Adopt
NC BOARD OF PHARMACY		
Definitions	21 NCAC 29 .0614	Adopt
Experience in Pharmacy	21 NCAC 29 .0615	Adopt
Examination	21 NCAC 29 .0616	Adopt
License by Reciprocity	21 NCAC 34A .0201	Amend
When New Permit Required		
When New Permit Not Required	21 NCAC 46 .1317	Amend
Right to Refuse a Prescription	21 NCAC 46 .1503	Amend
Receiving and Dispensing	21 NCAC 46 .1505	Amend
Transfer to Prescription Information	21 NCAC 46 .1602	Amend
Facsimile Transmission of Prescription Orders	21 NCAC 46 .1603	Amend
Transmission of Prescription Orders	21 NCAC 46 .1604	Amend
Prescription Labels	21 NCAC 46 .1801	Amend
Responsibilities of Pharmacist-Manager	21 NCAC 46 .1804	Amend
Patient Counseling	21 NCAC 46 .1806	Amend
Patient Choice	21 NCAC 46 .1807	Amend
Availability of Pharmacy Records	21 NCAC 46 .1813	Amend
Unique Projects	21 NCAC 46 .1818	Adopt
Dispensing and Delivery	21 NCAC 46 .1818	Adopt
Registration of Non-Pharmacists	21 NCAC 46 .2502	Amend
Storage of Devices and Medical Equipment	21 NCAC 46 .2504	Amend
Clinical Pharmacist Practitioner	21 NCAC 46 .2508	Adopt
Peer Review Agreements	21 NCAC 46 .2509	Adopt
Due Process	21 NCAC 46 .2510	Adopt
	21 NCAC 46 .2601	Amend
	21 NCAC 46 .2605	Amend
	21 NCAC 46 .2612	Adopt
	21 NCAC 46 .3101	Amend
	21 NCAC 46 .3202	Amend
	21 NCAC 46 .3203	Amend

RULES REVIEW COMMISSION

Receipt and Use of Information of Suspected Impair	21 NCAC 46 .3204	Amend
Intervention and Referral	21 NCAC 46 .3205	Amend
Monitoring Rehabilitation and Performance	21 NCAC 46 .3207	Amend
Reports of Individual Cases to the Board	21 NCAC 46 .3209	Amend
REAL ESTATE COMMISSION		
Proof of Licensure	21 NCAC 58A .0101	Amend
Agency Agreements and Disclosure	21 NCAC 58A .0104	Amend
Broker-in-Charge	21 NCAC 58A .0110	Amend
Filing and Fees	21 NCAC 58A .0302	Amend
Payment of Application Fees	21 NCAC 58A .0303	Amend
Scheduling Examinations	21 NCAC 58A .0401	Amend
Re-Applying ofr Examination	21 NCAC 58A .0403	Amend
Business Entities	21 NCAC 58A .0502	Amend
License Renewal Penalty for Operating While License	21 NCAC 58A .0503	Amend
Reinstatement of Expired License	21 NCAC 58A .0505	Amend
Continuing Education Requirement	21 NCAC 58A .1702	Amend
Instructional Delivery Methods	21 NCAC 58C .0311	Amend
Application and Criteria for Original Approval	21 NCAC 58C .0603	Amend
Request for Examinations and Video Recordings	21 NCAC 58C .0605	Amend
Denial or Withdrawal of Approval	21 NCAC 58C .0608	Amend
Application and Criteria for Original Approval	21 NCAC 58E .0203	Amend
Denial or Withdrawal of Approval	21 NCAC 58E .0205	Amend
Request for a Video Recording	21 NCAC 58E .0206	Amend
Criteria for Elective Course Approval	21 NCAC 58E .0304	Amend
Request for a Video Recording	21 NCAC 58E .0308	Amend
Denial or Withdrawal of Approval	21 NCAC 58E .0412	Amend
Monitoring Attendance	21 NCAC 58E .0510	Amend
NC RESPIRATORY CARE BOARD		
Schedule of Civil Penalties	21 NCAC 61 .0201	Amend
Fees	21 NCAC 61 .0204	Amend
Background Investigation	21 NCAC 61 .0205	Adopt
License Number Display of License	21 NCAC 61 .0301	Amend
License with Provisional Endorsement	21 NCAC 61 .0303	Amend
License with Temporary Endorsement	21 NCAC 61 .0304	Amend
Civil Penalty Procedures	21 NCAC 61 .0310	Amend
Continuing Education Requirements for License	21 NCAC 61 .0401	Amend

AGENDA
RULES REVIEW COMMISSION
February 19, 2004

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A .Board of Elections – 8 NCAC 9 .0106; .0108; .0109(DeLuca)
 - B .Board of Elections – 8 NCAC 10B .0103 (DeLuca)
 - C .DHHS/Division of Medical Assistance - 10A NCAC 21A .0201; .0602; .0603; .0606; .0607; .0608 (Bryan)
 - D. Criminal Justice Education & Training Standards Commission - 12 NCAC 9G .0405 (Bryan)
 - E .Commission for Health Services – 15A NCAC 18A .2508; .2511; .2529; .2543 (Bryan)
 - F. Examiners for Speech and Language Pathologists & Audiologists – 21 NCAC 64 .0212; .0213 (DeLuca)
- IV. Review of Rules (Log Report #206)
- V. Commission Business
- VI. Next meeting: March 18, 2004

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>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
Ice 2 K t/a Sports Dimensions, Inc. v. ABC Commission	02 ABC 0683	Gray	11/25/03	
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
<u>AGRICULTURE</u>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Regis A Urik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Richard Hart & Jeannette Hart, Little People Day Car, ID 3355048	01 DHR 1464	Wade	11/14/03	
v. Div of Child Dev Health & Human Services	01 DHR 1464	Wade	11/14/03	
Sunshine Schools, Inc. ID No. 9255424 v. DHHS, Div. of Child Dev.	02 DHR 0708	Wade	11/24/03	18:14 NCR 1209
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Lee Co. Dept of Social Services v. DHHS	02 DHR 1021	Elkins	12/01/03	18:14 NCR 1212
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development	02 DHR 1672	Wade	06/10/03	
June Locklear				
Bibby's Group Home, Billy McEachern v. Mental Health Licensure and	02 DHR 1749	Gray	12/08/03	
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of	02 DHR 1983	Wade	08/13/03	18:06 NCR 439

CONTESTED CASE DECISIONS

Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.				
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03	
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care Personnel Registry Section	02 DHR 2206	Wade	11/04/03	
Tanile Woodberry, By & Through Her Attorney-in-Fact, Linda Monroe v. DHHS, Division of Medical Assistance	02 DHR 2212	Chess	11/06/03	18:15 NCR 1353
Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
Lawyers Glen Retirement Living Ctr, Charlotte Elliotte v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
Valencia L Brown v Division of Medical Assistance (DMA)	03 DHR 0099	Chess	11/17/03	
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03	
Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03	
Southeastern Reg Med Ctr & Lumberton Radiological Assoc P.A. v DHHS, Div. of Facility Services	03 DHR 0226	Wade	10/31/03	18:12 NCR 1011
Little Angels Child Care Center v Arnette Cowan, Sup of Spec Nut. Prog.	03 DHR 0229	Lassiter	11/24/03	
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03	
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03	
Vivian P Bailey v. DHHS, Div. of Child Development	03 DHR 0296	Gray	12/18/03	
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03	
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03	
Cahterine Williams v. DHHS	03 DHR 0320	Mann	07/17/03	
Rachel Peek, Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03	
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
Twan Fields v. DHHS, Div. of Facility Services	03 DHR 0355	Morrison	09/10/03	
Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnigt v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03	
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03	
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03	
Janitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03	
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03	
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03	
Robert L Scott v DHHS	03 DHR 0527	Conner	12/02/03	
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03	
The Presbyterian Hospital v. DHHS, Division of Facility Services and Mooresville Hosp Mgmt Assoc Inc d/b/a Lake Norman Reg Med Ctr	03 DHR 0567	Wade	12/19/03	18:15 NCR 1362
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03	
Becky Wood, Guardian Rep The Arc/NCLifeguardianship on behalf of Mary Short (Ward) v. Richard Visingardi, Dir, Div of MH, DD, SAS	03 DHR 0575	Chess	12/22/03	
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Wallace C Levi v. Div. of Medical Assistance	03 DHR 0633	Wade	08/12/03	
Timothy Batts v. DHHS, Div. of Facility Services	03 DHR 0640	Gray	09/12/03	
Bestway Food's, Osama M Dari v. DOH WIC, Cory Menees, Unit Super.	03 DHR 0662	Morrison	07/28/03	
Charles Wakild & Susan Wakild v DENR, Div of Coastal Management	03 DHR 0663	Morrison	12/09/03	
Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03	
Wake Radiology Services, LLC, Wake Radiology Consultants, P. A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging of North Carolina, LLC	03 DHR 0676	Gray	07/07/03	
Nedall H Hassan d/b/a GNS Express Mart v. DHHS	03 DHR 0695	Lassiter	10/14/03	
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03	
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03	
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03	
Patti L Cain Small Fries by Patti v. Nutrition Services	03 DHR 0768	Morrison	07/31/03	
Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03	
Mrs Soon Ja An v. DHHS	03 DHR 0780	Morrison	07/28/03	
Kimberly Donyelle Miles v. DHHS, Div. of Facility Services	03 DHR 0795	Lassiter	09/11/03	
Pamela Powell v. DMA Outpatient Therapy	03 DHR 0834	Lassiter	10/13/03	
Angela Carter Precious Love Turtledove v. Tarin Goodwin, St. of NC, DCD	03 DHR 0850	Conner	09/23/03	
Donald Eugene Lowery by & through his guardian, Dennis Parise v. CAP (DMA) Div. of Medical Assistance	03 DHR 0868	Gray	12/17/03	
Nequita Williams v. DHHS, Div. of Medical Assistance	03 DHR 0895	Wade	11/21/03	
Ali Alsaras d/b/a University Market v. DHHS	03 DHR 0917	Conner	12/02/03	
Kimberly Roberts v. DHHS, Div. of Facility Services	03 DHR 0927	Gray	08/15/03	
Michael Hillis v. Department of Revenue	03 DHR 0935	Conner	07/28/03	
Alvin Paulk v. DHHS, Div. of Child Development	03 DHR 0971	Conner	07/25/03	
Nazih Hasan & Emao Hasan, Nes Convenient Mart v DHHS	03 DHR 0985	Lassiter	10/31/03	
Victor J Gray v Dorothea Dix Hospital	03 DHR 1039	Morrison	09/29/03	
Pine Forest Rest Home v DHHS, Div. of Facility Services	03 DHR 1066	Gray	10/10/03	
Doris Froneberger v. DHHS, Div. of Facility Services	03 DHR 1081	Gray	09/12/03	
Heather M Wood v. DHHS	03 DHR 1083	Morrison	10/30/03	

CONTESTED CASE DECISIONS

Lisa S Lincoln, Honeybees Creative Ctr v DHHS, Nutrition Branch	03 DHR 1091	Elkins	11/13/03
Wardeh Abukeshk v DHHS	03 DHR 1117	Gray	12/10/03
Esther M Huntley, Children Learning Ctr, Formerly Rainbow Nursery Sch v. DHHS, Division of Child Development	03 DHR 1118	Elkins	12/23/03
Jaris Davis v. DHHS, Div. of Facility Services	03 DHR 1136	Gray	10/07/03
Albert Brower v. DHHS	03 DHR 1153	Wade	09/04/03
Sherry Autry v. DHHS	03 DHR 1204	Elkins	12/22/03
Angela Sadler v. DHHS, Div. of Facility Services	03 DHR 1210	Conner	11/04/03
Lisa Dupree v. NC State Veterans Nursing Home	03 DHR 1306	Lassiter	09/15/03
LaQuasha K Massey v. DSS, Mecklenburg County	03 DHR 1375	Elkins	12/16/03
Calvin Harris, Jr. v. Health Care Personnel Registry	03 DHR 1434	Wade	10/06/03
Karen J Andrews v. DHHS	03 DHR 1461	Lassiter	11/25/03
Apple Nursing Services v. DHHS	03 DHR 1488	Chess	12/10/03
Coastal Carolina Health Care PA d/b/a Coastal Carolina Imaging (P-6766-03) V DHHS Div of Facility Svcs, Certificate of Need Section	03 DHR 1496	Lassiter	11/06/03
Roger William Suttles v. Broughton Hospital	03 DHR 1536	Gray	12/22/03
Barbara Hammond for Dennis Hammond v. DHHS	03 DHR 1539	Elkins	12/23/03
Delaine Hairston v DHHS	03 DHR 1604	Mann	11/25/03
Ronald Bryan Gatlyn v. Health Care Personnel Registry	03 DHR 1655	Lassiter	10/28/03
Sheila Ferrell Meeks v Office of Administrative Hearings	03 DHR 1672	Lassiter	12/02/03
Willie S Neely v DHHS, Div. of Facility Services	03 DHR 1674	Gray	11/20/03
Christine Gordon v Health Care Personnel Registry	03 DHR 1697	Elkins	12/16/03
Doris Duff v DHHS, Div. of Facility Services	03 DHR 1720	Lassiter	12/02/03
Daniel H. Moore v. DHHS, Div. of Facility Services	03 DHR 1753	Lassiter	11/20/03
Angela Kay Hudson v. DHHS, Div. of Facility Services	03 DHR 1789	Elkins	12/19/03
Patricia A Fox, Adm, Community Care of Jackson #1 v. Div. of Facility Services, Adult Care Licensure Section	03 DHR 1856	Conner	12/18/03

JUSTICE

Alarm Systems Licensing Board

Gregory L. Swicegood, Jr. v. Alarm System Licensing Board	03 DOJ 0503	Morrison	05/16/03
Alan Bradford Foehner v. Alarm System Licensing Board	03 DOJ 0709	Morrison	08/05/03

Private Protective Services Board

John Curtis Howell v. Private Protective Services Board	02 DOJ 1562 ¹⁰	Lassiter	12/31/03	
John Curtis Howell v. Private Protective Services Board	03 DOJ 0214 ¹⁰	Lassiter	12/31/03	
Anthony Lamont Henderson v. Private Protective Services Board	03 DOJ 0502	Morrison	07/08/03	
John Lee Powell v. Private Protective Services Board	03 DOJ 0694	Morrison	07/09/03	
Howard Leon Fisher v. Private Protective Services Board	03 DOJ 0898	Morrison	08/14/03	18:06 NCR 444
William Houston King Jr v. Private Protective Services Board	03 DOJ 0899	Morrison	07/11/03	
Derrick Lee McDonald v. Private Protective Services Board	03 DOJ 0946	Morrison	08/05/03	
Jason William Kane v Private Protective Services Board	03 DOJ 1708	Morrison	10/28/03	
George Donald Dixon, Jr v. Private Protective Services Board	03 DOJ 1924	Morrison	12/22/03	
Thomas Austin Atchison v. Private Protective Services Board	03 DOJ 1925	Morrison	12/23/03	18:15 NCR 1366

Sheriffs' Education & Training Standards Commission

Harvey Clinton Blanton v. Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1202	Gray	06/05/03	18:03 NCR 222
Jonathan Mims v. Sheriffs' Education & Training Standards. Comm.	02 DOJ 1263	Gray	06/03/03	18:03 NCR 229
Joshua Steven McCraw v Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1696	Conner	12/02/03	
Joshua Phillip Grant v Sheriffs' Education & Training Standards Comm.	02 DOJ 1787	Wade	10/27/03	
Laura Dawn Watts v. Sheriffs' Education & Training Standards Comm.	02 DOJ 1926	Lassiter	05/22/03	
Allen Wilson York v. Sheriffs' Education & Training Standards Comm.	02 DOJ 2042	Elkins	05/16/03	
Derek A Cousin v Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0250	Gray	11/13/03	
Fred Hines, Jr v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0428	Conner	07/29/03	
Alexander Draft: Registered Agent/Owner of A.D. Police Svcs., Inc. v. DOJ, Company Police Program	03 DOJ 0484	Mann	10/17/03	
Harvey Levale Cook v. Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0515	Lassiter	07/09/03	
Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03	
Mary Katherine McVey v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0517	Wade	08/11/03	
Kenneth Earl Brantley v Sheriffs' Educ & Trng Stds. Comm	03 DOJ 0604	Gray	11/14/03	
Brian Carroll Hatley v Sheriffs' Education & Trng. Stds. Comm.	03 DOJ 0649	Mann	10/02/03	
William Kelly Moore v Criminal Justice Educ & Trng Stds. Comm	03 DOJ 1068	Morrison	11/12/03	
Michael Ray Walker v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1138	Lassiter	09/23/03	
Loy S. Lentz Jr v. Sheriffs' Educ. & Trng. Stds. Comm.	03 DOJ 1229	Gray	10/02/03	
William Todd Streeter v. Sheriffs' Educ. & Trng Stds. Comm.	03 DOJ 1243	Chess	12/08/03	
Dawn Wilkins Gilmore v. Sheriffs' Educ. & Trng. Stds. Comm	03 DOJ 1244	Morrison	12/17/03	
Robert Lee Way v. Sheriffs' Educ. & Trng Stds. Comm.	03 DOJ 1263	Chess	12/08/03	
Charles D Metters, Jr. v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1471	Chess	12/09/03	

DEPARTMENT OF TRANSPORTATION

Chris Azar v. Department of Transportation	03 DOT 1345	Morrison	09/08/03
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DEPARTMENT OF STATE TREASURER

Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03
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DEPARTMENT OF PUBLIC INSTRUCTION

Robert Andrew Bartlett Sr. v. Dept. of Public Instruction	00 EDC 1306	Gray	08/04/03
Mary Margaret Davis v Dept of Public Instruction	02 EDC 0155	Gray	12/19/03
Charles Wordsworth v. State Board of Education	02 EDC 0572	Lassiter	10/17/03
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03

CONTESTED CASE DECISIONS

ENVIRONMENT AND NATURAL RESOURCES

Larry E. Sadler v. DENR	00 EHR 1322	Gray	07/02/03	
Lester Hill v. Person Co. Health Dept., DENR	00 EHR 1392	Gray	05/29/03	
John Burr v. Health Department, Mecklenburg County	01 EHR 1204	Gray	05/28/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269 ¹	Chess	05/14/03	
Rosa & Eddie Brame v. DENR	02 EHR 0319	Wade	06/27/03	
Trafalgar Properties LLC v. County of Durham	03 EHR 0630	Wade	07/18/03	
Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.)	02 EHR 0887	Mann	05/28/03	
Forest Sound Homeowners Assoc, James P Hynes, Pres. V. DENR, Div. of Coastal Management	02 EHR 1078	Wade	06/09/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	02 EHR 1119 ¹	Chess	05/14/03	
Raphael J Scharf & wife Guylene Scharf v. DENR	02 EHR 1155	Gray	11/24/03	
Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03	
Raleigh-Durham Airport Authority v DENR, Div. of Water Quality	02 EHR 1648	Gray	12/19/03	
Lee Roy Smyre v. DENR, Div. of Water Quality	02 EHR 1509	Wade	09/05/03	
Murphy's All Land Dev Inc d/b/a Emerald Cove Town homes at Wells Lake v. DENR	02 EHR 1735	Conner	07/22/03	
Glenn Sasser v. DENR, Division of Coastal Management	02 EHR 1794	Morrison	08/28/03	18:07 NCR 485
Michael E Hendrix v. Caldwell Co. Dept of Environmental Health	03 EHR 0006	Gray	07/02/03	
Lawndale Service Ctr, Inc. C Valley v. DENR	03 EHR 0016	Lassiter	06/05/03	
Daniel W Bulla III v. Env. Health Section Stokes Co Health Dept.	03 EHR 0156	Conner	09/11/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242	Lassiter	10/30/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242 ²	Lassiter	10/30/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0254 ⁶	Lassiter	10/30/03	
Robert Calvin Wyatt Jr, Calvin Wyatt v. DENR	03 EHR 0535	Wade	07/31/03	
Charles Wakild & Susan Wakild v DENR, Div. of Coastal Mgmt & Rick Gray	03 EHR 0663	Morrison	12/09/03	
Pacemaker Leasing Co v. DENR	03 EHR 0711	Conner	09/10/03	
Curtis Carney v. Pitt Co Health Dept., Env. Health Div.	03 EHR 0766	Conner	07/25/03	
J B Hooper v DENR	03 EHR 0876	Lassiter	10/22/03	
Danny L Ottaway v. DENR, Div. of Air Quality	03 EHR 0948	Gray	08/15/03	
Robert L Shepard v. Alamance Co. Health Board	03 EHR 0949	Gray	07/30/03	
Lorraine E. Caracci v. Nash Co. Health Dept. Env. Health	03 EHR 0986	Gray	11/26/03	
Megan Powell v. DENR	03 EHR 1071	Lassiter	08/18/03	
Redditt Alexander, Ida L Alexander v. Co. of Durham, Eng. Dept.	03 EHR 1074	Morrison	07/31/03	
Robert A Valois v. Coastal Resources Commission	03 EHR 1125	Elkins	11/18/03	
St. Paul's Lutheran Church v. DENR	03 EHR 1151	Morrison	10/01/03	
Quible & Assoc PC; Joseph S Lassiter agent for Wilma M Midgett v. DENR, Div of Coastal Management	03 EHR 1193	Elkins	11/06/03	
Connell E Purvis v DENR, Div of Marine Fisheries	03 EHR 1228	Elkins	11/06/03	
Jerry B Lytton v. Mecklenburg County Health Department	03 EHR 1850	Morrison	12/29/03	

HEARING AID DEALERS & FITTERS BOARD

Robert H Knox v. State Hearing Aid Dealers & Fitters Board	03 HAF 1785	Morrison	12/30/03	
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HUMAN RELATIONS FAIR HOUSING

Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03	
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TEACHERS' & STATE EMPLOYEES COMP. MAJOR MED PLAN

Alma Louise Triplett v. Teachers' & St Emp Comp Maj Med Plan	02 INS 0268	Gray	07/15/03	18:04 NCR 338
Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan	02 INS 1257	Conner	08/06/03	18:05 NCR 405
Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan	02 INS 1285	Chess	08/26/03	
Carol W Walker v. Teachers' & State Emp. Comp Major Medical Plan	02 INS 1306	Conner	12/19/03	18:15 NCR 1356
Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03	
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03	
Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan	03 INS 0975	Wade	10/22/03	
David C Karasow v St. of NC Teachers' & St Emp Comp Maj. Med Plan	03 INS 1227	Chess	11/20/03	
Cathy Penney v Teachers' & State Emp Comp Major Medical Plan	03 INS 1459	Gray	12/04/03	
Heather A Smith v. Teachers & St Emp Comp Major Medical Plan	03 INS 1558	Morrison	12/12/03	

OFFICE OF STATE PERSONNEL

Alvin Earl Williams v Dir of Cumberland Co Dept of Social Services	00 OSP 1490	Chess	11/05/03	
Dorris D Wright v. Cabarrus Co. Dept. of Social Services	00 OSP 1506	Gray	04/22/03	
Robert Banks Hinceman v. DHHS/Broughton Hospital	01 OSP 0827	Elkins	05/01/03	18:01 NCR 45
Robin Ritzheimer Austin v. Jim Jones, Hlth Dir, Judie DeMuth, Admin Asst & the County of Stanly	01 OSP 0888 ⁴	Lassiter	09/08/03	
Edward Allen Hughes, Jr v. Department of Correction	01 OSP 1011	Gray	08/01/03	
Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03	
James F Pridgen Jr v. A&T State University	01 OSP 2182	Gray	08/08/03	
Alan Foster v. Comm of Ag Meg Scott Phipps & DOA	02 OSP 0173	Lewis	09/26/03	
Jerry Thomas Ferrell v. Department of Correction	02 OSP 0375	Conner	09/15/03	
Angie Richardson v Department of Correction	02 OSP 0867 ⁹	Wade	11/14/03	
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:05 NCR 410
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:07 NCR 494
Terence G Westry v A&T State University	02 OSP 1019	Conner	06/30/03	
Angie Richardson v Department of Correction	02 OSP 1027 ⁹	Wade	11/14/03	
Robert L. Swinney v. Department of Transportation	02 OSP 1109	Gray	05/07/03	
Robin Ritzheimer Austin v. Jim Jones Hlth Dir Stanly County	02 OSP 1166 ⁴	Lassiter	09/08/03	

CONTESTED CASE DECISIONS

Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03
James Thomas Kinlaw v. ESC of NC	03 OSP 1343	Wade	10/23/03
Norman Burton v. Chatham County	02 OSP 1483 ²	Gray	05/12/03
Jonah Uduagbomen v. Department of Transportation	02 OSP 1597	Gray	06/19/03
Charles M Alexander v. ESC of NC	02 OSP 1613	Chess	07/01/03
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1624 ³	Gray	07/23/03
Norman Burton v. Chatham County	02 OSP 1625 ²	Gray	05/12/03
Edward K Royal v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	02 OSP 1631	Lassiter	06/25/03
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 ³	Gray	07/23/03
Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03
Patricia Doggett v. Trend Mental Health	02 OSP 2128	Conner	07/08/03
Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03
Michael J Stolarik Sr v. Piedmont Behavioral Health Care	02 OSP 2293	Chess	12/22/03
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03
Eric M Petree v. Department of Corrections	03 OSP 0116	Lassiter	06/24/03
Monica Lynn Johnson v. NC School of the Arts	03 OSP 0180	Conner	07/29/03
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03
Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03
Beverly M Jennings v. Juv Justice, Swananoa Valley Youth Dev Center	03 OSP 0408	Chess	08/11/03
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03
James E. Sharpe v. Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03
Joan Milligan, Patricia Flanigan, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03
Ty Atkinson v M S C Center	03 OSP 0577	Conner	10/28/03
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0599 ⁸	Chess	10/20/03
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0629 ⁸	Chess	10/20/03
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03
Henry Earl Stewart v Department of Transportation	03 OSP 0645	Lassiter	08/26/03
Derwin D Johnson v. Department of Correction	03 OSP 0660	Lassiter	06/24/03
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03
Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03
Jerry B Davis v. Dorothea Dix Hospital/DHHS	03 OSP 0678	Gray	07/14/03
Leslie Allen Whittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769 ¹¹	Conner	12/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0770 ¹¹	Conner	12/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0771 ¹¹	Conner	12/22/03
David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03
Joseph Nichols v UNC at Chapel Hill	03 OSP 0857	Gray	12/04/03
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0862 ⁵	Morrison	09/29/03
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0863 ⁵	Morrison	09/29/03
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03
Michael L Hillis v DHHS/Office of the Controller	03 OSP 0874 ⁷	Lassiter	11/10/03
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03
Everette C Body v Department of Correction	03 OSP 0885	Conner	11/12/03
Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03
Edith C Fisher v. Cabarus Health Alliance	03 OSP 1010	Conner	12/22/03
Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03
Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03
David Upchurch v. DOC	03 OSP 1076	Connor	09/23/03
Roberta Lane v DOC	03 OSP 1077	Conner	10/29/03
Mable Lynn Kelly v. NC SEAA	03 OSP 1129	Chess	10/20/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
Mable Lynn Kelly v NC SEAA	03 OSP 1184	Chess	10/20/03
Marcella Thorne v Department of Correction	03 OSP 1225	Elkins	11/14/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
Michael L Hillis v DHHS/ENCSD	03 OSP 1239 ⁷	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1240 ⁷	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1241 ⁷	Lassiter	11/10/03
Luvae J Wall v. DHHS, Payroll Office	03 OSP 1259	Morrison	12/02/03
Russell M Haas v Edgecombe Co Health Department	03 OSP 1261	Elkins	11/06/03
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03
Victor Marc Sain v. Catawba Valley Community College	03 OSP 1380	Conner	11/19/03
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03

CONTESTED CASE DECISIONS

Willie Allen v Swannanoa Youth Dev Ctr (DJJDP)	03 OSP 1412	Conner	01/05/04
Gloria Bennett v Dept of Correction DART Cherry Program	03 OSP 1428	Morrison	12/04/03
Richard Todd McLean v. John Umstead Hospital	03 OSP 1448	Wade	11/26/03
Charles G Horne Jr v. DOC	03 OSP 1479	Lassiter	10/28/03
Charles G Horne Jr v. DOC	03 OSP 1480	Lassiter	10/29/03
Yolanda Lopez v DOC Harnett Correctional Inst	03 OSP 1501	Elkins	12/22/03
Mable Lynn Kelly v State Educ. Assistance Authority	03 OSP 1502	Chess	12/03/03
Manuel C Fleming v Department of Revenue	03 OSP 1576	Morrison	11/12/03
Jesse C Whitaker v. Facilities Mgmt Operations of NCSU	03 OSP 1645	Lassiter	11/26/03
Peter A Fillare v. NCSU Dining	03 OSP 1646	Lassiter	12/02/03
A Louise Nilsen Mankes v. Dr. Gatewood, UNC Gen Admin Dept NCSEAA	03 OSP 1660	Lassiter	12/16/03
A Louise Nilsen Mankes v. Mr. Anthony Bordeaux, UNC Gen Admin Dept NCSEAA	03 OSP 1661	Lassiter	12161/03
John N Leak v Dept. of Public Instruction	03 OSP 1711	Lassiter	12/31/03

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03
Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03
Michael Gray Simmons v. UNC Hospitals	03 UNC 0977	Wade	11/25/03
Keith Bagby Sr & Patricia Bagby v UNC Hospitals	03 UNC 1011	Elkins	11/07/03
D. Parker Lynch v. UNC Hospitals	03 UNC 1124	Wade	11/19/03
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03

- 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

STATE OF NORTH CAROLINA
COUNTY OF GUILDFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
02 DHR 2212

TANILE WOODBERRY, By and Through Her Attorney-in-
Fact, LINDA MONROE
Petitioner,

vs.

NORTH CAROLINA DEPARTMENT OF HEALTH AND
HUMAN SERVICE, DIVISION OF MEDICAL ASSISTANCE
Respondent.

DECISION

THIS CAUSE CAME ON FOR HEARING, after proper and timely notices, and was heard by the undersigned Administrative Law Judge on Petition for contested case hearing, filed by Petitioner (“TaNile”), by and through her counsel. Appearing for Petitioner were A. Frank Johns and Andrew D. Atherton, Booth, Harrington & Johns, LLP. Appearing for the Respondent was Belinda Smith, Assistant Attorney General. The Petitioner sought to prevent Respondent from reducing Petitioner’s private duty nursing hours from twenty-four hours to eighteen hours. Respondent contends that pursuant to 10 N.C.A.C. 26B.0122 and North Carolina’s Medicaid Community Care Manual Section 9.2.4, “Private Duty Nursing coverage is not meant to replace help from unpaid care givers who are capable, willing and able to provide care.” The Respondent further sought attorney fees pursuant to N.C.G.S. § 619.1. Based on the evidence offered and argument of counsel, the Administrative Law Judge makes the following Findings of Fact:

1. On September 3, 2002, Respondent gave written notice to Petitioner that it was determined that eighteen hours per day of nursing could meet TaNile’s care needs.
2. On September 2001 and October 2002, Dr. Henry Smith wrote to Respondent informing it of Ms. Monroe’s debilitating heart condition with the medical opinion that Ms. Monroe should not be required to care for her daughter.
3. On October 23, 2002, Dr. R. Neville Gates, TaNile Woodberry’s physician, confirmed his home health certification and plan of care in a letter dated October 23, 2002 stating that TaNile Woodberry needs twenty-four hours of private duty nursing care.
4. On October 24, 2002, a reconsideration review hearing was held via conference call.
5. On November 5, 2002, Mary J. Howard, Chief Hearing Officer, confirmed the decision of the Division of Medical Assistance resulting from the reconsideration review.
6. On December 3, 2002, Petitioner filed a Petition for Contested Case Hearing in the Office of Administrative Hearings alleging that the Respondent failed to provide Petitioner with all medically necessary, continuous, substantial and complex nursing services by licensed nurses (R.N. or L.P.N.) available to her under the North Carolina Medicaid Community Care Manual, Section 9.2.4. Petitioner asserted that the facts presented in the reconsideration and review hearing, conducted by the agency, failed to prove that the mother of the Petitioner is capable, willing and able to provide care for the Petitioner, to the extent that the current twenty-four hours of private duty nursing could be reduced to eighteen hours.
7. On January 8, 2003, Petitioner filed a pre-hearing statement asserting the issues of: whether Respondent failed to provide Petitioner with all medically necessary, continuous, substantial and complex nursing services by licensed nurses (R.N. or L.P.N.) available to her under the North Carolina Medicaid Community Care Manual, Section 9.2.4; and whether Petitioner is entitled to reimbursement for expenses and attorney’s fees incurred by her to provide medically necessary continuous, substantial and complex nursing services by licensed nurses (R.N. or L.P.N.) available to her under North Carolina Medicaid Community Care Manual, Section 9.2.4.
8. On January 9, 2003, Respondent filed its pre-hearing statement contending that the issue was: whether the Respondent properly reduced TaNile’s Medicaid private duty nursing hours from twenty-four to eighteen.

9. On April 21, 2003, Petitioner filed a Motion for Summary Judgment asserting that there was no issue as to any material fact and attaching supporting affidavits of Dr. Henry Smith and Linda Monroe, mother and attorney in fact.
10. On May 2, 2003, Respondent was granted additional time to respond to Petitioner's Motion for Summary Judgment, and the contested case hearing was continued from that time.
11. Dr. Henry Smith, Linda Monroe's cardiologist since 1996 or 1997, testified that Ms. Monroe has a dilated cardiomyopathy resulting in Class II congestive heart failure.
12. Dr. Henry Smith further testified that Ms. Monroe's congestive heart failure results in decreased energy, shortness of breath, and has a certain negative prognosis with a five percent yearly mortality rate. There is no cure, and her heart is further injured the more the body puts out adrenalin causing increased failure of the heart muscle. Increased adrenalin is the result of increased stress and physical activity.
13. In his testimony, Dr. Henry Smith gave his medical opinion that Linda should not be caring for TaNile because of the added lifting and stress necessary for that care. Dr. Smith would recommend to Dr. Gates that he remove from the home health certification and plan of care, "Parent to assume care in the absence of professional caregiver."
14. Even when twenty-four hour care is contracted for TaNile, missed shifts and staffing issues do not cover a full twenty-four hours of private duty nursing care, it averaging out to several hours less than twenty-four hours per day.
15. Alison Weatherman, case worker for Respondent, testified that her decision to reduce PDN hours was based on the billing records showing that Ms. Monroe covered missed shifts, nursing notes that showed time periods where the nurses performed nothing physical and the Plan of Care where Dr. Gates states that "Parent to assume care in the absence of professional caregiver."
16. Alison Weatherman further testified that she was aware of Dr. Smith's letter and that it is her opinion that despite Dr. Smith's opinion that Ms. Monroe could care for TaNile six hours per day.
17. Brenda Gwen, R.N. with Metro Nursing and nurse for Petitioner, testified that there is never more than a one-half hour period when something physical has to be done for TaNile. Furthermore, TaNile has muscle spasms at any time, requiring continuous watch and immediate lifting of more than twenty to thirty pounds during range of motion exercises.
18. Respondent presented no direct evidence to rebut Dr. Smith's medical opinion that caring for TaNile would cause physical harm to Ms. Monroe.
19. Respondent disregarded the letters sent by the Petitioner's physicians on September 2001 and October 2002.
20. TaNile weighs in excess of 200 pounds for which there is significant physical exertion required to move even her extremities and to shift her body.
21. The Turn-Q mattress on TaNile's bed will not turn TaNile without positioning and shifting by the caregiver.
22. TaNile must be turned every two hours.
23. Repetitious positioning and shifting of Petitioner by Ms. Monroe requires significant physical exertion; causing additional damage to her heart.
24. Respondent acted without substantial justification in pressing its claim against the Petitioner, and Petitioner is entitled to reimbursement for expenses and attorneys' fees incurred by her to provide medically necessary, continuous, substantial and complex nursing services by licensed nurses (R.N. or L.P.N.) available to her under North Carolina Medicaid Community Care Manual, Section 9.2.4.
25. Based upon the Court's review of the record, the issues involved, reasonable time needed for discovery, preparation and litigation, the Court sets reasonable attorney fee and expenses in the amount of \$14,500.00, for A. Frank Johns, a Board Certified Elder Law attorney, with over twenty-five years of experience.

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

CONTESTED CASE DECISIONS

1. That Petitioner has shown by the evidence that the Respondent's intent to reduce TaNile's nursing services would fail to provide Petitioner with all medically necessary, continuous, substantial and complex nursing services by licensed nurses available to her under the North Carolina Medicaid Community Care Manual, Section 9.2.4.
2. That the agency acted without substantial justification in pressing its claim against the Petitioner, and Petitioner is entitled to reimbursement for expenses and attorneys' fees incurred by her to provide medically necessary, continuous, substantial and complex nursing services by licensed nurses (R.N. or L.P.N.) available to her under North Carolina Medicaid Community Care Manual, Section 9.2.4.
3. That there are no special circumstances that would make the award of attorney fees unjust.
4. That the Petitioner is entitled to reasonable attorney fees and expenses in the amount of \$14,500.00 for prosecution of this action.

DECISION

1. The Petitioner receive twenty-four hours of private duty nursing care as allowed under N.C. Medicaid Community Care Manual § 9.2.4; and
2. That Petitioner recover \$14,500.00 as reasonable attorney fees, and expenses associated with this Petition.

ORDER

It is hereby ordered that the agency serve a copy of the FINAL DECISION on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The North Carolina Health and Human Services, Division of Medical Assistance, will make the Final Decision in this Contested Case. North Carolina General Statute §150B-36(b1), (b2) and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. N.C.Gen. Stat. § 150B-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

In accordance with the N.C.Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the Agency, the Agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the Agency in not adopting the find of fact. For each new finding of fact made by the Agency that is not contained in the Administrative Law Judge's decision, the Agency shall set forth separately and in detail evidence in the record relied upon by the Agency in making the finding of fact.

Entered this 6 day of November 2003.

Judge Sammie Chess, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
02 INS 1306

CAROL W. WALKER
Petitioner,

v.

NORTH CAROLINA TEACHERS' AND STATE
EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL
PLAN,
Respondent.

DECISION

This contested case came on to be heard before the Honorable James L. Conner, II, Administrative Law Judge, on September 23, 2003 in Raleigh, North Carolina. Proposed Findings of Fact and Conclusions of Law were submitted on November 6, 2003.

APPEARANCES

For Petitioner: Marvin Schiller
Schiller & Schiller, PLLC
5540 Munford Road, Suite 101
Raleigh, North Carolina 27612

For Respondent: Brandon L. Truman
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

ISSUE

Whether the surgical placement of endosseous implants and related services rendered to Petitioner are covered benefits under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan State Health Plan (hereinafter "State Health Plan").

STATUTORY AND BOARD POLICY BACKGROUND

1. The State Health Plan provides hospital and medical benefits for its members subject to the limitations described in Chapter 135 of the North Carolina General Statutes.

2. Under N. C. Gen. Stat. § 135-40.1 (1a), the phrase "Covered Services" is synonymous with allowable expenses and with benefits.

3. Under N.C. Gen. Stat. § 135-39.5 (20), the Executive Administrator and Board of Trustees of the State Health Plan have the power and duty to: "[Determine] administrative and medical policies that are not in direct conflict with Part 3 of this Article upon the advice of the Claims Processor and upon the advice of the Plan's consulting actuary when Plan costs are involved." These policies are not subject to the rule making procedures of the North Carolina Administrative Procedure Act. See N. C. Gen. Stat. § 150B-1(d)(7).

4. N. C. Gen. Stat. §§ 135-40.6 and 135-40.7, and Board Medical Policy SU0160, adopted by the State Health Plan, have a bearing on the issue of whether or not Petitioner's expenses are covered.

5. Coverage for a limited amount of oral surgery and related services benefits can be available under the North Carolina General Statutes.

A. Under N. C. Gen. Stat. § 135-40.6 (5) (c), the State Health Plan will pay benefits for oral surgery services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors and lesions of the mouth,

treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure.

B. Under N. C. Gen. Stat. 135-40.6 (8) (f), the State Health Plan will pay benefits for dental surgery and appliances for mouth, jaw, and tooth restoration *necessitated because of external violent and accidental means*, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under N. C. Gen. Stat. § 135-40.3.

6. Board Medical Policy SU0160 on dental and oral surgical services provides, in part: Definition: Dental and oral surgical procedures are those which are within the scope of practice of both a doctor of medicine and a doctor of dentistry, such as the excision of tumors and other lesions of the mouth, treatment of jaw fractures, and surgery for diseases of the mouth and adjacent tissues and to correct injuries of the mouth structure other than the teeth and their supporting structures.

7. Coverage for a limited amount of oral surgery benefits can be available under Board Medical Policy SU0160. Under paragraphs one and two of Board Medical Policy SU0160, the following benefits are provided:

1. Accidental injury

A. Coverage is provided for dental care (including surgery and appliances for mouth, jaw, and tooth restoration) necessitated by an *accidental injury of external and violent means*, such as the impact of a moving body, vehicle collision, or fall, occurring while the individual is covered under the Plan.

B. Benefits include extractions, fillings, crowns, bridges, or other necessary therapeutic techniques and appliances, and are limited to those services necessary to restore condition and function to that which existed immediately prior to the accident.

2. Oral Surgery: Benefits include excision of cysts, tumors, and other lesions of the mouth; surgery involving cheeks, lips, tongue, and roof and floor of mouth; and procedures involving the jaw, including treatment of fractures, but excluding teeth or tooth structure. Oral surgery, including extraction of teeth, necessitated because of medical treatment (i.e. radiation treatment to head/face) may be covered.

8. The North Carolina General Statutes set forth express exclusions from oral surgical benefits.

A. Under N. C. Gen. Stat. § 135-40.6 (6) (a), *no benefits are provided for dental prostheses such as crowns, or dentures; orthodontic care; operative restoration of teeth (fillings); dental extractions (whether impacted or not impacted); apicoectomies; treatment of dental caries; gingivitis, or periodontal diseases by gingivectomies or other periodontal surgery; vestiplasties, alveoplasties, removal of exostosis and tori preparatory to fitting of dentures, correction of malocclusion by orthognathic surgery or other procedures by repositioning of bone tissue except as permitted pursuant to G.S. 135-40.6 (5) (c); removal of cysts incidental to apicoectomies or extraction of teeth.*"

B. Under N. C. Gen. Stat. § 135-40.7 (11), the following services are expressly excluded: charges for or in connection with any dental work or dental treatment except to the extent that such work or treatment is specifically provided for under the Plan. Excluded is payment for *surgical benefits for tooth replacement, such as crowns, bridges or dentures; orthodontic care; filling of teeth; extraction of teeth (whether or not impacted); root canal therapy; removal of root tips from teeth; treatment for tooth decay, inflammation of gingiva, or surgical procedures on diseased gingiva or other periodontal surgery; repositioning soft tissue, reshaping bone, and removal of bony projections from the ridges preparatory to fitting of dentures; removal of cysts incidental to removal of root tips from teeth and extraction of teeth; or other dental procedures involving teeth and their bones or tissue supporting structure.*

9. Board Medical Policy SU0160, in paragraphs six and nine of its Limitations and Exclusions section, provides that the following services are excluded:

6. Oral surgical benefits are excluded for:

- a. Tooth replacement prostheses such as crowns, bridges, and dentures
- b. Orthodontic treatment
- c. Operative restoration of teeth (fillings)
- d. Dental extractions (whether impacted or non-impacted)
- e. Apicoectomies

- f. Root canal therapy
- g. Removal of root tips
- h. Treatment of dental caries
- i. Gingivitis
- j. Surgical procedures of diseased gingiva or other periodontal surgeries
- k. *Vestibuloplasties, alveoplasties, and removal of exostosis and tori preparatory to fitting of dentures*
- l. Removal of cysts incidental to apicoectomies or extraction of teeth
- m. Other procedures involving teeth and the bones or tissue supporting structure

....

- 9. Benefits are excluded for charges for, or in connection with, any dental work or dental treatment except to the extent that such work is specifically provided for under the Plan.

From the official documents in the file, the sworn testimony of the witnesses and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

Parties

- 1. Petitioner Carol Walker is a state employee and a member of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan ("State Health Plan").
- 2. Respondent State Health Plan is the state agency responsible for administering the health care benefits provided for state employees and retired state employees by the North Carolina General Assembly.
- 3. Blue Cross Blue Shield of North Carolina is the Claims Administrator for the State Health Plan.

Procedural History

- 4. On February 17, 2001, Dentist Scott Hum, on Petitioner's behalf, requested prior approval of benefits for the placement of six endosseous implants in Petitioner's mouth.
- 5. The State Health Plan's Claims Administrator, Blue Cross Blue Shield of North Carolina, reviewed the materials submitted on Petitioner's behalf and by a March 2, 2001 letter, denied Petitioner's request for coverage for the dental implants.
- 6. Petitioner appealed the above denial through the two levels of review available through the Claims Administrator.
- 7. On February 25, 2002, the Claims Administrator denied Petitioner's final appeal to the Claims Administrator for the dental services at issue. The February 25, 2002 appeal determination from the Claims Administrator informed Petitioner of her right to an appeal to the Board of Trustees of the State Health Plan.
- 8. Petitioner timely appealed the decision of the Claims Administrator to the Board of Trustees of the State Health Plan.
- 9. On May 2, 2002, Michelle Overby, Appeals Coordinator for the Board of Trustees of the State Health Plan, wrote to Petitioner to acknowledge receipt of Petitioner's appeal to the Board of Trustees.
- 10. On June 17, 2002, the Board of Trustees and the Executive Administrator of the State Health Plan denied approval of Petitioner's request for coverage for the surgical placement of endosseous implants and related services. The Board of Trustees upheld the Claims Administrator's denial of approval of these services on the basis that such services were not within the coverage of the State Health Plan.

11. The June 17, 2002, written decision of the Board of Trustees informed Petitioner of her right to appeal its decision by filing a petition with the Office of Administrative Hearings.

12. Petitioner timely filed this petition for a contested case hearing with the Office of Administrative Hearings.

13. This contested case hearing is an appeal of the Board of Trustees' June 17, 2002 decision, in which the Board of Trustees was only deciding on Petitioner's eligibility for benefits for the placement of endosseous implants and related services. The services at issue in this proceeding are the placement of six endosseous implants and related services rendered by Dr. Steven Davis, the services that were reviewed by the Board of Trustees in its June 17, 2002 decision.

Petitioner's Health and Treatment Status

14. At the pertinent time period, Petitioner was a 52-year-old female who, due to long standing tooth loss, had been wearing dentures for longer than five years. Immediately prior to the services at issue in this proceeding, Petitioner's then-existing dentures were fitting improperly, causing her discomfort in eating.

15. Petitioner was referred by her primary dentist Howard Schaff, D.D.S. to John Murrell, D.D.S. Petitioner was referred by Dr. Murrell to Scott Hum, D.D.S, in order to determine whether Petitioner's mandible could support dental implants.

16. The endosseous dental implant procedure that Petitioner underwent consisted of a surgical placement of titanium screws in her mandible, which enabled a tooth replacement prosthesis, specifically a fixed, detachable denture, to be screwed into the implants.

17. Petitioner subsequently consulted with Steven Davis, D.D.S. In Petitioner's initial implant consultation with Dentist Steven Davis, her chief complaint was uncomfortable, poorly fitting upper and lower dentures.

18. Dr. Davis recommended to Petitioner that she have dental implants surgically placed in her mandible, in order to support a denture that would be constructed by Dr. Murrell.

19. Dr. Davis placed six dental implants in Petitioner's mandible to support a fixed, detachable denture. In preparation for the placement of the implants, Dr. Davis removed a knife-edge ridge of bone in Petitioner's mouth ("alveoloplasty" is the term for the removal procedure). The knife-edge ridge consisted of a thin ridge shape formed from a portion of Petitioner's mandible.

20. The testimony of Petitioner's expert witness Dentist John Murrell shows that the primary purpose for placing dental implants is to support some form of restoration or prosthesis (such as dentures) that could not otherwise be placed in that area.

21. While Petitioner's expert witness Dr. Murrell testified that the placement of endosseous dental implants can provide a collateral benefit of stoppage of mandible bone loss, his testimony is clear that notwithstanding the possible collateral benefit of the stoppage of bone loss, the primary purpose of the placement of Petitioner's implants was to support a new set of dentures.

22. Eugenie Komives, M.D. testified for Respondent. She has been employed as the Medical Director for the State Health Plan since the year 2000. Among other duties, as the Medical Director for the State Health Plan, Dr. Komives oversees all of the State Health Plan's medical review activities. From 1995 to 1999, Dr. Komives was employed as the Associate Medical Director for Health Policy and Utilization Management of the Kaiser Permanente, Kaiser Foundation Health Plan Group. She graduated with her M.D. degree from Harvard Medical School in 1985. Dr. Komives is a diplomate of the American Board of Quality Assurance and Utilization Review Physicians.

23. Health Care Utilization Management is part of Dr. Komives' job as Medical Director for the State Health Plan. Health Care Utilization Management is the practice of assuring that the benefits that are provided to a health plan enrollee meet the coverage requirements under the health plan.

24. By reason of Dr. Komives' job as Medical Director for the State Health Plan, she is familiar with the applicable provisions of North Carolina General Statutes, Chapter 135, and with Board Medical Policy SU0160.

25. Petitioner's expert witness Dentist John Murrell testified that he is not familiar with the applicable provisions of North Carolina General Statutes, Chapter 135, nor with Board Medical Policy SU0160.

26. Doctor Komives was found by the Administrative Law Judge to be qualified as an expert witness in the field of Health Care Utilization Management.

27. Dr. Komives was involved in the request for approval of dental implants benefits for Petitioner as early as February 14, 2002. On February 14, 2002 she recommended that the Claims Administrator deny coverage of the placement of Petitioner's endosseous implants and related services, on the basis that such services were not covered under the State Health Plan.

28. The standard practice for Utilization Review decisions is to review what is documented in the patient's medical record. In her review of Petitioner's case, Dr. Komives reviewed all the papers submitted. Dr. Komives reviewed Petitioner's entire file several times during the course of Petitioner's appeals at the Claims Administrator level and Board of Trustees' level. She also reviewed Petitioner's entire file prior to this hearing.

29. Dr. Komives gave expert opinion testimony at this hearing that Petitioner's treatment does not meet the statutory and Board medical policy provisions for dental and oral surgical benefits. In Dr. Komives' opinion, Petitioner's services constituted tooth replacement procedures. Petitioner underwent a surgical procedure that implanted titanium screws in her lower jaw so that she could have a tooth replacement prosthesis, specifically a fixed, detachable denture, screwed into the implants and attached to the implants.

30. The Administrative Law Judge finds as a fact that Petitioner's placement of the dental implants and related services, including the removal of the knife-edge ridge of bone (alveoloplasty procedure), were for the purposes of tooth replacement. The Administrative Law Judge finds as a fact that Dentures are a form of tooth replacement.

31. Petitioner was placed on reasonable notice by the State Health Plan benefits book that tooth replacement is not covered by the State Health Plan. The benefits book is made available by the State Health Plan to all its members.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the undersigned Administrative Law Judge concludes as a matter of law that:

1. The Office of Administrative Hearings has jurisdiction in this matter.

2. The services that are at issue in this proceeding are the placement of six (6) endosseous implants and related services rendered to Petitioner by Steven Davis, D.D.S. The appeal to the Board of Trustees was an appeal of the earlier decisions of the Claims Administrator, and the appeal documentation shows that both the Claims Administrator and the Board of Trustees were only deciding on Petitioner's eligibility for benefits for the placement of the endosseous implants and related services.

3. The Burden of proof is on Petitioner to show that she has health insurance coverage provided by Respondent and that she has a claim of the sort generally covered by Respondent.

4. Because the State Health Plan denied coverage on the basis that the treatment in question falls within an exception or exclusion contained in the statutes and its board medical policies, once the Petitioner meets her burden of proof, the State Health Plan bears the burden of proving the treatment falls within an exception. *See Flintall v. Charlotte Liberty Mutual Insurance Company*, 259 N.C. 666, 131 S.E.2d 312 (1963); *Gunther v. Blue Cross / Blue Shield of North Carolina*, 58 N.C. App. 341, 293 S.E.2d 597 (1982).

CONTESTED CASE DECISIONS

5. Petitioner, in presenting her evidence, met her burden of showing that she is a covered person and that she received oral surgery, which is generally covered under the Plan. Respondent met its burden of showing that Petitioner's placement of dental implants and related services falls within statutory and medical board policy exclusions.

6. The legal standards applicable to this case are found within the governing statutes and policies of the State Health Plan, specifically N. C. Gen. Stat. §§ 135-40.6 (6) (a) and 135-40.7(11), and Board Medical Policy SU0160. The portions of Board Medical Policy SU0160 relevant to this care are not in conflict with the statute and are therefore valid.

7. The Administrative Law Judge finds that the placement of dental implants and related services rendered to Petitioner falls within the exclusions set forth in N. C. Gen. Stat. §§ 135-40.6 (6) (a) and 135-40.7 (11), Board Medical Policy SU0160, and the medical benefits book provided by the State Health Plan to its members.

8. The services for which Petitioner seeks payment in this proceeding do not qualify as covered dental and oral surgical services under the General Statutes and Board policies applicable to this proceeding. Although Petitioner received services which were appropriate, the services are not covered under the State Health Plan.

9. The evidence shows that the services Petitioner received are excluded from coverage under N. C. Gen. Stat. §§ 135-40.6 (6) (a) and 135-40.7 (11), and Board Medical Policy SU0160, which exclude benefits for tooth replacement procedures, and which exclude benefits for the removal of bony projections from the ridges preparatory to fitting of dentures.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the decision of Respondent Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan to deny Petitioner's reimbursement claim for the placement of her dental implants and related services is **AFFIRMED**.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B036(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

This the 19th day of December, 2003.

James L. Conner, II
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
03 DHR 0567

THE PRESBYTERIAN HOSPITAL,)
 Petitioner,)
)
 v.)
)
)
 N.C. DEPARTMENT OF HEALTH AND HUMAN SERVICES,)
 DIVISION OF FACILITY SERVICES, CERTIFICATE OF)
 NEED SECTION,)
 Respondent)
)
 and)
)
 N.C. DEPARTMENT OF ENVIRONMENT)
 AND NATURAL RESOURCES,))
 Respondent.)

ORDER GRANTING SUMMARY JUDGMENT
AND RECOMMENDED DECISION

HAVING CONSIDERED the Motion for Summary Judgment filed by Respondent-Intervenor Mooresville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center ("Lake Norman") on October 23, 2003 and the Motion for Summary Judgment filed by Petitioner The Presbyterian Hospital ("Presbyterian") on October 22, 2003, the parties' responses, memoranda of law and notices of filing concerning these motions, and the pleadings and discovery filed in this case; and having considered the oral arguments of counsel during a hearing on November 12, 2003 at the Office of Administrative Hearings; the undersigned makes the following Findings of Undisputed Fact and Conclusions of Law:

FINDINGS OF UNDISPUTED FACT

1. Lake Norman is an acute care hospital with 105 beds located at 171 Fairview Road in Mooresville, Iredell County, North Carolina. *Lake Norman 2003 CON Application, pp. 1, 12.* Lake Norman is part of Health Management Associates, Inc. ("HMA") headquartered in Naples, Florida. *Lake Norman 2003 CON Application, pp. 1-2.* Mooresville is approximately 30 miles north of downtown Charlotte. *Lake Norman 2003 CON Application, pp. 1, 12.*
2. Presbyterian operates a 503-bed acute care hospital located at 200 Hawthorne Lane in downtown Charlotte, Mecklenburg County, North Carolina. Presbyterian is part of Novant Health, Inc. ("Novant") headquartered in Winston-Salem. *2003 State Medical Facilities Plan, p. 40.*
3. On or about January 14, 2003, Lake Norman filed a CON application to expand and renovate its existing emergency department. The Agency assigned Lake Norman's CON application Project I. D. No. F-6744-03. The application was determined complete and review of the application began on February 1, 2003.
4. Lake Norman's renovation and expansion project was not part of a competitive review, nor was it governed by any need determination set forth in the 2003 State Medical Facilities Plan ("SMFP"). *Presbyterian's Responses to Lake Norman's First Request for Admissions, No. 1.*
5. Lake Norman's application stated that it proposed to expand and renovate its emergency department because of the increased utilization that the facility had experienced and the need for more treatment rooms to provide quality and timely emergency services. The application also proposed to redesign the space in the emergency department to expand the waiting room to accommodate families of the increased number of patients and to add an isolation room close to the ambulance entrance. *Lake Norman 2003 CON Application, pp. 23, 25, 27-29.*
6. The Agency expedited review of Lake Norman's 2003 ED application.
7. No written comments were submitted and no public hearing was held concerning Lake Norman's 2003 ED application.

8. By letter dated March 11, 2003, the Agency notified Lake Norman that it had approved Lake Norman's 2003 ED application and also issued its findings and conclusions.
9. Presbyterian filed a Petition for Contested Case Hearing on April 9, 2003, contesting the approval of Lake Norman's 2003 ED application.
10. Presbyterian neither submitted written comments regarding Lake Norman's 2003 ED application nor requested a public hearing regarding that application. *Paul Arrington's Deposition, p. 21; Presbyterian's Responses to Lake Norman's First Request for Admissions, Nos. 7 and 8.*
11. Presbyterian Hospital Matthews ("PHM") is also part of Novant. It is a 102-bed acute facility located 1500 Matthews Township Parkway in Matthews, Mecklenburg County, North Carolina. *2003 SMFP, p. 40.*
12. Presbyterian Orthopedic Hospital is a 140-bed hospital that is located at 1901 Randolph Road, Charlotte, Mecklenburg County, North Carolina and is also part of Novant. *2003 SMFP, p. 40.*
13. On May 8, 2002, pursuant to a settlement reached with the Agency, Presbyterian received a CON to build a hospital located in Huntersville, Mecklenburg County to be known as Presbyterian Hospital North ("PHN"). *Deposition of Arrington, pp. 172-73; Presbyterian's Responses to Request for Admission, No. 3.* The CON issued to Presbyterian for the proposed PHN authorized development of a 50-bed acute care hospital with an emergency department, 10 observation beds and 8 operating rooms in Huntersville approximately 10 miles from Lake Norman's hospital facility. *Deposition of Arrington, pp. 172-73; Presbyterian's Responses to Request for Admissions, No. 3.*
14. Lake Norman filed a Petition for Contested Case Hearing challenging the Agency's settlement with Presbyterian including the issuance of the CON to Presbyterian to develop Presbyterian Hospital North. That matter is currently pending in the North Carolina Court of Appeals. *See Case No. 02-DHR-0888.*
15. On April 25, 2003, Lake Norman moved to intervene in this contested case on the grounds that it was the applicant and that it was entitled to intervene as an "affected person" within the meaning of N.C. Gen. Stat. § 131E-188(c).
16. The Court allowed Lake Norman to intervene by an order signed on May 12 and filed on May 13, 2003.
17. Presbyterian's petition alleges that it is affected in its person and property by the Agency's decision to approve the expansion and renovation of Lake Norman's ED, which interferes with its ability to carry out its lawful business.
18. Presbyterian admits that it does not have a hospital in Iredell County where Lake Norman is located nor has it proposed to develop a hospital in Iredell County. Presbyterian has also admitted that it does not own or operate nor has it proposed to locate an emergency department in Iredell County. *Presbyterian's Responses to Request for Admissions, Nos. 10-13.*
19. Paul Arrington, Presbyterian's Director of Strategic Planning, testified at his deposition that he was not aware of any impact that the Agency's approval of Lake Norman's ED application would have on whether or not Presbyterian in downtown Charlotte can renovate or expand its emergency department, should it wish to propose such a renovation or expansion. *Deposition of Arrington, p. 174.*
20. Mr. Arrington also testified at his deposition that the Agency's approval of Lake Norman's ED application will not have any impact on whether Presbyterian Matthews' then pending emergency department CON application would be approved. *Deposition of Arrington, pp. 173-74.*
21. Mr. Arrington also testified that the Agency's approval of Lake Norman's ED application will not have any impact on any potential proposal by Presbyterian Orthopedic Hospital to expand or renovate its facility. *Deposition of Arrington, pp. 174-75.*
22. Presbyterian received a CON to develop a new hospital and emergency department in Huntersville on May 8, 2002, prior to Lake Norman's filing its 2003 emergency department application on January 15, 2003 and prior to the Agency's approving that application on March 11, 2003. Since Presbyterian, had already received a CON to develop the hospital in Huntersville, the Agency's approval of Lake Norman's 2003 emergency department application is not preventing Presbyterian from developing a hospital and emergency department in Huntersville. *Presbyterian's Responses to Request for Admissions, No. 3; Deposition of Arrington, pp. 172-73, 175-76.*
23. Mary Edwards, the Project Analyst for the Agency, who made the decision to approve Lake Norman's 2003 ED application, testified in her deposition that the Agency does not consider utilization in the emergency departments of other hospitals when

determining whether an applicant's emergency department needs to be expanded and/or renovated. *Deposition of Edwards, pp. 136-37.*

24. On October 22, 2003, Presbyterian filed a Motion for Summary Judgment contending that Lake Norman's 2003 ED application did not conform as a matter of law with Criterion 5 and, therefore, could not be approved and the Agency's decision should be set aside.

25. On October 23, 2003, Lake Norman filed a Motion for Summary Judgment contending that Presbyterian had admitted that it had not been negatively affected by the Agency's approval of Lake Norman's 2003 ED application and, therefore, had admitted that any alleged Agency error was harmless.

26. On November 3, 2003, Presbyterian filed a Response, Memorandum of Law and Notice of Filing opposing Lake Norman's Motion for Summary Judgment.

27. On November 4, 2003, Lake Norman filed a Response, Memorandum of Law and Notice of Filing opposing Presbyterian's Motion for Summary Judgment.

28. On November 5, 2003, the Agency filed a Response Supporting Lake Norman's Motion for Summary Judgment.

29. On November 12, 2003, the undersigned conducted a hearing at the Office of Administrative Hearings in Raleigh, North Carolina, first on Presbyterian's Motion for Summary Judgment and then on Lake Norman's Motion for Summary Judgment. Denise Gunter and Lisa Gordon of the firm of Nelson Mullins Riley & Scarborough, L.L.P. appeared on behalf of Presbyterian. Melissa L. Trippe, Special Deputy Attorney General, and Wendy Greene appeared on behalf of the Agency. Maureen Demarest Murray and Harriett Twiggs Smalls of the firm of Smith Moore LLP appeared on behalf of Lake Norman.

BASED UPON the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when it can be shown "that an essential element of the opposing party's claim is nonexistent," or "that the opposing party cannot produce evidence to support an essential element of his claim." *Collingwood v. G.E. Real Estate Equities, Inc.*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989). Summary judgment is appropriate in CON cases when there is no genuine issue of material fact. *See Presbyterian-Orthopaedic Hosp. v. North Carolina Dep't of Human Resources*, 122 N.C. App. 529, 470 S.E.2d 831 (1996) (holding that summary judgment against Presbyterian was proper because it failed to show in its CON application that it met all the applicable criteria and its witnesses testified that its CON application did not show on its face that it met certain criteria.).

2. In order to prevail in a contested case, a petitioner must show that the Agency erred and that the error was not harmless to the petitioner. *See* N.C. Gen. Stat. § 150B-23(a). A petitioner cannot prevail if an alleged erroneous action by the Agency is harmless. *Britthaven, Inc. d/b/a Britthaven of Morganton v. North Carolina Department of Health and Human Resources, Division of Facility Services and Valdese Nursing Home, Inc.*, 118 N.C. App. 379, 455 S.E. 2d 455 (1995).

3. Because Presbyterian admitted that The Presbyterian Hospital, Presbyterian Hospital Matthews, Presbyterian Orthopedic Hospital, and the proposed Presbyterian Hospital North to be placed in Huntersville, North Carolina are not and will not be negatively impacted by the Agency's approval of Lake Norman's 2003 ED application, the facts are undisputed that any alleged Agency error is harmless, Presbyterian has failed to prove an essential element of its claim, and Lake Norman's Motion for Summary Judgment should be granted.

4. If there were errors in the way the Agency conducted its review and decision regarding Lake Norman's 2003 ED application, such errors would nevertheless be harmless to Presbyterian.

5. Presbyterian argued that Lake Norman's statements in this case are inconsistent with statements Lake Norman has made during its challenge in Case No. 02 DHR 0888, which included a challenge to the CON issued to Presbyterian for Presbyterian Hospital North, and that the doctrine of judicial estoppel applies to preclude summary judgment in Lake Norman's favor. The undersigned does not find judicial estoppel applicable under these facts. Lake Norman's 2003 ED application relates to emergency department treatment rooms and related space in Iredell County, whereas the Presbyterian Huntersville 1999 and 2001 applications and settlement related to acute care inpatient beds in Mecklenburg County. The applications and certificate of need reviews at issue in Case No. 02 DHR 0888 concerned statements made with respect to different issues, applications, State Medical Facilities Plans, circumstances, county and CON reviews than what is at issue in this case. Furthermore, Presbyterian's arguments are based upon Presbyterian's speculation concerning what Lake Norman may or may not do in the future depending upon what occurs in the

CONTESTED CASE DECISIONS

continuing appeal in Case No. 02 DHR 0888. The undersigned must consider the motions in this case concerning Lake Norman's 2003 ED application based not on future theory and speculation but on the undisputed facts presented in this case.

6. Presbyterian argued that the way Lake Norman has used the process is contrary to the CON Laws and that Lake Norman has manipulated the process, which is against public policy. The undersigned finds that Lake Norman properly used the CON process.

7. Because of the undersigned's ruling granting Lake Norman's Motion for Summary Judgment, it is not necessary to and the Court does not make a ruling on Presbyterian's October 22, 2003, Motion for Summary Judgment, which the Court heard, or Presbyterian's November 7, 2003, Motion for Summary Judgment for which the time to respond had not yet expired as of the November 12, 2003 hearing.

Based on the foregoing Findings of Undisputed Fact and Conclusions of Law, the undersigned Administrative Law Judge hereby recommends that Lake Norman's Motion for Summary Judgment be granted. Each party is responsible for its own costs and attorneys fees.

ORDER

It is hereby ordered that the Agency serve a copy of the Final Decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b3).

NOTICE

Before the Agency makes the Final Decision, it is required by N.C. Gen. Stat. § 150B-36(a) to give each party an opportunity to file exceptions to this Recommended Decision, and to present written arguments to those in the Agency who will make the Final Decision.

The Agency is required by N.C. Gen. Stat. § 150-36(b3) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorneys of record.

IT IS SO ORDERED.

This the 19th day of December, 2003.

Beryl E. Wade
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
03 DOJ 1925

THOMAS AUSTIN ATCHISON,
Petitioner,

v.

NORTH CAROLINA PRIVATE PROTECTIVE SERVICES
BOARD,
Respondent.

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PROPOSAL FOR DECISION

This contested case was heard before Senior Administrative Law Judge Fred G. Morrison Jr. on November 18, 2003, in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared pro se.

Respondent was represented by attorney Bradford A. Williams.

WITNESSES

Petitioner - Petitioner testified on his own behalf.

Respondent – Investigator Sarah Conner testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner’s application for a private investigator license on grounds that he lacks good moral character or temperate habits?

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner’s application for a private investigator license should be denied for lack of good moral character or temperate habits. Petitioner may rebut the Respondent’s showing.

**STATUTES AND RULES APPLICABLE
TO THE CONTESTED CASE**

Official notice is taken of the following statutes and rules applicable to this case:

G.S. 74C-2;
74C-3;
74C-8;
74C-9;
74C-11;
74C-12;
12 N.C.A.C. 7D § .0400.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C.G.S. 74C-1 et seq. and is charged with the duty of licensing and registering individuals engaged in the private protective services industry, which includes private investigators.
2. Thomas Austin Atchison (hereinafter “Petitioner”) applied to Respondent Board in May 2003 for a private investigator license. Before applying for a private investigator license, Petitioner served in the Charlotte-Mecklenburg Police Department (hereinafter “CMPD”) as a law enforcement officer for approximately 13 years. He rose to the rank of sergeant while at

CONTESTED CASE DECISIONS

- CMPD and became a S.W.A.T. patrol and investigative supervisor. Petitioner retired from CMPD in April 2003 on disability.
3. Respondent Board assigned Investigator Sarah Conner (hereinafter "Investigator Conner") to conduct Petitioner's background investigation. As part of her investigation, Investigator Conner contacted CMPD to review Petitioner's employment record.
 4. Petitioner signed a release on May 13, 2003, which he submitted to Respondent Board along with his application. The release authorized Petitioner's employers to submit documents to Respondent Board pertaining to its background investigation of Petitioner.
 5. Respondent Board submitted into evidence as Respondent's Exhibit 3 a February 5, 2003 memorandum from Darrel Stephens, chief of the Charlotte-Mecklenburg Police Department, to Patrick Clark, chairperson of the Charlotte-Mecklenburg Civil Service Board. The memorandum advised Mr. Clark that Petitioner on January 29, 2003, had been suspended for 30 working days without pay with the recommendation that he be demoted from sergeant to police officer.
 6. In the February 5, 2003, memorandum to Mr. Clark, Chief Stephens alleged that on June 3, 2002, Petitioner became involved in a vehicle pursuit during which he violated several departmental rules of conduct and engaged in conduct unbecoming. The allegations included the following: (a) that Petitioner failed to evaluate the potential dangers involved with the pursuit because of the excessive speeds reached, and that "significant unreasonable danger to both the public and members of the Department was created;" (b) that Petitioner became involved in the pursuit as the primary unit while driving an unmarked patrol vehicle in violation of the department's rules governing pursuits; (c) that Petitioner failed to activate his audio recording device during the pursuit in violation of the department's rules governing pursuits; (d) that Petitioner exceeded the speed limit during the pursuit without activating his audible signal in violation of the department's rules governing emergency responses; (e) that Petitioner engaged in conduct unbecoming by failing to inform his immediate supervisor, the pursuit supervisor, the Mecklenburg County District Attorney's Office, and the police department's internal affairs division, during its administrative investigation of the incident, that he had an unauthorized passenger in his vehicle during the pursuit; (f) that Petitioner engaged in conduct unbecoming by instructing two officers to remove the unauthorized passenger, a witness to the pursuit, from the crash scene where the pursuit ended; and (g) that Petitioner engaged in conduct unbecoming by instructing his passenger not to give a witness statement about her involvement in the pursuit.
 7. Respondent Board's Exhibit 4 includes the investigation completed by CMPD's internal affairs division into the June 3, 2002, pursuit. The investigation contains exhibits 1-38, though exhibits 22-31 and 36 remain in the custody of CMPD. The investigation includes transcripts of interviews with Petitioner, other CMPD officers involved in the pursuit, and the passenger who rode in Petitioner's vehicle during the pursuit.
 8. Respondent Board submitted into evidence as Respondent's Exhibit 5 a February 25, 2003, memorandum from Chief Stephens to Mr. Clark of the Civil Service Board. The memorandum advised Mr. Clark that Petitioner, on February 25, 2003, had been suspended without pay and was cited to the Civil Service Board with the recommendation that his employment be terminated.
 9. The February 25, 2003, memorandum alleges that Petitioner engaged in conduct unbecoming and unsatisfactory job performance when he on multiple occasions in 2002 improperly recorded Sergeant N.V. Mackey's duty time on daily duty status reports. The improper recording of Sergeant Mackey's time allowed Sergeant Mackey to receive credit for hours worked which he in fact did not work.
 10. Petitioner retired from CMPD on disability before the Civil Service Board could hold a hearing on CMPD's request that his employment be terminated. Petitioner testified that he asked the Civil Service Board to hear the matter anyway, but the Board declined to do so because he was no longer an employee of the police department.
 11. On direct-examination, Petitioner described the June 3, 2002, pursuit that led to his 30 day suspension without pay and recommendation that he be demoted. While on break, Petitioner met his girlfriend for dinner. The girlfriend was a CMPD officer who was off-duty at the time. Petitioner drove the two of them to a restaurant in his unmarked patrol car. As they left the restaurant after finishing dinner, Petitioner heard a call over his radio that a vehicle which had been stolen the previous night in a car-jacking had been spotted. Petitioner immediately responded to the call because he was near the location of the stolen vehicle. The driver of the vehicle failed to pull-over when another officer in a marked car turned on his emergency equipment. A pursuit began, and at some point during the chase, Petitioner fell behind the stolen vehicle and became the primary unit involved in the pursuit. During the pursuit, Petitioner's girlfriend continued to ride with him in his unmarked patrol car.

CONTESTED CASE DECISIONS

12. The pursuit lasted for approximately six miles. It involved multiple CMPD officers. The pursuit ended when the stolen vehicle wrecked. After wrecking, the driver of the stolen vehicle tried to car-jack another car in an attempt to flee. The suspect was eventually taken into custody, and Petitioner remained at the crash scene as a supervisor. Petitioner admitted he directed a CMPD officer who was at the crash scene to take his girlfriend back to the patrol station where her car was parked. Petitioner claimed he had his girlfriend taken from the crash scene because she had to report to duty soon at another patrol station and not because he intended to cover up the fact that he had an unauthorized passenger in his patrol car while on duty.
13. On cross-examination, Petitioner admitted that CMPD's departmental policies prohibited an off-duty officer from riding as a passenger in a patrol car driven by a fellow officer who was on-duty. Petitioner called this a "technical" rule that everyone in the department violated, including his supervising captain.
14. Petitioner testified that from June 2002 until October 2002 nothing was said to him about his role in the pursuit except his captain told him not to worry about it. That fall, Petitioner went out on disability. Petitioner alleged his captain was upset about Petitioner going out on disability. The captain purportedly made disparaging comments about Petitioner. Petitioner learned of these comments and allegedly confronted the captain, causing an argument. According to Petitioner, the internal affairs investigation was the result of his captain trying to get revenge on him.
15. On September 5, 2002, an internal affairs investigator interviewed Petitioner. At the end of the interview, the investigator asked Petitioner if he had anything else to add that had not been discussed during the interview. Petitioner said no. During the interview, Petitioner never disclosed that he had a passenger riding with him during the pursuit on June 3, 2002.
16. It took a second internal affairs interview, conducted on September 19, 2002, for Petitioner to disclose that he had a passenger riding in his vehicle during the pursuit. Petitioner claimed on direct-examination that he didn't disclose this fact in the first internal affairs interview because his supervisor and his girlfriend's supervisor both knew the girlfriend had been in Petitioner's car during the pursuit.
17. Petitioner's girlfriend failed to complete a witness statement detailing the June 2002 pursuit until after internal affairs began its investigation into the incident. On direct examination, Petitioner admitted he told his girlfriend not to do a witness statement. Petitioner felt that her statement would be unnecessary because it would contain the same information as his. Petitioner denied trying to cover up that he had an unauthorized passenger in his patrol car during the pursuit.
18. On cross-examination, Petitioner admitted his girlfriend was a witness to a crime when she observed the pursuit as a passenger in Petitioner's car. Petitioner acknowledged that at a crime scene the police take statements from all witnesses, not just select ones.
19. With regard to the allegation by CMPD that Petitioner at multiple times improperly recorded the time of a fellow sergeant, Petitioner admitted occasionally leaving Sergeant Mackey's name on daily duty status reports even when Sergeant Mackey failed to show for work. Petitioner explained that he and Sergeant Mackey were exempt employees who were not paid off the clock. CMPD did not use the daily duty status reports to keep track of how much the sergeants were owed in wages. Since the daily duty status reports weren't used to calculate his pay or Sergeant Mackey's pay, Petitioner didn't believe he was helping Sergeant Mackey to obtain funds fraudulently from the City of Charlotte. Petitioner also testified that it was a common practice in the department to leave a person's name on a daily duty status report even though that person may not have been present for work that day.
20. On cross-examination, Petitioner acknowledged that by improperly recording a sergeant's time on the daily duty status reports, that sergeant could accrue vacation time to which he otherwise would not be entitled. In other words, a sergeant could take a day off and not be charged a vacation day simply by having his name left on the daily duty status report.
21. Petitioner testified that from 1990, when he began his employment with CMPD, until 2002 he only had one disciplinary action taken against him by the department. He is 33 years old, he earned a GED in 1987 from Central Piedmont Community College, he completed basic law enforcement training, and he has no criminal record.
22. Petitioner gave Respondent Board five character references. Four were favorable and one was mixed. CMPD did not give Petitioner a favorable employment reference, and he is not eligible for rehire at CMPD. Petitioner cooperated with Respondent's investigator.

CONCLUSIONS OF LAW

An applicant for a private investigator license must establish to Respondent Board that he has good moral character or temperate habits. See N.C.G.S. § 74C-8(d)(2) (2003). The Board may deny an application for a private investigator license when the applicant lacks good moral character or has intemperate habits. See N.C.G.S. § 74C-12(a)(25) (2003).

CONTESTED CASE DECISIONS

Though the North Carolina Supreme Court has yet to offer a definition of good moral character, it has described the qualities held by a person of good moral character. In the Matter of Basil Ray Legg, Jr., 325 N.C. 658, 386 S.E.2d 174 (1989), the Court noted that a person of good moral character is honest and candid. See id. at 672, 386 S.E.2d at 182.

Petitioner's employment record with the Charlotte-Mecklenburg Police Department (hereinafter "CMPD") includes a thirty-day suspension without pay on January 29, 2003, along with a recommendation of demotion and on February 25, 2003, another suspension without pay and recommendation of employment termination. CMPD took disciplinary action against Petitioner on January 29, 2003, for, among other things, failing to disclose during an administrative investigation that he had a passenger riding with him while he was involved in a vehicle pursuit on June 3, 2002. Additionally, CMPD cited Petitioner for his conduct immediately after the pursuit when he instructed two officers to remove his passenger from the crash scene where the pursuit ended and because he told his passenger that it was unnecessary for her to complete a witness statement.

A month after being suspended because of his actions during the June 2002 pursuit Petitioner was suspended again by CMPD and recommended for termination. CMPD recommended Petitioner for termination because on multiple occasions in 2002 he improperly recorded a fellow sergeant's duty time on daily duty status reports. The improper recording of the fellow sergeant's time allowed the sergeant to receive credit for hours worked which he did not work, or allowed him to take vacation days.

Petitioner's lack of full disclosure during CMPD's administrative investigation of the June 2002 pursuit and his role in improperly recording a fellow sergeant's duty time, enabling the sergeant to take some days off, called into question his forthrightness and was unacceptable conduct meriting disciplinary action by his employer. From the evidence presented, Respondent Board raised questions about Petitioner's moral character, but did not offer proof of any criminal convictions or addictions specifically listed under G. S. 74C-8(d)(2) which are prima facie evidence that an applicant does not have good moral character or temperate habits.

Petitioner's proven indiscretions do not constitute the lack of good moral character and temperate habits necessary to deny his application to become a private investigator. While his career as a law enforcement officer with the CMPD has ended, he is entitled to a second chance.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The North Carolina Private Protective Services Board will make the final decision in this contested case. It is proposed that the Board **reverse** its initial decision to deny Thomas Austin Atchison's application for a private investigator license.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with N.C.G.S. 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C.G.S. 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

This the 23rd day of December, 2003.

Fred G. Morrison Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
03 EHR 1125

ROBERT A. VALOIS
Petitioner,

v.

COASTAL RESOURCES COMMISSION,
Respondent.

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**DECISION
SUMMARY JUDGMENT
FOR PETITIONER**

THIS CAUSE comes on for consideration pursuant to Petitioner’s Motion for Summary Judgment filed in the Office of Administrative Hearings on August 8, 2003. After reviewing the record proper including the Petitioner’s Motion, and all other items submitted by both the Respondent and the Petitioner, the Undersigned hereby makes the following ruling based on the standards of review for Motions for Summary Judgment.

Summary Judgment-Standard of Review

Summary judgment is designed to eliminate formal trials where only questions of law are involved. Summary judgment should be used cautiously, with due regard to its purposes and a cautious observance of its requirements. See *Brown v. Greene*, 98 N.C.App. 377, 390 S.E.2d 695 (1990). The standard of review is whether there is a genuine issue of material fact and whether the movant is entitled to judgment as a matter of law. See *Kessing v. National Mortgage Corp.*, 278 N.C. 523, 534, 180 S.E.2d 823, 830 (1971). To entitle one to summary judgment, the movant must conclusively establish a legal bar to the nonmovant’s claim or complete defense to that claim. See *Virginia Elec. and Power Co. v. Tillett*, 80 N.C.App. 383, 385, 343 S.E.2d 188, 190-91, *cert denied*, 317 N.C. 715, 347 S.E.2d 457 (1986). The burden of establishing a lack of any legally triable issue resides with the movant. See *Pembee Mfg. Corp. v. Cape Fear Constr. Co.* 313 N.C. 488, 329 S.E.2d 350 (1985)

As observed in *Nelson v. Ferris*, 136 F. Supp. 2d 703, 712 (E.D. Mich. 2001), “[t]hree 1986 United States Supreme Court cases -- *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986); and *Celotex Corp. v. Catrett*, 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986) -- ushered in a ‘new era’ in the standards of review for a summary judgment motion. These cases, in the aggregate, lowered the movant’s burden on a summary judgment motion.” Summary judgment is proper “if the pleadings, depositions, answer to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that [the moving] party is entitled to a judgment as a matter of law.” Rule 56(c), N.C.G.S. § 1A-1.

STATEMENT OF THE CASE

The Petition For A Contested Case Hearing in this case was filed in the North Carolina Office of Administrative Hearings on June 26, 2003. The Petitioner alleged that the Division of Coastal Management (“Division”) unlawfully failed to require the owner (Edward Barry) of a lot adjoining Petitioner’s lot in Holden Beach, North Carolina to obtain a permit under the Coastal Area Management Act, N.C.G.S § 113A-100, et seq. (“CAMA”) for the addition of two new courses of concrete block on top of a previously existing subterranean wall and instead unlawfully determined that such work was exempt from the CAMA permit requirements as “maintenance and repair.” A Notice of Contested Case and Assignment, Scheduling Order, and Order for Prehearing Statements were filed on June 30, 2003.

Petitioner filed a Motion for Summary Judgment and a Brief in Support including exhibits on August 8, 2003. Respondent filed an Opposition to the Petitioner’s Motion for Summary Judgment and a Memorandum of Law including two affidavits and other exhibits on August 19, 2003. Petitioner filed a Reply Memorandum including exhibits on September 12, 2003. Petitioner filed a Verification in Support of Petitioner’s Motion for Summary Judgment on September 12 and modified it on September 15, 2003.

A Notice of Hearing on the Motion was filed on October 14, 2003. This matter was called to be heard on November 5, 2003, pursuant to such Notice.

At the Hearing, the Petitioner was present and represented by James E. Gates of Maupin Taylor, P.A., Raleigh, North Carolina. The Respondent was present and represented by David G. Heeter, Assistant Attorney General.

CONTESTED CASE DECISIONS

The parties stipulated on the record that they timely received the Motion for Summary Judgment and all related filings, including the Notice of Hearing. The parties proceeded to present their respective arguments on the Motion for Summary Judgment. Neither side requested the opportunity to present live testimony at the Hearing and none was presented.

ISSUE

Should summary judgment be entered in favor of the Petitioner?

DISCUSSION OF FINDINGS OF FACT AND APPLICABLE CONCLUSIONS OF LAW

1. Petitioner owns a lot in Holden Beach, North Carolina that adjoins a lot owned by Edward Barry ("Barry"). The northern side of both Petitioner's lot and Barry's lot abuts the Atlantic Intracoastal Waterway.
2. Prior to 2002, there had been constructed on Barry's lot a U-shaped wall, as follows: the portion of the wall forming the base of the "U" ran along the northern side of Barry's lot and was approximately fifty (50) feet in length; the portions of the wall forming the sides of the "U" ran along the eastern and western sides of Barry's lot and were each approximately seventy (70) feet in length; and at the time of the addition described below, the wall was largely subterranean, its elevation extending to ground level or slightly above it.
3. In or about October 2002, Barry added on top of the full length of the wall two new courses of concrete block that extended approximately eighteen (18) inches above ground level.
4. By letter dated November 15, 2002, the Town of Holden Beach, the local CAMA representative, issued to Barry a "Notice of Violation and STOP WORK ORDER" advising that no permits of record had been issued for work being performed at Barry's address, and that it had been determined that a retaining wall and other structures had been constructed there. Barry was ordered to immediately cease and desist building activity.
5. By letter dated December 6, 2002, the Town of Holden Beach advised Barry that the new addition to the existing concrete wall constituted a CAMA violation. The letter further advised Barry that in order to avoid being fined by the Division, it would be necessary for him to remove all the new concrete blocks. The letter also advised Barry that the blocks were within the coastal wetland area; that if at any time Barry wanted to add fill or do any landscaping, he would need to request that the Division stake and locate the coastal wetland line; that Barry would then need to apply for a minor CAMA permit; and that no work of any kind would be permitted waterward of the wetlands line.
6. By letter dated April 11, 2003, the Town of Holden Beach advised the Division that a field investigation at the Barry property resulted in a determination that two new courses of block had been added.
7. By letter dated May 12, 2003, the Town of Holden Beach advised Barry that the letter of December 6, 2003 noticing a CAMA violation was rescinded. The May 12, 2003 letter also advised that the Division office in Wilmington had determined that the work on the wall was considered "maintenance and repair," and was therefore exempt from needing a CAMA development permit under N.C.G.S. § 113A-103(5)b.5. The letter further notified Barry that while maintenance and repairs were excluded from the definition of development pursuant to that statute, individuals required to take such measures within an area of environmental concern must contact the local CAMA representative for consultation and advice before beginning work.
8. Petitioner disputes the Division's determination that the addition of two courses of concrete block to the wall on Barry's lot was exempt and is seeking in this proceeding an order vacating the letter of rescission dated May 12, 2003 and reinstating the violation notice letters dated November 15, 2002 and December 6, 2002. Respondent defends the Division's determination that the addition to the wall was exempt.
9. N.C.G.S. § 113A-118(a) provides, in relevant part, that every person before undertaking any "development" in any "area of environmental concern" must obtain a permit pursuant to CAMA.
10. Barry's lot, including the portion upon which the wall in question is located, is in an area of environmental concern as defined in N.C.G.S. § 113A-113(b)(5).
11. The addition of two courses of concrete block to the wall falls within the definition of "development" in N.C.G.S. § 113A-103(5)a, constituting "the construction or enlargement of any structure."
12. Respondent admits that the addition of the two courses of concrete block to the wall on Barry's lot would be subject to the permitting requirements of N.C.G.S. § 113A-118(a) as minor development within the meaning of N.C.G.S. §§ 113A-

CONTESTED CASE DECISIONS

103(5)a and -118(d)(2) if such addition did not come within the exemption for maintenance and repairs in N.C.G.S. § 113A-103(5)b.5.

13. N.C.G.S. § 113A-103(5)b.5 exempts from the definition of development and thereby the CAMA development permit requirement “[m]aintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.”
14. The Administrative Law Judge finds as a matter of law that the addition of two courses of concrete block to the wall on Barry’s lot was not “maintenance or repairs . . . necessary to repair damage to structures caused by the elements” within the meaning of N.C.G.S. § 113A-103(5)b.5, and the addition was not exempt from, but was subject to, the development permitting requirements in N.C.G.S. § 113A-118(a).
15. Therefore, the determination in the May 12, 2003 letter that the addition was exempt was erroneous, as was the rescission of the prior violation notices in the same letter. The letter of rescission dated May 12, 2003 should accordingly be vacated, the violation notice letters dated November 15, 2002 and December 6, 2002 should be reinstated, and such additional action authorized by law consistent with this decision should be taken.

SUMMARY JUDGMENT

IT IS, THEREFORE, the decision of the Administrative Law Judge that summary judgment under Rule 56 of the North Carolina Rules of Civil Procedure and N.C.G.S. § 150B-36(d) be entered in favor of Petitioner because there are no genuine issues as to any material fact and, as a matter of law, Petitioner is entitled to have the May 12, 2003 rescission letter vacated, the November 15, 2002 and December 6, 2002 violation notice letters reinstated, and such additional action consistent with this decision taken by the appropriate CAMA enforcement agencies.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge’s decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge’s decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the Coastal Resources Commission.

ORDER

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36.

IT IS SO ORDERED.

This the 18th day of November, 2003.

Augustus B. Elkins II
Administrative Law Judge