

NORTH CAROLINA

REGISTER



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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/Transliterator	
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		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		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 2005 – December 2005

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

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.

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 09 – GOVERNOR AND LT. GOVERNOR

None

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Budget and Management intends to adopt the rules cited as 09 NCAC 03M .0101-.0102, .0201-.0205, .0301, .0401, .0501, .0601, .0701-.0704, .0801-.0802.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: May 16, 2005

Time: 10:00 a.m.

Location: Administration Building, 5th floor conference room, 116 W. Jones St., Raleigh, NC

Reason for Proposed Action: Amendment is legislation requiring rules to be adopted. G.S. 143-6.2, SB 1008.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections regarding the proposed rules to Tom Newsome, Assistant State Budget Officer, Office of State Budget and Management, Administration Building, 20320 Mail Service Center, Raleigh, NC 27699-0320.

Written comments may be submitted to: Tom Newsome, Assistant State Budget Officer, Office of State Budget and Management, Administrative Building, 116 W. Jones St., 20320 Mail Service Center, Raleigh, NC 27699-0320, phone (919) 733-7061.

Comment period ends: May 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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)

CHAPTER 03 - STATE BUDGET AND MANAGEMENT

SUBCHAPTER 03M – UNIFORM ADMINISTRATION OF STATE GRANTS

SECTION .0100 - ORGANIZATION AND FUNCTION

09 NCAC 03M .0101 PURPOSE

Pursuant to G.S. 143-6.2(d), the rules in this Subchapter establish reporting requirements for non-State entities that receive, use, or expend State funds and ensure the uniform administration of State grants by all grantor State agencies, grantee, and subgrantees.

Authority G.S. 143-6.2.

09 NCAC 03M .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Agency" shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the grantor agency to the Office of the State Auditor that states that the grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the grantor agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the

- form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (10) "Grantee" means a non-State entity that receives a grant of state funds from an agency of the State of North Carolina but does not include any non-State entity subject to the audit and other reporting requirements of the State and Local Government Finance Division with the North Carolina Department of State Treasurer.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" means a firm, corporation, partnership, association, institution, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department or institution.
- (13) "Public Authority" means a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (Article 1 of G.S. 143) or a local governmental authority, board, commission, council, or agency that:
 (a) is not a municipal corporation;
 (b) is not subject to the Executive Budget Act; and
 (c) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.

- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are subgranted to other organizations.
- (17) "Subgrantee" means a non-State entity that receives a grant of state funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the State and Local Government Finance Division with the North Carolina Department of State Treasurer.
- (18) "Unit of Local Government" means a municipal corporation that is not subject to the Executive Budget Act (Article 1 of G.S. 143) and has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

Authority G.S. 143-6.2.

SECTION .0200 - RESPONSIBILITIES OF GRANTEES AND SUBGRANTEES

09 NCAC 03M .0201 DISBURSEMENT AND USE OF STATE FUNDS

Any grantee that receives, uses, or expends any State funds shall use or expend those funds only for the purposes for which they were either appropriated by the North Carolina General Assembly or collected by the State of North Carolina.

Authority G.S. 143-6.2.

09 NCAC 03M .0202 ALLOWABLE USES OF STATE FUNDS

Expenditures of State funds by any grantee shall be in accordance with the State of North Carolina Cost Principles as developed by the Office of the State Auditor and the Office of the State Controller. If the grant funding includes federal sources, the grantee shall ensure adherence to the cost principles established by the Federal Office of Management and Budget.

Authority G.S. 143-6.2.

09 NCAC 03M .0203 GRANTEE RESPONSIBILITIES

A grantee that receives State funds shall ensure that those funds are utilized for the purpose of the grant and shall be accountable for the expenditure of those funds in compliance with reporting requirements established by this Subchapter. Grantees shall:

- (1) Provide the information required by the grantor agency in order to comply with the procedures for disbursement of grant funds as

- required by the Office of State Budget and Management.
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. All reports and records shall be made available for inspection by both the awarding agency and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.
- (3) Ensure that subgrantees comply with all reporting requirements of the grantee.

Authority G.S. 143-6.2.

09 NCAC 03M .0204 SUBGRANTEE RESPONSIBILITIES

A subgrantee that receives State funds must ensure that those funds are spent for the purpose of the grant and shall be accountable for expenditure of those funds in compliance with reporting requirements established by this Subchapter. Subgrantees shall:

- (1) Provide the information required by the grantor agency in order to comply with the procedures for disbursement of grant funds as required by the Office of State Budget and Management.
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. All reports and records shall be available for inspection by both the awarding agency and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.
- (3) Ensure that any subgrantees comply with all reporting requirement of the grantee.

Authority G.S. 143-6.2.

09 NCAC 03M .0205 REPORTING THRESHOLDS AND FORMATS FOR GRANTEES AND SUBGRANTEES

(a) For the purposes of this Subchapter, there are three reporting thresholds established for grantees and subgrantees receiving State funds:

- (1) Less than \$25,000 – A grantee that receives, uses, or expends State funds in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year must comply with the reporting requirements established by this Subchapter and the applicable sections of the State Budget Manual including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - (B) An accounting of the State funds received, used, or expended; and

- (C) All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.
 - (2) \$25,000 up to \$500,000 - A grantee that receives, uses, or expends State funds in an amount of at least twenty-five thousand (\$25,000) and up to five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter and the applicable sections of the State Budget Manual including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - (B) An accounting of the State funds received, used, or expended;
 - (C) A description of activities and accomplishments undertaken by the grantee with the State funds; and
 - (D) All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.
 - (3) Greater than \$500,000 – A grantee that receives, uses, or expends State funds and in the amount greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter and the applicable sections of the State Budget Manual including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - (B) An audit completed by the grantee consistent with the reporting requirement of this Subchapter;
 - (C) A description of activities and accomplishments undertaken by the grantee with the State funds; and
 - (D) All reporting requirements shall be filed with both the funding agency and the Office of the State Auditor within nine months after the end of the grantee's fiscal year in which the State funds were received.
- (b) Unless prohibited by law, the costs of audits made in accordance with the provisions of this rule are allowable charges to State and Federal awards. The charges may be considered a

direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable State and Federal cost principles circulars or other applicable cost principles or regulations. The cost of any audit not conducted in accordance with this Subchapter is unallowable and shall not be charged to State or Federal grants.

(c) The audit requirements in this Subchapter do not replace a request for submission of audit reports by grantor agencies in connection with requests for direct appropriation of state aid by the General Assembly.

(d) Federal law may require a grantee to make additional reports with respect to funds for which reports are required under this Subchapter. Notwithstanding the provisions of this Subchapter, a grantee may satisfy the reporting requirements of Part (a)(3)(C) of this Rule by submitting a copy of the report required under the federal law with respect to the same funds.

(e) All grantees and subgrantees shall use the forms of the Office of State Budget and Management and of the Office of the State Auditor in making reports to the awarding agencies and the Office of the State Auditor.

Authority G.S. 143-6.2.

SECTION .0300 - RESPONSIBILITIES OF THE OFFICE OF THE STATE CONTROLLER

09 NCAC 03M .0301 OFFICE OF THE STATE CONTROLLER RESPONSIBILITIES

The State Controller has the exclusive authority for issuing of all warrants, prescribing the manner in which all disbursements are made, authorizing and rescinding the used of disbursing accounts by an agency, and requiring the form and regularity of reporting for these activities. All grantees receiving State funds shall enter into a disbursing agreement in accordance with the Office of the State Controller in accordance with G.S. 143-3 and G.S. 143-3.2.

Authority G.S. 143-6.2.

SECTION .0400 - RESPONSIBILITIES OF AGENCIES

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

An agency that receives State funds and disburses those funds to a grantee shall comply with the following reporting requirements:

- (1) Notify each grantee, at the time the grant is made, of the purpose of the grant and the reporting requirements established in this Subchapter.
- (2) Prior to disbursing any grant funds:
 - (a) register with the Office of State Budget and Management's Community Resources Information System (CRIS); and
 - (b) follow the procedures for disbursement of grant funds as required by the Office of State Budget and Management.

- (3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division with the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.
- (4) Provide the Office of the State Auditor with a listing of each grantee to which the agency disbursed State funds during the prior fiscal year by October 31st of each year including detailed information regarding the purpose and amount of the grant awarded.
- (5) Provide the Office of State Budget and Management with a listing of every grantee to which the agency disbursed State funds during the prior fiscal year by January 31st of each year. This report shall be consistent with the disbursement report previously provided to the Office of the State Auditor including whether the grantee has complied with the reporting requirements established in this Subchapter.
- (6) Hold grantees accountable for the expenditure of State funds by performing monitoring and oversight functions as required in this Subchapter.
- (7) Ensure that funds are spent consistent with the purposes for which they were granted.
- (8) Agencies shall not disburse funds to grantees that are not in compliance with the reporting requirements for funds received during the prior fiscal year. Agencies shall consult with the Office of State Budget and Management in making this determination.
- (9) The grantor agency shall determine that the applicable reporting requirement has been met by the grantee and that all reports have been completed and submitted. For grantees receiving less than five hundred thousand dollars (\$500,000), the grantor agency shall complete a Certification of Compliance to the Office of the State Auditor.
- (10) Each grantor agency shall conduct periodic monitoring reviews to ensure that State awards are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements and that performance goals are achieved.
- (11) Each grantor agency shall monitor compliance by grantees with all terms of a contract. Upon determination of noncompliance, the agency shall give the grantee 60 days written notice to come into compliance. After the 60-day period, the grantor agency shall:
 - (a) terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures;

- (b) suspend payments pending negotiation of a plan of corrective action; or
- (c) offset future payments with the amount improperly spent.
- (12) Each non-State entity shall ensure that subgrantees have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.

Authority G.S. 143-6.2.

SECTION .0500 - RESPONSIBILITIES OF THE OFFICE OF THE STATE AUDITOR

09 NCAC 03M .0501 OFFICE OF THE STATE AUDITOR RESPONSIBILITIES

Pursuant to the provisions of this Subchapter, the responsibilities to be performed and documented by the Office of the State Auditor include:

- (1) Review submitted audit reports for those grantees receiving more than five hundred thousand dollars (\$500,000) in State funds to determine compliance with applicable reporting standards.
- (2) Maintain grantor agency submitted compliance data for grantees that receive State funds at levels below five hundred thousand dollars (\$500,000) demonstrating that the grantees have met the reporting requirements established by this Subchapter.
- (3) Notify disbursing agencies, by January 31st of each year, of all grantees for which no compliance data has been received.
- (4) Notify disbursing agencies of any material findings in the audits of grantees throughout the State fiscal year as reports are received.
- (5) Submit a list to the Office of State Budget and Management by January 31st of each year; of each grantee that received State funds in the prior fiscal year including the status of grantee compliance with the reporting requirements.
- (6) A grantee shall, upon request, furnish to the Office of the State Auditor all books, records, and other information necessary to account for the use and expenditure of State funds. The grantee shall furnish any additional financial or budgetary information requested by the Office of the State Auditor. The grantee shall obtain the audit necessary to comply with reporting requirements established by this Subchapter. The Office of the State Auditor may also request information from or review the working papers of the grantee's independent auditor directly related to the use and expenditure of State grant funds. This oversight authority also extends to subgrantees.

Authority G.S. 143-6.2.

SECTION .0600 - RESPONSIBILITIES OF THE OFFICE OF STATE BUDGET AND MANAGEMENT

09 NCAC 03M .0601 OFFICE OF STATE BUDGET AND MANAGEMENT RESPONSIBILITIES

The Office of State Budget and Management is responsible for the development and oversight of rules for the uniform administration of State grants by all agencies, grantees, and subgrantees including the oversight of the rules established in this Subchapter. The Office of State Budget and Management shall:

- (1) Provide consultation to agencies as to whether grantees have complied with the required reporting requirements.
- (2) Consult with agencies to ensure that all grantees found in noncompliance have their funding ceased immediately upon that determination and ensure that no further funding will be provided until the grantee is in compliance.
- (3) Maintain a Suspension of Funding list readily accessible to any interested party that identifies any grantee found in noncompliance. This list will serve as notice to other agencies that no further State grant funding may be provided to that grantee.
- (4) Maintain a Community Resources Information System database to record grant documentation required by this Subchapter.
- (5) In conjunction with the grantor agency, ensure reporting requirements have been met prior to the removal of any grantee from the Suspension of Funding listing. A grantee found in noncompliance may appeal to the Office of State Budget and Management for corrective action and reinstatement from the Suspension of Funding list. Once removed from the Suspension of Funding list, the grantee is eligible for current and future grants of State funds.
- (6) Take administrative action, when the Director of Budget finds that the grantee has spent or encumbered State funds for an unauthorized purpose, which includes reporting criminal violations to the Attorney General and the State Bureau of Investigation.
- (7) If the grant funds are a pass-through of funds granted by an agency of the United States, consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.

Authority G.S. 143-6.2.

SECTION .0700 - CONTRACTING, MONITORING, AND OVERSIGHT

09 NCAC 03M .0701 GRANT DOCUMENTATION

In consideration of receiving State funds, the grantee shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any State funds, each agency shall sign a contract with the grantee requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all subgrantee relationships.

Authority G.S. 143-6.2.

09 NCAC 03M .0702 SUBORDINATION OF OTHER CONTRACTS AGREEMENTS

No contract agreements shall act to eliminate or diminish the requirements contained in this Subchapter.

Authority G.S. 143-6.2.

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

Each contract agreement shall contain:

- (1) A specification of the purpose of the grant, services to be provided, objectives to be achieved, and expected results;
- (2) The Source of funds (federal, state, etc.) must be identified (CFDA number if applicable) and percentages included where applicable;
- (3) Account coding information sufficient to provide for tracking of the disbursement through the grantor accounting system;
- (4) Agreement to maintain all grant records for a period of five years or until all audit exceptions have been resolved, whichever is longer; and
- (5) The following information:
 - (a) names of all parties to the terms of the contract; for the grantee or subgrantee, including the employer/tax identification number, address, contact information, and the grantee/subgrantee fiscal year end date;
 - (b) date signatures indicating authorization by all parties to the terms of the contract;
 - (c) duration of the contract, including the effective and termination dates;
 - (d) amount of the contract and schedule of payment(s);
 - (e) particular duties of the grantee; and
 - (f) required reports and reporting deadlines;
- (6) Provisions for termination by mutual consent or for cause with 60 days written notice to the other party, or as otherwise provided by law;
- (7) A provision that the awarding of the grants subject to allocation and appropriation of

funds to the agency for the purposes set forth in the contract;

- (8) A provision that requires reversion of unexpended funds to the agency upon termination of the contract;
- (9) A provision that requires compliance with the rules and reporting requirements outlined in this Subchapter including audit oversight by the Office of the State Auditor, the provision of access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding;
- (10) A clause addressing assignability and subcontracting including the following:
 - (a) the grantee or subgrantee is not relieved of any of the duties and responsibilities of the original contract; and
 - (b) the subgrantee agrees to abide by the standards contained in this Subchapter, and to provide all information to allow the grantee to comply with these standards.

Authority G.S. 143-6.2.

09 NCAC 03M .0704 GRANT MONITORING AND EVALUATION

(a) Agencies shall ensure that oversight and monitoring of grantee and subgrantees occurs to prevent the misuse of State funds. Grantees and subgrantees shall manage the day-to-day operations of grant-supported activities. Grantors shall monitor grant-supported activities to assure compliance with applicable compliance requirements and that performance goals are being achieved. Grantee monitoring shall cover each program, function or activity. An evaluation must be performed with a comparison of actual accomplishments to the measurable objectives or outcomes established for the grant.

- (b) Agencies are responsible for the following:
 - (1) Grant Identification - At the time the grant is made, the agency must provide information to the grantee including the required contract provisions as well as the applicable compliance requirements.
 - (2) During the grant period, the agency shall monitor the grantee's use of State awards through reporting, site visits, regular contact, or other means to provide assurance that the grantee administers State funds in compliance with laws, rules, and the provisions of grant agreements and that performance goals are achieved.
 - (3) Ensuring that subgrantees expending five hundred thousand dollars (\$500,000) or more in State awards during the subgrantee's fiscal year have met the audit requirements of this Subchapter and that the required audits are

completed within nine months of the end of the subgrantee's audit period; issuing a management decision on audit findings within six months after receipt of the subgrantee's audit report; and ensuring that the subgrantee takes timely corrective action on all audit findings.

- (4) Take action using sanctions when a subgrantee has demonstrated a continued inability or unwillingness to provide required audits.
- (5) Evaluate the impact of subgrantee activities on the agency's ability to comply with applicable State rules.
- (6) Evaluate the results and outcomes of the activities and accomplishments of the grantee or subgrantee to determine if results were achieved, the success of the activity, and whether the project activities should continue.

Authority G.S. 143-6.2.

SECTION .0800 - SANCTIONS

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take measures to ensure that the requirements are met including:

- (1) communicating the requirements to the non-State entity;
- (2) requiring a response from the non-State entity upon a determination of noncompliance; and
- (3) suspend payments to the non-State entity until the non-State entity is in compliance.

(b) Prior to disbursing any State funds, the grantor agency shall verify that the grantee has complied with the reporting requirements for the most recent applicable reporting period. The agency shall consult with the Office of State Budget and Management during this verification process. A grantor agency shall not disburse funds to any grantee that has been determined by the grantor agency to be noncompliant with the reporting requirements established by this Subchapter.

(c) The grantor agency finds that a non-State entity has used State funds for an unauthorized purpose, the grantor agency shall report such findings to the Attorney General, the Office of the State Budget and Management, the Office of the State Auditor, and the Office of the State Controller.

(d) If a grantee has not met the reporting requirements established by this Subchapter and fails to submit revised reports in accordance with a grantor agency determination letter, the grantor agency shall suspend further payments to the grantee and report the grantee to the Office of the State Auditor.

(e) Each agency shall assure compliance by grantees and subgrantees with all contract terms. Upon determination of non-compliance, the agency shall give the grantee or subgrantee 60-days written notice to come into compliance. After the 60-day period, the agency shall:

- (1) terminate the contract and take necessary action to retrieve unexpended funds and recover any unauthorized expenditures;
- (2) suspend payments pending negotiation of a plan of corrective action; or
- (3) offset future payments with the amount determined to have been improperly spent.

(f) Each grantor agency shall ensure that grantees and subgrantees have complied with the applicable provisions of this Subchapter.

Authority G.S. 143-6.2.

09 NCAC 03M .0802 RECOVERY OF STATE FUNDS

(a) The Attorney General shall assist the Office of State Budget and Management in the recovery and return of State funds in the event a grantee or subgrantee:

- (1) is unable to fulfill the obligations of the contractual agreement;
- (2) is unable to accomplish the purposes of the grant;
- (3) is noncompliant with the reporting requirements; or
- (4) has inappropriately used the State funds.

(b) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of State funds shall be reported to the Attorney General and State Bureau of Investigation.

(c) Civil actions to recover State funds or to obtain other mandatory orders in the name of the State of North Carolina on relation of the Attorney General, or in the name of the Office of State Budget and Management shall be filed in the General Court of Justice in Wake County.

Authority G.S. 143-6.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to adopt the rules cited as 10A NCAC 27G .1701-.1708, .1901-.1904 and amend the rule cited as 10A NCAC 27G .1301.

Proposed Effective Date: July 1, 2005

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018 by March 30, 2005.*

Reason for Proposed Action: *The proposed amendment of 10A NCAC 27G .1301 and the adoption of 10A NCAC 27G, Section .1700 is necessary to strengthen current residential treatment facility licensure rules. The proposed adoption of 10A NCAC 27G, Section .1900 is needed to establish a new licensure category for psychiatric residential treatment facilities. The*

proposed rule changes represent the first part of a comprehensive plan to revamp the child residential treatment service continuum. The proposed rules add additional safeguards for children and adolescents and establish higher standards for providers of residential treatment services.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Written comments may be submitted to: Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone 919-715-2780, fax 919-733-1221, email cindy.kornegay@ncmail.net.

Comment period ends: May 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .1300 - RESIDENTIAL TREATMENT PROGRAM FACILITY FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS

10A NCAC 27G .1301 SCOPE

(a) A residential treatment program facility for children and adolescents is a free-standing residential facility which provides a structured living environment within a system of care approach for children and adolescents who have a primary diagnosis of mental illness or emotional disturbance and who may also have

~~other disabilities, disabilities and for whom removal from home is essential to facilitate treatment.~~

~~(b) A facility providing residential treatment, level III service shall be licensed as set forth in 10A NCAC 27G .1700.~~

~~(c)(b) Services shall be designed to address the functioning level of the child or adolescent and include training in self-control, communication skills, social skills, and recreational skills. Some children Children or adolescents may be able to ~~may~~ receive education services in a day treatment facility or public school. Children or adolescents may also have a job placement facility, have a job placement, or attend public schools; for others, special education services may need to be offered within the residential setting.~~

~~(d)(e) Services are designed to support the child or adolescent in gaining the skills necessary to return to a natural or therapeutic home setting. The target populations to be served in a residential setting are children and adolescents for whom removal from home to a community based residential setting is essential to facilitate treatment. Residential treatment is targeted toward children and adolescents who no longer meet criteria for inpatient psychiatric services or intensive residential treatment and need a step-down placement in the community, or those who have been placed in non-residential community setting and need a more intensive treatment program.~~

~~(e)(d) Treatment, services, and discharge plans provided by residential treatment program facilities shall be coordinated with other individuals and agencies within the client's local system of care.~~

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

SECTION .1700 - RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS

10A NCAC 27G .1701 SCOPE

(a) A residential treatment facility for children and adolescents is a free-standing residential facility that provides intensive, active therapeutic treatment and interventions within a system of care approach.

~~(b) A private family residence shall not be licensed as a residential treatment facility.~~

~~(c) Services shall be designed to include individualized, constant supervision and structure of daily living designed to minimize the occurrence of behaviors related to functional deficits, to ensure safety and deescalate out-of-control behaviors including frequent crisis management with or without physical restraint or to maintain optimum level of functioning.~~

~~(d) Some children or adolescents may be able to receive services in a day treatment facility, have a job placement, or attend public schools; for others, special education services may need to be offered within the residential setting.~~

~~(e) The populations to be served in a residential setting are children and adolescents for whom removal from home to a community-based residential setting is essential to facilitate treatment.~~

(f) Residential treatment is targeted toward children and adolescents who do not meet criteria for inpatient psychiatric services but do require treatment in a staff secure setting.

(g) Staff secure means staff are required to be awake during client sleep hours and supervision shall be continuous.

(h) Services shall be designed to support the child or adolescent in gaining the skills necessary to step-down into a less intensive treatment setting.

(i) Treatment, services, and discharge plans provided by residential treatment facilities shall be coordinated with other individuals and agencies within the client's system of care.

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

10A NCAC 27G .1702 QUALIFICATIONS AND REQUIREMENTS OF THE DIRECTOR

(a) Each facility shall have a director who is a qualified professional as set forth in 10A NCAC 27G .0104(18). The director shall work a minimum of 32 hours each week, of which at least 70% shall occur when children or adolescents are awake and present.

(b) The governing body responsible for each facility shall develop and implement written policies that specify the clinical and administrative responsibilities of the director. At a minimum these policies shall include:

- (1) supervision of the group home manager;
- (2) provision of direct psychoeducational services to children and adolescents;
- (3) participation in service planning meetings;
- (4) coordination of each child or adolescent's treatment plan; and
- (5) provision of basic case management functions.

(c) The director shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Residential Treatment Services, including subsequent amendments and editions. A copy of Clinical Policy 8D-2 is available from DMH/DD/SAS at a price to cover printing, handling and postage.

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

10A NCAC 27G .1703 REQUIREMENTS FOR GROUP HOME MANAGERS

(a) Each facility shall have a full-time group home manager who is an associate professional as set forth in 10A NCAC 27G .0104(1).

(b) The governing body responsible for each facility shall develop and implement written policies that specify the responsibilities of the group home manager. At a minimum these policies shall address the following:

- (1) management of the day to day operations of the facility;
- (2) supervision of paraprofessionals regarding responsibilities related to the implementation of each child or adolescent's treatment plan;
- (3) participation in service planning meetings.

(c) Group home managers shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Residential Treatment

Services, including subsequent amendments and editions. A copy of Clinical Policy 8D-2 is available from DMH/DD/SAS at a price to cover printing, handling and postage.

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

10A NCAC 27G .1704 REQUIREMENTS FOR PARAPROFESSIONALS

(a) There shall be two staff present in the facility at all times when children and adolescents are present. At least one paraprofessional staff member shall be present with every two children or adolescents. If children or adolescents are cared for in separate buildings, the ratios shall apply to each building.

(b) The minimum number of paraprofessionals required is as follows:

- (1) one paraprofessional shall be present for one, two or three children or adolescents;
- (2) two paraprofessionals shall be present for four or five children or adolescents;
- (3) three paraprofessionals shall be present for six or seven children or adolescents;
- (4) four paraprofessionals shall be present for eight or nine children or adolescents;
- (5) five paraprofessionals shall be present for 10 or 11 children or adolescents; and
- (6) six paraprofessionals shall be present for 12 children or adolescents.

(c) Paraprofessionals shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Residential Treatment Services, including subsequent amendments and editions. A copy of Clinical Policy 8D-2 is available from DMH/DD/SAS at a price to cover printing, handling and postage.

(d) An additional emergency on-call paraprofessional staff shall be readily available by telephone or page and able to reach the facility within 30 minutes.

(e) One staff member is required to be present at all times when children or adolescents are away from the facility.

(f) Paraprofessional staff are awake during client sleep hours and supervision shall be continuous.

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

10A NCAC 27G .1705 REQUIREMENTS OF LICENSED BEHAVIORAL HEALTH PROFESSIONALS

(a) Face to face clinical consultation shall be provided in each facility at least four hours a week by a licensed behavioral health professional.

(b) The consultation specified in Paragraph (a) of this Rule shall include:

- (1) clinical supervision of the director;
- (2) individual, group or family therapy services; and
- (3) involvement in client specific treatment plans or overall program treatment issues.

(c) Licensed behavioral health professionals shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Residential Treatment Services, including subsequent

amendments and editions. A copy of Clinical Policy 8D-2 is available from DMH/DD/SAS at a price to cover printing, handling and postage.

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

10A NCAC 27G .1706 OPERATIONS

(a) Capacity. Each facility shall serve no more than a total of 12 children and adolescents.

(b) Family Involvement. Family members or other responsible adults shall be involved in development of plans in order to assure a smooth transition to a less restrictive setting.

(c) Education. Children and adolescents residing in a residential treatment facility shall receive appropriate educational services, either through a facility-based school, 'home-based' services, or through a day treatment program. Transition to a public school setting shall be part of the treatment plan.

(d) Psychiatric consultation shall be available as needed for each client.

(e) Age Limitation. If an adolescent has his 18th birthday while receiving treatment in a residential facility, he may continue in the facility for six months or until the end of the state fiscal year, whichever is longer.

(f) Clothing. Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.

(g) Personal Belongings. Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

(h) Hours of Operation. Each facility shall operate 24 hours per day, seven days per week, each day of the year.

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

10A NCAC 27G .1707 PERSONS PERMITTED IN THE FACILITY

(a) Only admitted children or adolescents, legally responsible persons, staff; other family and friends identified in the treatment plan and others invited or permitted by the facility director shall be permitted on the premises.

(b) Individuals other than those specified in Paragraph (a) of this Rule are prohibited from entering the facility except in instances of emergency or as permitted by law.

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

10A NCAC 27G .1708 TRANSFER OR DISCHARGE

(a) The purpose of this Rule is to address communication procedures concerning the transfer or discharge of a child or adolescent from one facility to another facility.

(b) The residential treatment facility shall meet with the parent(s) or legal guardian, area authority or county program representative(s) and other representatives involved in the care and treatment of the child or adolescent, including local Department of Social Services, Local Education Agency and criminal justice agency, to make service planning decisions prior to the transfer or discharge of the child or adolescent from one facility to another. Existing child and family teams may be used for this purpose.

(c) In case of an emergency, the facility shall notify the treatment team including the legally responsible person of the transfer or discharge of the child or adolescent as soon as the emergency situation is stabilized.

(d) In case of an emergency, notification may be by telephone. A service planning meeting as set forth in Paragraph (b) of this Rule shall be held within five business days of an emergency transfer or discharge.

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

SECTION .1900 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY FOR CHILDREN AND ADOLESCENTS WHO HAVE A MENTAL ILLNESS OR SUBSTANCE ABUSE OR DEPENDENCE

10A NCAC 27G .1901 SCOPE

(a) A psychiatric residential treatment facility (PRTF) provides care for children and adolescents who have mental illness or substance abuse/dependency in a non-acute inpatient setting. The facility provides a structured living environment for children and adolescents who do not meet criteria for acute inpatient care, but do require supervision and specialized interventions on a 24-hour basis. Therapeutic interventions address functional deficits associated with the child or adolescent's diagnosis and include psychiatric treatment and specialized substance abuse and mental health therapeutic care.

(b) Therapeutic interventions and services shall be designed to address the treatment needs necessary to facilitate a move to a less intensive community setting.

(c) The populations to be served in a PRTF are children and adolescents for whom removal from home or a community-based residential setting is essential to facilitate treatment.

(d) Treatment, services and discharge plans shall be coordinated with other individuals and agencies within the child or adolescent's catchment area.

(e) A PRTF shall be accredited through one of the following: Joint Commission on Accreditation of Healthcare Organizations; the Commission on Accreditation of Rehabilitation Facilities; the Council on Accreditation or other national accrediting bodies as set forth in the Division of Medical Assistance Clinical Policy Number 8D-1, Psychiatric Residential Treatment Facility, including subsequent amendments and editions. A copy of Clinical Policy Number 8D-1 is available from DMH/DD/SAS at a price to cover printing, handling and postage.

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

10A NCAC 27G .1902 STAFF

(a) Each facility shall have a director who is a physician board-eligible or certified in child psychiatry or a general psychiatrist with demonstrated experience in the treatment of children and adolescents with mental illness.

(b) At all times, at least two paraprofessional staff members shall be present with every six children or adolescents in each residential unit.

(c) Staff shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-1, Psychiatric Residential Treatment Facility,

including subsequent amendments and editions. A copy of Clinical Policy 8D-1 is available from DMH/DD/SAS at a price to cover printing, handling and postage.

(d) If the facility is hospital based, staff shall be specifically assigned to this program, with responsibilities clearly separate from those performed on an acute medical unit or other residential units.

(e) Each child or adolescent admitted to a facility shall have a weekly consultation with a psychiatrist to review medications.

(f) Consultation with staff from the responsible area authority or county program shall occur regularly in order to assist with the development of a treatment plan in a community-based setting.

(g) Twenty-four hour coverage by a registered nurse is required.

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

10A NCAC 27G .1903 OPERATIONS

(a) Capacity. Each unit shall serve no more than a total of 12 persons. If the facility has more than one residential unit, the capacity of each unit shall be limited to 12 children and adolescents. Any facility licensed or approved to provide these services for a greater capacity as of the effective date of these Rules shall continue to provide services at no more than the licensed or approved capacity.

(b) Residential units. Each residential unit shall be administered, staffed, and located to function separately from all other residential units in the facility.

(c) Length Of Stay. Efforts for discharge to a less restrictive community residential setting shall be documented from the date of admission.

(d) Hours Of Operation. Each facility shall operate 24-hours a day, seven days a week, each day of the year.

(e) Family Involvement. Family members or other responsible adults shall be involved in the development and implementation of treatment plans in order to assure a smooth transition to a less restrictive setting.

(f) Education. Children and adolescents residing in a PRTF shall receive educational services through a facility-based school. Educational services shall meet applicable standards as required by federal and State law.

(g) Clothing. Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.

(h) Personal Belongings. Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

(i) Transition Planning. Discharge planning begins on the day of admission. Family members or guardians or both of the child shall be present at discharge planning meetings.

Authority G.S. 143B-147.

10A NCAC 27G .1904 TRANSFER OR DISCHARGE

(a) The purpose of this Rule is to address communication procedures concerning the transfer or discharge of a child or adolescent from one facility to another facility.

(b) The PRTF shall meet with the parent(s) or legal guardian, area authority or county program representative(s) and other representatives involved in the care and treatment of the child or

adolescent including local Department of Social Services, Local Education Agency and criminal justice agency, to make service planning decisions prior to the transfer or discharge of the child or adolescent from one facility to another. Existing child and family teams may be used for this purpose.

(c) In case of an emergency, the facility shall notify the treatment team including the legally responsible person of the transfer or discharge the child or adolescent as soon as the emergency situation is stabilized.

(d) In case of an emergency, notification may be by telephone. A service planning meeting as set forth in Paragraph (b) of this Rule shall be held within five business days of an emergency transfer or discharge.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 - STATE BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to amend the rule cited as 21 NCAC 14P .0105.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: March 30, 2005

Time: 10:00 a.m.

Location: NC State Board of Cosmetic Art Examiners, 1201-110 Front Street, Raleigh, NC

Reason for Proposed Action: Change in rules and regulations on civil penalties.

Procedure by which a person can object to the agency on a proposed rule: If you have any objections to the proposed rule, please forward a typed or handwritten letter indicating your specific reason(s) for your objection(s) to Souk Rios, NC Board of Cosmetic Art Examiners, 1201-110 Front Street, Raleigh, NC 27609.

Written comments may be submitted to: Souk Rios, 1201-110 Front Street, Raleigh, NC 27609, phone 919-733-4117, ext. 222, fax 919-733-4127, email srios@intrex.net.

Comment period ends: May 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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.

CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0201-.0202, .0204, .0206,.0210, .0303, .0404, .0403, .0406-.0407, .0501 and 21 NCAC 57B .0101, .0209-.0210, .0302-.0304,.306, .0603-.0604, .0606, .0608.

Fiscal Impact

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

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: April 19, 2005

Time: 9:00 a.m.

Location: 3900 Barrett Drive, Suite 101, Raleigh, NC

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

- (1) 1st offense warning (\$100.00)
(2) 2nd offense \$250.00
(3) 3rd offense \$500.00

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

- (1) 1st offense warning (\$100.00)
(2) 2nd offense \$250.00
(3) 3rd offense \$500.00

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

- (1) 1st offense \$100.00
(2) 2nd offense \$300.00
(3) 3rd offense \$500.00

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- (1) 1st offense \$100.00
(2) 2nd offense \$300.00
(3) 3rd offense \$500.00

(e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:

- (1) 1st offense warning (\$50.00)
(2) 2nd offense \$100.00
(3) 3rd offense \$200.00

(f) The presumptive civil penalty for teaching with an expired license is:

- (1) 1st offense warning (\$100.00)
(2) 2nd offense \$250.00
(3) 3rd offense \$500.00

Reason for Proposed Action: Staff review of rules indicated a need to clarify several of them. More specific direction is needed for applicants for licensure. Additional clarification is needed for trainee supervision and registration. There has been confusion regarding continuing education requirements.

Procedure by which a person can object to the agency on a proposed rule: Send written comments or an email to, or call the rulemaking coordinator. Attend the public hearing.

Written comments may be submitted to: Roberta Ouellette, P.O. Box 20500, Raleigh, NC 27619, phone (919)420-7920, fax (919)420-7925, email roberta@.ncab.org.

Comment period ends: May 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

Authority G.S. 88B-4; 88B-21; 88B- 23(a); 88B-24: 88B-29.

SECTION .0200 – TRAINEE REGISTRATION,
APPRAISER LICENSING AND CERTIFICATION

21 NCAC 57A .0201 QUALIFICATIONS FOR
TRAINEE REGISTRATION, APPRAISER LICENSURE
AND CERTIFICATION

(a) Applicants for trainee registration, licensure as a ~~state-licensed~~ licensed residential real estate appraiser and for certification as a ~~state-certified~~ certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in Subparagraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this Rule, provided however that registration as a trainee or licensure as a ~~state-licensed~~ licensed residential real estate appraiser is not prerequisite for certification as a ~~state-certified~~ certified residential or general real estate appraiser:

- (1) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education in the areas of Introduction to Real Estate Appraisal, Valuation Principles and Practices, Applied Residential Property Valuation, and, effective January 1, 2003, the Uniform Standards of Professional Appraisal Practice (USPAP) or appraisal education found by the Board to be equivalent to such courses.
- (2) Applicants for licensure as a ~~state-licensed~~ licensed residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in Subparagraph (a)(1) of this Rule, and shall have obtained ~~have~~ at least 2,000 hours of appraisal ~~experience.~~ experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of 18 calendar months. Applicants must have been actively engaged in real estate appraising for at least 18 months prior to the date application is made.
- (3) Applicants for certification as a ~~state-certified~~ certified residential real estate appraiser shall have completed those courses required for registration as a trainee or licensure as a ~~state-licensed~~ licensed residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, a course in Introduction to Income Property Appraisal consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,500 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been actively engaged in real estate appraising for at least two calendar years prior to the date application is made. At

least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

- (4) Applicants for certification as a ~~state-certified~~ certified general real estate appraiser shall have completed those courses required for certification as a ~~state-certified~~ certified residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 3,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been actively engaged in real estate appraising for at least two and a half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of complex properties or of improved properties in which the income approach was utilized in the appraisal process.

(b) Applicants for licensure or certification may be required to provide to the Board copies of appraisal reports in support of experience credit. All appraisals submitted in support of experience credit must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(c) When a trainee becomes a ~~state-licensed~~ licensed or ~~state-certified~~ certified real estate appraiser or when a ~~state-licensed~~ licensed real estate appraiser becomes certified as a ~~state-certified~~ certified real estate appraiser, his registration or licensure shall be immediately canceled by the Board. When a ~~state-certified~~ certified residential real estate appraiser becomes certified as a ~~state-certified~~ certified general real estate appraiser, his previous certification as a ~~state-certified~~ certified residential real estate appraiser shall be immediately canceled by the Board.

(d) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee will be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration, license or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

Authority G.S. 93E-1-6(a); 93E-1-10.

21 NCAC 57A .0202 FITNESS FOR REGISTRATION, LICENSURE OR CERTIFICATION

- (a) The Appraisal Board shall consider the fitness for registration, licensure or certification of each applicant who has passed the appropriate examination. When the fitness of an applicant is in question, action by the Board will be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.
- (b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for registration, licensure or certification at a hearing before the Board.
- (c) The inquiry into fitness for registration, licensure or certification may include consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, or whether the applicant has committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification, ~~or~~ whether the applicant has been convicted of or pleaded guilty to any criminal ~~act~~ act, or whether any such actions or charges are pending.
- (d) Notice to the applicant that his or her competency or fitness for registration, licensure or certification is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his or her application for trainee registration, licensing or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration, licensure or certification.

Authority G.S. 93E-1-10.

21 NCAC 57A .0204 CONTINUING EDUCATION

- (a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the ~~second~~ renewal of their registration, license or certificate following their registration, licensure or certification by the Board, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Registered trainees who were initially registered with the Board after January 1 of an odd numbered year will not be required to show continuing education credit for renewal of their registration in that odd numbered year.
- (b) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education between July 1, 2003 and June 30, 2005 and prior to June 30 of every odd numbered year thereafter. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, ~~state licensed~~

~~licensed and state certified~~ certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the annual continuing education requirement. Trainees, licensees and certificate holders may not take the same continuing education course more than once during the two year continuing education cycle. The seven hour National USPAP update course may be taken once for each edition of USPAP.

- (c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.
- (d) ~~Beginning July 1, 2003, each~~ Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must, as part of the 28 hours of continuing education required in .0204(b) of this Section, complete the seven hour National Uniform Standards of Professional Appraisal Practice (USPAP) update course, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent, ~~prior to June 30, 2005 and~~ prior to June ~~30~~ 15 of every odd numbered year.
- (e) A licensee who elects to take approved continuing education courses in excess of the minimum requirement shall not carry over into the subsequent years any continuing education credit.
- (f) Course sponsors must provide a prescribed certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 30 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.
- (g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be

evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The awarding of credit for such activities is wholly discretionary on the part of the Board. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit shall be deemed to have taken an equivalent course and shall not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every three years, regardless of how often he teaches the course.

(h) A trainee, ~~state licensed or state certified real estate appraiser~~ licensee or certificate holder may receive continuing education credit by taking any of the Board-approved prelicensing or precertification courses or their approved equivalents. These courses cannot be used for both continuing education credit and for credit for licensing purposes. In order to receive continuing education credit for these courses, the examination must be taken. Trainee, licensees and certificate holders who wish to use a prelicensing course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Board that he was unable to obtain the necessary education due to an incapacitating illness, military assignment outside the 50 states, or similar condition. If an extension of time is granted, the trainee, licensee or certificate holder shall be permitted to renew or reinstate, as appropriate, his registration, license or certificate for that period of time for which the extension was granted. The granting of such request and the length of any extension of time granted are wholly discretionary on the part of the Board.

Authority G.S. 93E-1-7(a); 93E-1-10.

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the two-hundred dollar (\$200.00) renewal fee plus a late filing fee of five dollars (\$5.00) per month for each month or part thereof that such registration, license or certificate is lapsed, and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If the registration, license or certificate has been expired for more than 12 months, a request for reinstatement will be treated as an original application. In order to be considered for reinstatement, the applicant must pay the one-hundred fifty dollar (\$150.00) original registration, license or certificate fee and include in the application a detailed description of the applicant's appraisal education and experience during the period of registration, licensure or certification and during the time of expiration. Such applications will be reviewed by the Board to determine whether an examination, additional real estate appraisal education or additional appraisal experience will be required. In addition, the Board may, in its discretion, consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration, licensure or certification before granting the request for reinstatement.

(c) A request for reinstatement will be not granted if the registration, license or certificate has been expired for more than 24 months.

~~(e)~~(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser ~~from another state~~ who does not reside in North Carolina and who is licensed or certified by the appraiser licensing or certifying agency in ~~such~~ another state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a properly completed application accompanied by a fee of one hundred fifty dollars (\$150.00) and otherwise satisfying the Appraisal Board as to his or her qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified check or cashier's check. As part of the examination for moral fitness, the Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202(c) of this Section.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina trainee or state-licensed or state-certified appraiser.

(e) A trainee may apply for a temporary practice permit and the provisions of Sections (a), (b) and (c) above shall apply. The supervising appraiser for the trainee must be a North Carolina ~~state licensed~~ licensed or state certified certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others

who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser.

(f) An applicant for a temporary practice permit may not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board.

Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

SECTION .0300 - APPRAISER EXAMINATIONS

21 NCAC 57A .0301 TIME AND PLACE

(a) Applicants who have met the education and experience requirements shall be issued an examination approval form by the Appraisal Board in order to take the examination. The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for real estate trainee registrations, appraiser licenses and certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants shall be scheduled for examination based on their successful completion of appraiser qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions shall be grounds for denial, suspension or revocation of a license or certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0303 RE-EXAMINATION

(a) Applicants for a trainee registration, or appraiser license or certificate who fail to pass or appear for any examination for which the applicant has been scheduled by the Board-approved private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service

(b) Applicants may take the examination no more than three times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by the third attempt at the examination or within one year of the date of issuance of the examination approval form, the application is cancelled. If the application is cancelled, the applicant must wait six months before filing a new application ~~reapply~~ for registration, licensure or certification and must meet all the qualification requirements for original approval.

Authority G.S. 93E-1-6; 93E-1-10.

SECTION .0400 – GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0401 USE OF TITLES

(a) A trainee shall utilize either the term "registered trainee" or the term "trainee real estate appraiser" when performing an

appraisal of real estate or any interest therein, and when referring to himself as a trainee.

(b) A ~~state-licensed licensed residential real estate appraiser~~ shall utilize the term "~~state-licensed residential real estate appraiser~~" "licensed residential real estate appraiser" and a ~~state-certified certified residential real estate appraiser~~ shall utilize the term "~~state-certified residential real estate appraiser~~" "certified residential real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself or herself as an appraiser. A ~~state-certified certified general real estate appraiser~~ shall utilize either the term "~~state-certified general real estate appraiser~~" "certified general real estate appraiser" or "~~state-certified residential/general real estate appraiser~~" "certified residential/general real estate appraiser" when performing appraisals of all types of real estate or any interest therein, and when referring to himself or herself as an appraiser.

(c) Trainee registration, licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a trainee, ~~state-licensed licensed or state-certified certified~~ real estate appraiser.

Authority G.S. 93E-1-10.

21 NCAC 57A .0403 ADVERTISING

(a) When advertising or otherwise holding himself out as a trainee or real estate appraiser, a trainee shall identify himself or herself either as a "registered trainee" or as a "trainee real estate appraiser", a ~~state-licensed licensed residential real estate appraiser~~ shall identify himself or herself as a "~~state-licensed residential real estate appraiser~~", "licensed residential real estate appraiser", a ~~state-certified certified residential real estate appraiser~~ shall identify himself or herself as a "~~state-certified residential real estate appraiser~~" "certified residential real estate appraiser", and a ~~state-certified certified general real estate appraiser~~ shall identify himself or herself as either a "~~state-certified general real estate appraiser~~" "certified general real estate appraiser" or a "~~state-certified residential/general real estate appraiser~~" "certified residential/general real estate appraiser".

(b) A registered trainee, ~~state-licensed licensed or state-certified certified~~ real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is registered, licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any trainee, licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the trainee, licensee or certificate holder, he shall first notify the Board in writing of such name and furnish the Board with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with Section 66-68, North Carolina General Statutes.

Authority G.S. 93E-1-10.

21 NCAC 57A .0406 BUSINESS PRACTICES

Each trainee or appraiser who has an ownership interest in an appraisal firm must assure that:

- (1) proper notification is given to the Board of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use; and
- (2) ~~the proper conduct of~~ advertising of appraisal services by or in the name of the ~~firm~~ firm is conducted in a proper manner.

Authority G.S. 93E-1-3(b); 93E-1-10.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) ~~A state-licensed licensed or state-certified certified~~ real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the ~~state-licensed licensed or state-certified certified~~ real estate appraiser:

- (1) has been licensed or certified for at least two years;
- (2) has no more than ~~two trainees~~ one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser, or two trainees if the supervisor is a certified real estate appraiser, either as employees or as a subcontractors. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee;
- (3) actively and personally supervises the trainee. The supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments performed after the effective date of this Rule for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business ~~address~~ location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location. If the subject property is more than 50 miles from the supervisor's business address, the supervisor must accompany the trainee on all inspections;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in

connection with the appraisal, and places a copy of such report in the supporting file for the appraisal. In addition, the supervisor must make available to the trainee a copy of every appraisal report to the trainee where the trainee performs more than 75% of the work on the appraisal; and

- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means only an active suspension or a revocation.

(b) The trainee must maintain a log on a form prescribed by the Board that includes, but is not limited to, each appraisal performed by the trainee, the name of the supervisor for that appraisal, the supervisor's license or certificate ~~number and~~ number, whether the supervisor accompanied the trainee on the inspection of the subject ~~property~~ property and the date the supervisor sent in the Supervisor Declaration Form to the Appraisal Board.

(c) ~~The Appraisal Board may require a~~ A license or certificate holder who wishes to supervise a trainee ~~to~~ must attend an education program regarding the role of a supervisor before such supervision may begin.

(d) Trainees must assure that the supervisor has properly completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the trainee begins assisting the supervising appraiser. Trainees will not receive appraisal experience credit for appraisals performed in violation of this section.

(e) Supervising appraisers may not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

Authority G.S. 93E-1-3(b); 93E-1-10.

SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE

21 NCAC 57A .0501 APPRAISAL STANDARDS

(a) Every registered trainee, ~~state-licensed licensed and state-certified certified~~ real estate appraiser shall, in performing the acts and services of a ~~state-registered registered~~ registered trainee, ~~state-licensed licensed or state-certified certified~~ real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards, including subsequent amendments and editions of those standards which may from time to time be approved, are hereby incorporated by reference. For the purpose of this Rule, the "Uniform Standards of Professional Appraisal Practice" are the Definitions, Preamble, Ethics Rule, Competency Rule, Departure Rule, Jurisdictional Exception Rule, Supplemental Standards Rule, Statements on Appraisal Standards, and Standards 1, 2, and 3.

(b) ~~A copy of the portions of the "Uniform Standards of Professional Appraisal Practice" specified in Paragraph (a) of~~

this Rule is included in the Board's Information and Application booklet available free of charge.

Authority G.S. 93E-1-10.

SUBCHAPTER 57B – REAL ESTATE APPRAISAL EDUCATION

SECTION .0100 – COURSES REQUIRED FOR REGISTRATION, LICENSURE AND CERTIFICATION

21 NCAC 57B .0101 REGISTERED TRAINEE, AND LICENSED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee or licensure as a ~~state licensed~~ licensed residential real estate appraiser shall complete a minimum of 90 hours of prelicensing education, consisting of the following;

- (1) A minimum of 30 hours in Introduction to Real Estate Appraisal (R-1);
- (2) A minimum of 30 hours in Valuation Principles and Procedures (R-2);
- (3) A minimum of 15 hours in Applied Residential Property Valuation (R-3); and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP)

(b) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with these rules. These courses must be completed within the five-year period immediately preceding the date when application for registration, licensure or certification is made to the Board.

(c) Introduction to Real Estate Appraisal (R-1) shall be a prerequisite to taking Valuation Principles and Procedures (R-2), and Valuation Principles and Procedures (R-2) shall be a prerequisite to taking Applied Residential Property Valuation (R-3). The 15 hour USPAP course may be taken any time after the successful completion of R-2.

Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10.

SECTION .0200 - COURSE SPONSOR STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0209 CERTIFICATE OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate. Certificates of course completion must be on a document bearing the letterhead or insignia of the school or course sponsor and must have the signature or signature stamp, which must be in an ink color other than black, or the school or course sponsor director. A student who has taken a prelicensing or precertification course, other than the 15 hour National USPAP course, for continuing education credit and who does not pass the examination shall not be given a course completion certificate, but shall be given a certificate of attendance for the course, provided that the student

complies with the provisions of 21 NCAC 57B .0303. Either certificate shall be valid to obtain continuing education credit, in accordance with 21 NCAC 57B .0604.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0210 COURSE RECORDS

Schools and course sponsors must:

- (1) retain on file for five years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request;
- (2) retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request;
- (3) within 15 days of course completion, but not later than June 30 of each year, submit to the Board a roster of all students who satisfactorily completed the course; and
- (4) participate in the Board's course and instructor evaluation program. Rosters and evaluations must be sent together by mail, not by fax or other electronic means.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0300 - COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0302 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas and at the competency and instructional levels prescribed in the course syllabi. Copies of the syllabi are available free of charge upon request to the Board.

(b) Courses may also include coverage of additional related subject areas not prescribed by the Board; however, any such course must provide additional class time above the minimum requirement of 30 classroom hours for ~~R-1 and R-2~~, R-1, R-2, G-1, G-2 and G-3 and the minimum requirement of 15 hours for R-3 and USPAP for the coverage of such additional subject areas.

Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion must reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade must be based solely on his or her performance on examinations and on graded homework and class work assignments.

(b) Course completion requirements must include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50

percent of a student's grade for the course. Take-home or open-book final course examinations are prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course however any make up examination must be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the make up examination must be different from those used in the initial examination.

(c) The minimum attendance required for satisfactory course completion is 90 percent of all scheduled classroom hours for the course.

(d) The instructor may, in his or her discretion, offer additional hours of instruction so that students can make up lost hours of instruction.

(e) Students who are taking a prelicensing or precertification course, other than the 15 hour National USPAP course, for continuing education credit are required to sit for the final course examination. Students who pass the examination and who comply with the provisions of 21 NCAC 57B .0303 shall be given a course completion certificate. Students who do not pass the examination but who otherwise comply with the provisions of 21 NCAC 57B .0303 shall be given a certificate of attendance. Students who are taking the course as a result of a conditional dismissal, consent order or order of the Board after a hearing must take and pass the examination.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0304 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates, and schools and course sponsors may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Paragraphs (c) and (d) of Rule .0303 of this Section.

(b) Courses may be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day; however credit for courses will be limited to 30 classroom hours per seven-day period.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of 10 minutes per hour must be scheduled and taken at reasonable times.

(d) Instruction must be given for a minimum of 30 classroom hours for ~~R-1 and R-2~~, R-1, R-2, G-1, G-2 and G-3, and a minimum of 15 hours for R-3 and USPAP. Instructors may not accumulate unused break time to end the class early. The time for the final examination shall not be included in the credit hours.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal prelicensing and precertification courses or courses

deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

(1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years full time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. Instructors must also be either ~~state-certified~~ certified residential or ~~state-certified-certified~~ certified general real estate appraisers.

(2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. Instructors must also be ~~state-certified~~ certified general real estate appraisers.

(3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area he is teaching.

(c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

(1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary.

(2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;

(3) The ability to effectively utilize varied instructive techniques other than straight

lecture, such as class discussion or other techniques.

- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of a prelicensing course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Proposed prelicensing or precertification instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports.

(h) Persons desiring to become instructors for prelicensing and precertification courses must file an application for approval with the Board. Board approval of instructors expires on the next June 30 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before June 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific prelicensing or precertification course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer prelicensing and precertification courses.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0600 - CONTINUING EDUCATION COURSES

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification and;
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught,
 - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught,
 - (iii) two years' full-time experience teaching the subject matter to be taught, or
 - (iv) an equivalent combination of such education and experience.
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or

- whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.
- (6) ~~For courses attended on or after the effective date of this rule, a~~ A trainee or appraiser may receive up to ~~14~~seven hours of credit ~~per renewal period every two years in the period ending on June 30 of each odd numbered year~~ for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and must make available at the sponsor's expense, all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course

is equal to or exceeds the credit hours assigned to the program. A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, ~~state-licensed~~ licensed and ~~state-certified~~ certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade conferences or similar activities.
- (8) The course sponsor must certify that the course will be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0604 PRELICENSING AND PRECERTIFICATION COURSES

- (a) Appraisal prelicensing or precertification courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina prelicensing and precertification courses may be separately approved as appraisal continuing education courses. ~~Trainees and state-licensed and state-certified~~ Trainees, license and certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A. Appraisal trade organizations must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.
- (b) It is presumed that any person taking any of the prelicensing or precertification courses is doing so for registration, licensure or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she must request such credit and must send the original course completion certificate or course attendance certificate with the request.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction

- and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.
- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or sufficient worktable space for each student, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions. Sponsors are required to comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement. Instruction must be given for the number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
- (8) Upon request of the Board, the course sponsor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.
- (9) ~~Upon the request of the Board, course~~ Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina at least 30 calendar days before such class is offered, unless circumstances beyond the control of the course sponsor require that the course be rescheduled. If the dates or location of the classes change after such information is provided to the Board, the course sponsor must notify the Board of such changes.
- (10) Course sponsors must participate in the Board's course and instructor evaluation program. Course sponsors must require that students complete a course evaluation form prior to or upon completion of the course. Course sponsors must also send the completed course evaluation forms to the Board together with the roster required pursuant to 21 NCAC 57B .0608.
- (11) Persons desiring to become instructors for continuing education courses must file an application for approval with the Board. Board approval of instructors expires on the next June 30 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before June 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific course, that person may teach the course for any course sponsor approved by the Appraisal Board to offer continuing education courses.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0608 SPONSOR REPORTING OF CONTINUING EDUCATION CREDIT

Course sponsors must, within 15 days of course completion but no later than June 30 of each year, submit to the Board a roster of all North Carolina registered trainees, ~~state licensed~~ licensed

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and ~~state-certified~~ certified appraisers who satisfactorily completed the course. The roster must be sent by regular mail together with the course evaluation forms required by 21 NCAC 57B .0606(10). Rosters sent by fax or other electronic means will not be accepted.

Authority G.S. 93E-1-8(c); 93E-1-1.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday March 17, 2005, 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 Monday, March 14, 2005 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
Lee Settle
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

March 17, 2005
April 21, 2005
June 16, 2005
August 18, 2005
October 20, 2005
May 19, 2005
July 21, 2005
September 15, 2005
November 17, 2005
December 15, 2005

Commission Review/Permanent Rules

Log of Filings

January 21, 2005 through February 21, 2005

* Approval Recommended, ** Objection Recommended, *** Other

SOCIAL SERVICES COMMISSION

The rules in Chapter 6 are from the Social Services Commission.

The rules in Subchapter 6T concern state adult day care funding and include nature and purpose of state adult day care fund (.0200).

Nature and Purpose of State Adult Day Care Fund
Amend/* 10A NCAC 06T .0201

MEDICAL CARE COMMISSION

The rules in chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.500); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

Medical Orders
Amend/* 10A NCAC 13B .3707

Patient Medical Records Amend/*	10A NCAC 13B .3905
Medication Administration Amend/**	10A NCAC 13B .4511

The rules in subchapter 13F concern licensing of homes for the aged and infirm and include definitions (.0100); licensing (.0200); physical plant (.0300); staff qualification (.0400); staff orientation training, competency and continuing education (.0500); staffing (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medication (.1000); Resident's funds and refunds (.1100); policies; records and reports (.1200); special care units for alzheimer and related disorders (.1300); and special care units for mental health disorders (.1400).

Definitions Repeal/*	10A NCAC 13F .0101
Training on Cardio-Pulmonary Resuscitation Amend/*	10A NCAC 13F .0507
Management of Facilities with a Capacity or Census of Seven to Thirty Residents Amend/*	10A NCAC 13F .0601
Management of Facilities with a Capacity or Census of 81 or more Residents Amend/*	10A NCAC 13F .0603
Personal Care and Other Staffing Amend/*	10A NCAC 13F .0604
Resident Assessment Amend/*	10A NCAC 13F .0801
Resident Care Plan Amend/*	10A NCAC 13F .0802
Personal Care and Supervision Amend/*	10A NCAC 13F .0901
Health Care Amend/*	10A NCAC 13F .0902
Medication Administration Policies and Procedures Amend/*	10A NCAC 13F .1001
Medication Orders Adopt/*	10A NCAC 13F .1002
Medication Labels Adopt/*	10A NCAC 13F .1003
Medication Administration Adopt/*	10A NCAC 13F .1004
Self-Administration of Medications Adopt/*	10A NCAC 13F .1005
Medication Storage Adopt/*	10A NCAC 13F .1006
Medication Disposition Adopt/*	10A NCAC 13F .1007
Controlled Substances Adopt/*	10A NCAC 13F .1008
Pharmaceutical Care Adopt/*	10A NCAC 13F .1009
Pharmaceutical Services Adopt/*	10A NCAC 13F .1010
Management of Residents Funds Amend/*	10A NCAC 13F .1101
Refund Policy Amend/*	10A NCAC 13F .1102

Legal Representative or Payee Adopt/*	10A NCAC 13F .1103
Accounting for Residents Adopt/**	10A NCAC 13F .1104
Refund or Personal Funds Adopt/*	10A NCAC 13F .1105
Settlement of Costs of Care Adopt/*	10A NCAC 13F .1106
Disposal of Resident Records Amend/*	10A NCAC 13F .1202
Report of Admissions and Discharges Repeal/*	10A NCAC 13F .1203
Reporting of Accidents and Incidents Adopt/*	10A NCAC 13F .1212
Availability of Corrective Action and Survey Reports Adopt/*	10A NCAC 13F .1213

The rules in subchapter 13G concern licensing of family care homes including definitions (.0100); licensing (.0200); the building (.0300); staff qualifications (.0400); staffing orientation, training, competency and continuing education (.0500); staffing of the home (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medications (.1000); management and resident's funds and refunds (.1100); and policies, records and reports (.1200).

Definitions Repeal/*	10A NCAC 13G .0101
Application to License an Existing Building Amend/*	10A NCAC 13G .0204
Application to License a Newly Constructed or Renovated Building Repeal/*	10A NCAC 13G .0205
Capacity Amend/*	10A NCAC 13G .0206
Termination of License Repeal/*	10A NCAC 13G .0210
Application of Physical Plant Requirements Adopt/*	10A NCAC 13G .0301
Design and Construction Amend/*	10A NCAC 13G .0302
Location Amend/**	10A NCAC 13G .0303
Living Arrangements Amend/*	10A NCAC 13G .0304
Living Room Amend/*	10A NCAC 13G .0305
Dining Room Amend/*	10A NCAC 13G .0306
Kitchen Amend/*	10A NCAC 13G .0307
Bedrooms Amend/*	10A NCAC 13G .0308
Bathroom Amend/**	10A NCAC 13G .0309
Corridor Amend/*	10A NCAC 13G .0311
Outside Entrance and Exits	10A NCAC 13G .0312

Amend/*	
Laundry Room	10A NCAC 13G .0313
Amend/*	
Floors	10A NCAC 13G .0314
Amend/*	
Housekeeping and Furnishings	10A NCAC 13G .0315
Amend/*	
Fire Safety and Disaster Plan	10A NCAC 13G .0316
Amend/*	
Building Service Equipment	10A NCAC 13G .0317
Amend/*	
Outside Premises	10A NCAC 13G .0318
Amend/*	
Management and Other Staff	10A NCAC 13G .0601
Amend/**	
Resident Assessment	10A NCAC 13G .0801
Amend/*	
Resident Care Plan	10A NCAC 13G .0802
Amend/*	
Personal Care Plan and Supervision	10A NCAC 13G .0901
Amend/*	
Health Care	10A NCAC 13G .0902
Amend/*	
Medication Administration	10A NCAC 13G .1001
Amend/*	
Medication Orders	10A NCAC 13G .1002
Amend/*	
Medication Administration	10A NCAC 13G .1004
Amend/*	
Controlled Substances	10A NCAC 13G .1008
Amend/*	
Pharmaceutical Services	10A NCAC 13G .1010
Amend/*	
Management of Residents Funds	10A NCAC 13G .1101
Amend/*	
Legal Representative or Payee	10A NCAC 13G .1102
Amend/*	
Accounting for Resident's Personal Funds	10A NCAC 13G .1103
Amend/**	
Refund Policy	10A NCAC 13G .1104
Amend/*	
Refund of Personal Funds	10A NCAC 13G .1105
Amend/*	
Settlement of Cost of Care	10A NCAC 13G .1106
Amend/*	
Disposal of Resident's Records	10A NCAC 13G .1203
Amend/*	
Report of Admissions and Discharges	10A NCAC 13G .1204
Repeal/*	
Reporting of Accidents and Incidents	10A NCAC 13G .1213
Adopt/*	
Availability of Corrective Action	10A NCAC 13G .1214

Adopt/*

The rules in Subchapter 130 deal with the healthcare personnel registry.

Investigating and Reporting Health Care Personnel
Amend/* 10A NCAC 130 .0102

HHS-FACILITY SERVICES

The rules in Chapter 14 concern services provided by the Divisions of Facility Services.

The rules in Subchapter 14C are Certificate of Need regulations including general provision (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800).

Performance Standards
Amend/* 10A NCAC 14C .3303

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 41 are Health and Epidemiology rules adopted by the Commission for Health Services.

The rules in Subchapter 41A concern communicable disease control including rules about reporting (.0100); control measures (.0200 and .0300); immunizations (.0400); purchase and distribution of vaccine (.0500); special program and project funding (.0600); licensed nursing home services (.0700); grants and contracts (.0800); and the biological agent registry (.0900).

Control Measures HIV
Amend/* 10A NCAC 41A .0202

The rules in Chapter 41 are Health and Epidemiology rules adopted by the Commission for Health Services. The rules in Subchapter 41D establish standards for methamphetamine decontamination.

General
Adopt/* 10A NCAC 41D .0101

Pre-Decontamination Assessment
Adopt/* 10A NCAC 41D .0102

Decontamination
Adopt/* 10A NCAC 41D .0103

Post-Decontamination
Adopt/* 10A NCAC 41D .0104

Enforcement
Adopt/* 10A NCAC 41D .0105

SOCIAL SERVICES COMMISSION

The rules in Chapter 71 are from the Social Services Commission and cover various adult and family support services. These are generally administered by the Division of Social Services within the Department of Health and Human Services.

The rules in Subchapter 71U cover the Food Assistance Program. They include administration and supervision (.0100); all the program's substantive requirements transferred from the program manual (.0200); the substantive requirements to complete various forms (.0300); and electronic benefit transfer cards and fair hearings (.0400)

Medical Deductions for Medicare Prescription Drug Card Be... 10A NCAC 71U .0216
 Adopt/*

HOME INSPECTOR LICENSURE BOARD

The rules in Chapter 8 are the engineering and building codes including the State Building Code (.0200); approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); and home inspector continuing education (.1300).

Definitions	11	NCAC	08	.1101
Amend/*				
Purpose and Scope	11	NCAC	08	.1103
Amend/*				
General Exclusions	11	NCAC	08	.1105
Amend/*				
Structural Components	11	NCAC	08	.1106
Amend/*				
Exterior	11	NCAC	08	.1107
Amend/*				
Roofing	11	NCAC	08	.1108
Amend/*				
Plumbing	11	NCAC	08	.1109
Amend/*				
Electrical	11	NCAC	08	.1110
Amend/*				
Heating	11	NCAC	08	.1111
Amend/*				
Air conditioning	11	NCAC	08	.1112
Amend/*				
Interiors	11	NCAC	08	.1113
Amend/*				
Insulation and Ventilation	11	NCAC	08	.1114
Amend/*				
Built-in Kitchen Appliances	11	NCAC	08	.1115
Amend/*				
Board Staff	11	NCAC	08	.1203
Amend/*				

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C Alarm Systems Licensing Board and over the organization and general provisions (.0100), license applications and requirements (.0200), registration of employees of licensees (.0300), the recovery fund (.0400), and continuing education for licensees (.0500).

Fees for Registration 12 NCAC 11 .0302

Amend/*

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission.

The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100), the standards and classes (.0200), and the assignments (.0300).

Groundwater Quality Standards
Amend/**

15A NCAC 02L .0202

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to Coastal Management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resources areas (.0500); general permits for various activities in AECs: construction of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shorelines AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA and/or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); for placement of riprap for wetland protection in estuarine and public trust waters (.2400); conditions caused by hurricanes or tropical storms (.2500); construction of mitigation sites by the NC Ecosystem Enhancement Program or the NC Wetlands Restoration Program (.2600); and construction of riprap sills for wetland enhancement and shoreline protections in estuarine and public trust waters (.2700)

Specific Conditions
Amend/*

15A NCAC 07H .1105

Purpose
Adopt/*

15A NCAC 07H .2701

Approval Procedures
Adopt/*

15A NCAC 07H .2702

Permit Fee
Adopt/*

15A NCAC 07H .2703

General Conditions
Adopt/*

15A NCAC 07H .2704

Specific Conditions
Adopt/*

15A NCAC 07H .2705

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps

(.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

Definitions	15A NCAC 18A .2601
Amend/*	
Grading	15A NCAC 18A .2606
Amend/*	
Refrigeration Thawing and Preparation of Food	15A NCAC 18A .2609
Amend/**	
Shellfish	15A NCAC 18A .2612
Amend/*	
Utensils and Equipment	15A NCAC 18A .2617
Amend/*	
Drinking Water Fountains	15A NCAC 18A .2621
Amend/*	

SECRETARY OF STATE, DEPARTMENT OF

The rules in Chapter 6 are from the Securities Division and cover general provisions (.1100), exemptions (.1200), registration of securities (.1300), registration of dealers and salesmen (.1400), miscellaneous provisions (.1500), registration of qualified businesses (.1600), registration of investment advisors and investment advisor representatives (.1700), miscellaneous provisions relating to investment advisers (.1800), and registration of athlete agents (.1900).

Limited Offerings Pursuant to G.S. 78A-17(9)	18 NCAC 06 .1205
Amend/*	
Registration of Direct Participation Program Securities	18 NCAC 06 .1313
Amend/**	

BARBER EXAMINERS, BOARD OF

The rules in Subchapter 6N concern the filing requirements for various permits, the application and examination to become a barber, and operating a school or barbershop.

Forms and Fees	21 NCAC 06N .0101
Amend/*	

The rules in Subchapter 6O govern the assessing of civil penalties.

Schedule of Penalties	21 NCAC 06O .0101
Adopt/*	
Licensing of Barber Shops	21 NCAC 06O .0102
Adopt/*	
Licensing of Barber Schools	21 NCAC 06O .0103
Adopt/*	
Unsupervised Apprentice	21 NCAC 06O .0104
Adopt/*	
Unlicensed Barber	21 NCAC 06O .0105
Adopt/*	
Display of Current License	21 NCAC 06O .0106

Adopt/*				
Fraudulent Misrepresentations or Submission of Fraudulent	21	NCAC	06O	.0107
Adopt/*				
Inspections of Shops and Schools	21	NCAC	06O	.0108
Adopt/*				
Expired License	21	NCAC	06O	.0109
Adopt/*				
Adequate Premises	21	NCAC	06O	.0110
Adopt/*				
School Instructors	21	NCAC	06O	.0111
Adopt/*				
School Reports	21	NCAC	06O	.0112
Adopt/*				

COSMETIC ART EXAMINERS, BOARD OF

The rules in Chapter 14 are from the Cosmetic Art Examiners.

Subchapter 14A gives the Departmental rules of the Board of Cosmetic Art Examiners. The rules in Section .0100 are the organizational rules.

Departmental Rules-Definitions	21	NCAC	14A	.0101
Amend/*				

MEDICAL BOARD

The rules in Chapter 32 are from the Medical Board and include the licensing and practice standards of doctors, approval of nurse practitioners and physician assistants, regulation of professional corporations and mobile intensive care, and other aspects of medical practice and the regulatory procedures.

The rules in Subchapter 32F deal with the biennial registration.

Fee	21	NCAC	32F	.0103
Amend/*				

The rules in Subchapter 32S regulate physician assistants.

Annual Registration	21	NCAC	32S	.0105
Amend/*				
Fees	21	NCAC	32S	.0117
Amend/*				

NURSING, BOARD OF

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); and implementation of Nurse Licensure Compact Act (.0700).

Issuance of a License by a Compact Party State	21	NCAC	36	.0702
Amend/*				

PHARMACY, BOARD OF

The rules in Chapter 46 are from the Board of Pharmacy and cover organization of the Board (.1200); general definitions (.1300);

hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health department (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); and impaired pharmacist per review program (.3200).

Hours Records Providers Correspondence 21 NCAC 46 .2201
Amend/*

PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); forms used by the Board (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners constituting a board of podiatry elections procedures for holding an election (.1300); and scope of practice (.1400).

Application 21 NCAC 52 .0201
Amend/*
Practice Orientation 21 NCAC 52 .0205
Amend/**
Fee for Validation of Licensee Lists 21 NCAC 52 .0210
Adopt/*
Temporary License 21 NCAC 52 .0211
Adopt/*
Application for Examination 21 NCAC 52 .0601
Amend/*
Notice Mailing List 21 NCAC 52 .0804
Adopt/*
Procedures for Conducting Elections 21 NCAC 52 .1302
Amend/*

AGENDA
RULES REVIEW COMMISSION
March 17, 2005, 10:00 A.M.

- (I) Call to Order and Opening Remarks
- (II) Review of minutes of last meeting
- (III) Follow Up Matters
 - (A) State Personnel Commission – 25 NCAC 01D .1924 (Bryan)
 - (B) State Personnel Commission – 25 NCAC 01J .0615; .1408; .1409; .1410 (Bryan)
 - (C) State Personnel Commission – 25 NCAC 01K .0104; .0212 (Bryan)
 - (D) State Personnel Commission – 25 NCAC 01O .0206 (Bryan)
- (IV) Review of Rules (Log Report #219)

- (V) Review of Temporary Rules (if any)
- (VI) Commission Business
- (VII) Next meeting: April 21, 2005

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 <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*

RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ABC COMMISSION</u>				
ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	04 ABC 0938	Chess	10/19/04	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Comp.	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
Christopher C. Searcy v. Crime Victims Compensation Commission	04 CPS 1305	Gray	01/21/05	
Jason Israel Chandler v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1368	Lassiter	01/10/05	
Regina Rose Hargrave v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1500	Lassiter	01/10/05	
Isaac Cornell Mitchell v. Victim and Justice Services	04 CPS 1529	Gray	01/13/05	
Belinda D. Clegg v. Crime Victims Compensation Commission	04 CPS 1637	Mann	02/07/05	
John Selden Clem v. State Highway Patrol, Trooper C.J. Owens	04 CPS 1705	Chess	11/17/04	
Ricky Nelson Allen v. Dept. Crime Control & Public Safety	04 CPS 1916	Lassiter	01/05/05	
Bennett Lee Sullivan v. Johnston County Sheriff's Dept.	04 CPS 2041	Wade	01/06/05	
Delphine Holder v. Crime Control & Public Safety, Victim Compensation Services Division	04 CPS 2135	Chess	01/05/05	
<u>DEPARTMENT OF AGRICULTURE</u>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	

DEPARTMENT OF ADMINISTRATION

CONTESTED CASE DECISIONS

Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04
HEALTH AND HUMAN SERVICES			
Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04
Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Med. Assistance	03 DHR 1113	Gray	10/15/04
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Tony Worley v. DHHS, Div of Facility Services	03 DHR 2427	Mann	12/07/04
Mooresville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
Brenda Rena Hairston v. DHHS	04 DHR 0183	Wade	02/04/05
Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services	04 DHR 0185	Elkins	11/23/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Evelyn Deloris Johnson v. DHHS	04 DHR 0261	Elkins	02/10/05
Terry T. Nixon v. DHHS, Division of Facility Services	04 DHR 0287	Lassiter	01/05/05
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Beverly Manago v. DHHS, Division of Facility Services	04 DHR 0473	Chess	11/30/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Bio-Medical Applications of NC, Inc., v. DHHS, Div. of Facility Services, S CON , Section, Health Systems Management, Inc, (Lessor) and Clayton Dialysis Center., Inc. (Lessee)	04 DHR 0516	Elkins	12/17/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Francho Peoples v. DHHS, Division of Medical Assistance	04 DHR 0596	Elkins	11/23/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
The Braxton Home, Alfred F. Braxton v. DHHS, Division of Facility Services	04 DHR 0633	Wade	02/01/05
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Velma J. Thomas, Thomas Child Care v. Div of Child Development	04 DHR 0645	Conner	12/03/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Rudolph Lofton v. Medicaid Program	04 DHR 0788	Wade	11/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Michelle Cross v. DHHS	04 DHR 0811	Morrison	11/24/04
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child	04 DHR 0844	Mann	09/22/04

CONTESTED CASE DECISIONS

Development c/o Forsyth County Department of Social Services			
Tanya H. Dey v. Medicaid	04 DHR 0864	Elkins	11/10/04
Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
Ralph Robinson, Jr., Neuse Center for MH/DD/SAS	04 DHR 0897	Gray	01/31/05
Lisa Robinson v. Neuse Center for MH/DD/SAS	04 DHR 0898	Gray	01/31/05
Linda Brown v. DHHS, Div. of Medical Assistance	04 DHR 0919	Gray	01/19/05
K.E.C., Jr., by parent or guardian, E.D.C v. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	04 DHR 0967	Mann	12/10/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
James Phillip Chavis, Jr., DHHS, Div. of Medical Assistance	04 DHR 1071	Wade	02/04/05
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
Roger Penland, Jr v. DHHS, Division of Facility Services	04 DHR 1096	Gray	11/29/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
Janet K. Faison v. DHHS, Div. of Facility Services	04 DHR 1181	Wade	02/01/05
Cynthia R. Hill, DHHS, Division of Facility Services	04 DHR 1183	Wade	02/01/05
Charlynn Keough v. Cherokee Co. DSS, BeBe McClure	04 DHR 1225	Wade	01/24/05
S.H., by his parent/guardian D.H. v. DHHS	04 DHR 1250	Creech	11/30/04
Alicia Colon v. DHHS, Division of Facility Services	04 DHR 1280	Mann	11/16/04
Monica Dockery v. DHHS	04 DHR 1281	Wade	12/02/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1301	Wade	10/19/04
Faye Rice, CEO Rice & Rice Co., Inc v. Marvin Sanders DHHS, Div of MH Dev. Disabilities	04 DHR 1303	Wade	01/24/05
Martha Abare v. DHHS, Div. of Facility Services	04 DHR 1310	Wade	11/01/04
Lakresha McIver v. Health Care Registry	04 DHR 1330	Elkins	11/10/04
Vonzella Malone v. DHHS, Division of Facility Services	04 DHR 1331	Gray	11/23/04
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1359	Wade	10/14/04
Elizabeth D. Hedgepeth v. Dept. of Health Services	04 DHR 1364	Elkins	11/10/04
Cydra Pajiete Seegers v. DHHS, Div. of Facility Services	04 DHR 1366	Mann	11/09/04
Ghazaelleh Abdel-Kader v. DHHS, WIC, Division of Public Health	04 DHR 1373	Gray	12/15/04
Adib Abdullah v. DHHS	04 DHR 1380	Gray	10/22/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1381	Wade	10/14/04
Bio-Medical Applications of NC, Inc., DHHS, Div. of Facility Services, Div. of Medical Facilities Planning Section, Total Renal Care of NC, LLC and Renal Systems Management, LLC and Garner Dialysis Center, Inc	04 DHR 1384	Elkins	02/04/05
Craven Regional Medical Authority d/b/a Craven Regional Medical Center v. DHHS, DFS, CON and Coastal Carolina Health Care, PA d/b/a Coastal	04 DHR 1428	Chess	01/21/05
Kim Haley, Cap/C, DHHS	04 DHR 1443	Gray	01/21/05
Carolina Imaging			
Red Sea Grocery, Weldegebriel Ucheab v. DHHS	04 DHR 1453	Elkins	01/04/05
Charlenia Ferguson v. Child Care Division	04 DHR 1489	Mann	01/07/05
Tammy S. Edge v. NC Tax Administrator, Dept. of Revenue	04 DHR 1565	Lassiter	01/26/05
Kathleen Barker v. DHHS	04 DHR 1584	Gray	01/04/05
Anita Whitehurst v. MRNC	04 DHR 1620	Chess	12/08/04
Joyce Miller Moore v. DHHS	04 DHR 1621	Lassiter	01/26/05
Olivera Leross Langston v. Cherry Hospital	04 DHR 1802	Chess	12/09/04
Richard D. Bullock v. DHHS, Div of Medical Assistance	04 DHR 2148	Elkins	02/10/05
Wendy Dawn Cooke, Dept. of Health and HR/State Board of CNAs	04 DHR 2301	Elkins	02/10/05
Laverne Luck v. Health Care Personnel Registry	04 DHR 2310	Lassiter	02/11/05

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncsoh.com/decisions.

DEPARTMENT OF JUSTICE

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Cindy L. Schumacher v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 2341	Chess	12/29/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
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Lisa Anne Weaver v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0490	Wade	11/01/04
Guy Wesley Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04

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Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0658	Gray	09/20/04	
George Williams, Jr., v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0688	Wade	10/29/04	
John Allen Hester, Jr. v. Private Protective Services Board	04 DOJ 0707	Gray	01/14/05	
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Joel Patrick Holt v. Sheriffs' Education & Training Standards Comm	04 DOJ 0731	Wade	01/10/05	
George Eugene White v. Sheriffs' Education & Training Standards Comm	04 DOJ 0732	Wade	10/04/04	
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David R. Pacheco v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 0966	Gray	11/16/04	
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Kenneth R. Moore v. Dept of Justice, Company Police Program Comm	04 DOJ 1180	Gray	09/29/04	
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Holly M. Taylor v. UNC Hospitals	04 UNC 0743	Chess	10/04/04
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- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases

- Exhibit 6: Statement of John Johnson dated October 18, 2003
Exhibit 7: Statement of Carolyn Coffey
Exhibit 8: Statement of Carolyn Coffey

PETITIONER'S WITNESSES

Charlene Austin; Rebekah Roten; Marilyn Eggers; Marlene Wilson; Steven Dickson

RESPONDENT'S WITNESSES

Barry Sauls; Debra Grubb; Carolyn Coffey; John Johnson

ISSUE

Was Petitioner, Charlene C. Austin, discharged from her employment with Respondent, Appalachian State University, for just cause?

BURDEN OF PROOF

Pursuant to N.C.G.S. § 126-35 (d), Respondent has the burden of proof to show that Respondent had just cause to terminate Petitioner.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearings, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner, Charlene C. Austin, was employed by Respondent, Appalachian State University, as an Administrative Assistant I at the time of her discharge. Ms. Austin was continuously employed by the Respondent for more than three years and at the time of her discharge, Petitioner was a permanent State employee subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act.) Respondent Appalachian State University (ASU) is subject to Chapter 126.
2. Petitioner was employed in various positions at ASU from 1988-2000 with several breaks in her employment. In December 2000, Petitioner was hired into a permanent position in the ASU Parking and Traffic Department. From December 2000 until she was discharged on February 19, 2004, Petitioner worked in the Parking and Traffic Department.
3. While working in the Parking and Traffic Department after December 2000, Petitioner was employed in a pay grade 60. In this position, Petitioner served as the administrative assistant to the Director of Parking and Traffic, Barry Sauls, who was her direct supervisor. As the administrative assistant to Mr. Sauls, Petitioner provided administrative assistance to the office, was responsible for maintenance of the departmental budget, and was responsible for auditing the daily financial transactions.
4. In the Fall of 2002, the ASU Parking and Traffic Department opened a new parking deck on campus. At that time, Mr. Sauls added to Petitioner's duties the responsibility of supervising the new parking deck and its employees. Sauls, with Petitioner's input and approval, submitted documents to ASU Human Resources requesting that Petitioner's position be upgraded to pay grade 63 to include her duties as Administrative Secretary II and add those of Parking Deck Manager. Ultimately in 2002, Petitioner's position was upgraded to a pay grade 63 so that she served as Mr. Sauls' administrative assistant and Parking Deck Manager.
5. As Parking Deck Manager, Petitioner was responsible for the daily operations of the parking deck, which included supervising the parking deck attendants and insuring coverage of the parking deck during operating hours. Petitioner was responsible for accounting for the cash collections from the parking deck. As detailed in her position description, Petitioner was, among her other duties, responsible for the following: auditing daily financial transactions; creating operating guidelines and setting policies and procedures for the parking deck; providing daily auditing of the parking deck revenue collection system to insure the integrity and accountability of the operation; and providing accountability of the department's revenue collection operations. As a supervisor,

Petitioner was responsible for instructing the parking deck attendants on ASU policies and insuring that such policies were followed. Petitioner was responsible for insuring that money collected in the parking deck was deposited with the University Cashier's Office.

6. On a daily basis, the ASU parking deck collects an estimated one to two thousand dollars when school is in session. Deck attendants, at times, have cash overages and cash shortages. Most often, overages result when a parking deck visitor exits the parking deck without obtaining their change. Petitioner indicated in her testimony that she understood that cash overages were the property of ASU and the State of North Carolina.

7. Mr. Sauls had performed evaluations of Ms. Austin and these evaluations were always "outstanding" or "very good" including being a "stickler for financial details."

8. In October 2003, an investigation was initiated at the request of Ms. Jane Helm, Vice-Chancellor for Business Affairs, which included targeting both the Petitioner and her sister, Ms. Marlene Wilson, Assistant Director of the Parking and Traffic Department. Wes Bunch, ASU's Director of Internal Audit, and Chief Gunther Doerr, ASU Chief of Police, investigated the financial practices of the Traffic and Parking Department. Mr. Sauls, as Director of Traffic and Parking, participated in the investigation to a limited extent but was periodically partially apprized of some of the results of the investigation.

9. As part of the investigation, Mr. Bunch and Chief Doerr spoke to a number of employees, including Petitioner, and former employees of the Traffic and Parking Department.

10. On November 24, 2003, Petitioner was first interviewed by Mr. Bunch and his assistant, and immediately thereafter by Chief Doerr and SBI Agent Steve Wilson. No one including Chief Doerr and Agent Wilson provided any warnings to the Petitioner regarding any statements that she may make that could result in criminal prosecution and/or dismissal from employment with Appalachian State University.

11. When asked by Chief Doerr and SBI Agent Wilson to agree to a polygraph examination, the Petitioner responded that she would welcome the opportunity.

12. As the Petitioner was being interviewed by Mr. Bunch and immediately afterwards by Chief Doerr and Agent Wilson, the lock to her office was changed. After her interviews, law enforcement personnel escorted Petitioner to her office to get her personal belongings. During the entire investigation, Petitioner was not allowed access to her office or any records in her office. The Respondent had complete custody and control of her office and all records contained there. No money was found in Petitioner's office and nothing was found in her office labeled, "Flower Fund."

13. During questioning, the Petitioner fully and completely cooperated with all persons conducting the investigation, including the Chief of Police and the SBI Agent.

14. At the conclusion of separate interviews of the Petitioner and Ms. Wilson conducted by Chief Doerr and SBI Agent Wilson, both the Petitioner and Ms. Wilson were given a letter, signed by Ms. Helm, placing each of them on investigative leave.

15. During the course of the rest of the investigation, Petitioner was never contacted, re-interviewed or permitted to provide further information or rebuttal to any allegations.

16. After more than a two month investigation by Respondent, the Petitioner was sent a pre-dismissal conference letter. Respondent's policy allows a 30-day period of investigative leave and if the leave is to be extended, it must be communicated in writing. The Respondent failed to properly extend Petitioner's leave.

17. On January 28, 2004, Sauls issued Petitioner a notice of a pre-disciplinary conference to be held on February 4, 2004. In the pre-disciplinary conference notice, Sauls informed Petitioner that the disciplinary action being considered was dismissal. He stated that the facts that led to the recommendation for dismissal included the following: (1) Repeated failures to make deposits of funds in excess of \$250.00 collected by Parking & Traffic within twenty-four hours, as required by University policy; (2) Inaccurate preparation of a Daily Cash Report, and failure to obtain supervisor's signature for an overage, contrary to Department policy; (3) Delayed deposit and inadequate record keeping; (4) Directing Parking & Traffic employees under her supervision to pocket cash overages or to place such overages in a flower fund; (5) Personal use of state property, specifically, a non-personal guest deck parking card; and (6) Falsification of time records.

18. Mr. Sauls testified that he was initially not aware of the policy that deposits were to be made within 24 hours of receipt, but he included this as an allegation for dismissal of the Petitioner that she had violated this policy. In fact, in violation of Respondent's policy, Mr. Sauls had taken sums of money in excess of \$5,000.00 to his personal residence, which was not kept secured.

19. Mr. Sauls file regarding the Petitioner's dismissal was what was provided to him. Chief Doerr's final report stated there was not enough evidence to file criminal charges against Petitioner. The investigation by SBI Agent Wilson found no evidence for criminal charges against the Petitioner. Mr. Sauls had seen some of Chief Doerr's investigation report but had not seen it in its entirety. One of the two main witness's relied upon by Respondent was John Johnson. Mr. Sauls saw Mr. Johnson's statement but never saw interview information from Chief Doerr's interview with Mr. Johnson. Mr. Sauls testified that he did not know specifically whether statements he received came from Chief Doerr or Mr. Bunch. Mr. Sauls had seen Mr. Bunch's investigation report before his testimony but had not seen before the pre-dismissal letter. The report by Mr. Bunch did not include any references to the Petitioner, Ms. Austin

20. Chief Doerr attended the pre-dismissal conference. The Petitioner was not told by Chief Doerr as to the reason he was at the pre-dismissal conference nor given Miranda rights prior to the conference being recorded. Mr. Sauls stated he was instructed to tape record the pre-dismissal conference and that he did not offer a choice to Petitioner. Mr. Sauls stated it was not his standard practice to record these type conferences.

21. The Petitioner was allowed to respond to allegations contained in the pre-dismissal conference letter and she responded to each of the six (6) allegations. During the pre-dismissal conference, she specifically denied any wrongdoing, including advising any employees to improperly handle money received at the parking deck.

22. Two of Respondent's witnesses were of particular importance in Respondent's decision to terminate Petitioner. They were Carolyn Coffey and John Johnson. Mr. Sauls testified that Mr. Johnson and Ms. Coffey did not come forward with their concerns regarding overages because they were temporary employees and concerned about their employment. Mr. Johnson testified that he didn't come forward even after he received a permanent position in the Police Department

23. Carolyn Coffey has worked at the ASU Parking and Traffic Department since September 2, 2003. She worked as a temporary cashier at the Parking Deck under the Petitioner's supervision. Ms. Coffey stated that she was handling scheduling, refunds and surpluses and that she felt she was doing a lot of Petitioner's job. Ms. Coffey stated that she did not know John Johnson. Ms. Coffey was, at the time of this hearing, supervising the parking deck.

24. Ms. Coffey testified that on one occasion she had an overage of one or two dollars. She testified that she asked Petitioner what to do with it and that she (Petitioner) pulled out an envelope from her desk and said the money would go into the Flower Fund. After that Ms. Coffey started a Flower Fund envelope and kept it in a locked file cabinet inside the parking deck. Ms. Coffey testified that Ms. Austin was not aware of the envelope in Ms. Coffey's file cabinet, but other cashiers were aware of the envelope. In her first statement to investigators, Ms. Coffey did not mention anything about the Flower Fund.

25. On November 26, 2003, a day after her initial statement, Coffey approached Mr. Sauls with overage money that she had collected stating that she had intended to provide it to Petitioner in a lump sum. Mr. Sauls directed Ms. Coffey to go immediately to Chief Doerr with the money. In the second statement, Coffey set forth instructions Petitioner provided to her regarding cash overages. In addition, Coffey provided to Chief Doerr the money which she had collected as cash overages and had set aside. Coffey had been collecting the overages in a separate envelope for a period of 2-3 weeks but had not yet provided to Petitioner or anyone else the collected overage money.

26. During the investigation, Mr. Sauls initially stated that he was not aware of a flower fund. Barry Sauls testified that the envelope marked "Flower Fund" was in Carolyn Coffey's possession and that the Petitioner never had possession or knowledge of this envelope. Further, Mr. Sauls stated that no money or envelope labeled "Flower Fund," was found in Petitioner's office.

27. Ms. Coffey testified that other cashier's, including Steve Dickson and a couple of students, gave overage money to go into the Flower Fund envelope that she had started.

28. John Johnson worked in the parking deck as an attendant when the parking deck opened in August 2002. Mr. Johnson was a temporary employee, hired and supervised by Petitioner. He worked in the parking deck for approximately two months in late 2002. While working in the parking deck as an attendant, Mr. Johnson testified that he had cash overages from several daily collections of money over a two to four week period. He stated whenever he had an overage he asked Petitioner what to do with it and she said to just stick it in the drawer for now. When he had accumulated about twenty dollars, Mr. Johnson asked Petitioner, as his supervisor, what to do with the cash overages he had collected. Mr. Johnson stated that Petitioner told him to stick it in his pocket. He stated he told her he did not feel comfortable with doing that and that she had him then ring the money in as a false sale which ultimately was deposited with the university. Mr. Johnson did not believe it was illegal to ring in false sales.

29. Mr. Johnson stated that overages were kept in a separate compartment in the cash register next to the change and the money was wrapped around a card and a paper clip was put on it. He stated that Petitioner told him that it was important to keep things in balance and that overages and shortages should be accounted for.
30. Mr. Johnson stated that Steve Dickson was working at the time he (Johnson) was working and that he was one of the student workers that worked nights. He stated that Mr. Dickson would have seen cash overages in the cash register. In fact, he said the separate compartment for overages was plain for all to see.
31. Mr. Johnson testified that he knew Ms. Coffey, contrary to Ms. Coffey's statement. He stated he met her through the traffic office. He was not aware that Ms. Coffey was keeping a separate envelope for the purpose of putting overages in it.
32. Mr. Sauls was provided with a statement by Mr. Johnson. He was not provided Chief Doerr's summary of his interview with Mr. Johnson. The written statement of Mr. John Johnson and his interview by Chief Doerr are contradictory in parts particularly as they relate to the ringing up of false sales. Further, Mr. Johnson's testimony contradicted itself concerning how long overages accumulated and how to deal with this accumulation.
33. After leaving employment with the Respondent, Mr. Johnson became employed by the Watauga County Sheriff's Department. He was later terminated by the Sheriff's Office and at the time of the hearing was not employed. Mr. Johnson failed to appear to testify on the day noticed by the subpoena, but the hearing was held open and he appeared the following morning.
34. Steve Dickson testified that he was a student at ASU from August of 2000 until his graduation in August of 2004. He started working in Parking and Traffic in August 2002 when the parking deck first opened and continued working there for two years. Petitioner was his supervisor. He stated his instruction for dealing with overages were to put the money in the bag with the rest of the collected money, with a note explaining the overage. The bag would be locked and placed in the parking office in a locked desk drawer (at first) and then in a safe (when the offices moved in the deck). He was never instructed to pocket any overages.
35. Mr. Dickson knew Carolyn Coffey. He never had any discussion with her about putting overages in a flower fund. He never gave her any money from the second shift to go into a flower fund. All money went into the locked bag. Mr. Dickson stated Ms. Coffey was a first shift employee. Ms. Coffey did not do any scheduling or act as a head cashier. In fact, Mr. Dickson stated that he assisted in training her since he had been working at the parking deck for about a year before Ms. Coffey came.
36. Mr. Dickson never left any money in a separate compartment in the cash register. It was made clear to him that parking attendants were not to leave any money in the cash register. Mr. Dickson never saw a dollar, five dollars or some other amount of money wrapped up as a separate entity in the cash register. If there had been money wrapped and placed in a separate compartment, Mr. Dickson stated he would have observed it for there was no way he could have missed it.
37. Petitioner would meet periodically with all the employees; day shift and night shift, and go over basic procedures.
38. Mr. Dickson had heard of a flower fund in the office but did not contribute to it.
39. In October of 2002, Rebekah Roten was working part-time at the parking deck and part-time in the Records Section of Parking and Traffic when the parking deck opened. After a full-time person was hired on first shift, Ms. Roten would fill in during lunch, breaks and other absences. Her instructions from Petitioner were to deposit overages with the daily cash report. She was never told that overages were to be used for a Flower Fund. Ms. Roten had some contact with Carolyn Coffey. Carolyn Coffey never told her to put money from overages aside for a flower fund. Ms. Roten also knew John Johnson. She did not see any overage money wrapped up and/or put aside in a separate compartment in the cash register. She was never told by anyone to just pocket and keep overage money. Ms. Roten is a friend of both Ms. Austin and Ms. Wilson but would not answer questions untruthfully.
40. Petitioner's sister, Ms. Marlene Wilson was the person who had control and custody of the office flower fund. After her pre-dismissal conference and upon her return to ASU, Ms. Wilson gave the remaining balance of the fund to Mr. Sauls to be distributed to the employees who had contributed.
41. Ms. Wilson, at the time of this hearing, had been employed by ASU since June of 1981 except for one year, she voluntarily took off. She had been employed by ASU for approximately twenty-four continuous years. On November 24, 2003, she was called to Chief Doerr's office. After an hour and a half interview, she was handed a pre-signed letter from Jane Helm stating she was on administrative leave until further notice. She was escorted off ASU campus and only returned for a pre-dismissal conference. One of the allegations against her was falsification of time records based on a time review of when her car was in and out of the deck. Ms. Wilson had no way of getting documentation relating to this allegation because she had not been allowed on the university since being escorted off. This lack of access to records is the same faced by Petitioner, Ms. Austin, regarding her allegations.

42. Petitioner, Charlene Austin, started at ASU in 1988 as a stock clerk. She left the University in 1992 to return to school and then moved to another state. In 1996 she again began working as ASU in the Police Department which at the time also housed Parking and Traffic. She was hired by Chief Roy Tugman who was her supervisor. She moved to the campus location of Parking and Traffic and was supervised by Captain Harman. In September/October 2000, she moved and left ASU but in December 2000 returned and was reemployed at ASU back in her old position which had not been filled, with Mr. Barry Sauls as her supervisor.

43. Ms. Austin assisted Mr. Sauls as well as oversaw the Parking Deck. She stated she had not falsified time or directed anyone to pocket overage money or place in a flower fund. Because she was escorted off campus and not allowed access to files in her office she was unable to review or provide documentation to Mr. Sauls in the pre-dismissal conference. In her job she would go to get supplies. She would also numerous times take work home. She thought if she would have had access to her time records she could have shown notations and other explanations.

44. After Petitioner was terminated she filed an appeal/grievance with ASU per Respondent's policies. The Respondent's Grievance Committee recommended reinstatement after hearing the testimony of Mr. Sauls, Mr. Bunch, Chief Doerr, Ms. Coffey and the Petitioner. ASU Interim Chancellor, Harvey Durham, rejected the Committee's findings and recommendations and upheld Petitioner's termination. Chief Doerr was not called by Respondent or Petitioner as a witness in this hearing.

45. Mr. Sauls testified that Ms. Debbie Grub and Mr. Jon Ogilvie's statements were not relied upon for his decision to dismiss, but the final decision by the Respondent's Chancellor [Document Constituting Agency Action] included reliance on these statements (tp.150).

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. The parties received proper notice of the hearing in the matter. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

2. The Petitioner was a career state employee, as defined in N.C. Gen. Stat. §126-1, *et seq.*, and is subject to the State Personnel Act. N.C.G.S. §126-35 provides that no career State employee subject to the State Personnel Act shall be discharged, suspended or demoted for disciplinary reasons, except for just cause.

3. N.C.G.S. §126 states that in contested cases pursuant to Chapter 150B of the General Statutes, the burden of showing that a career State employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer.

4. The Respondent has the burden of proof by a greater weight or preponderance of the evidence that its dismissal of Petitioner was for just cause. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

5. Respondent has failed to prove by a preponderance of the evidence that Petitioner engaged in the conduct as described in the Notice of Dismissal. The evidence does not support a finding of termination.

6. The testimony of the two primary witnesses relied on by Respondent cannot be accepted as credible regarding key factors in Respondent's decision to dismiss. The inconsistencies of testimonies at hearing with each other and other witnesses, the inconsistencies between testimony at this hearing and previous written statements and/or interviews, and the absence of corroboration for the required elements for dismissal lead the Undersigned to find that Respondent's evidence does not overbear, in some degree, the weight upon the Petitioner's side.

7. Respondent has further engaged in questionable actions that directly and indirectly had an effect of Petitioner's due process rights, right to defend the termination action and full and fair opportunity for the facts to be explored regarding this case. These included Petitioner's lack of access to relevant records, Petitioner's interview with law enforcement personnel without fair and proper warnings or understandings of the nature and consequence of the interviews, the presence of law enforcement at the pre-dismissal conference without there being any safety concerns to the participants, and the recording of the pre-dismissal conference against the

standard practice of Mr. Sauls. There are also procedural problems in this case regarding pre-signed letters done before facts coming from interviews are known, the lack of full and complete reports turned over to the dismissal authority, Mr. Sauls, and the lack of review of critical statements for use in accessing credibility.

8. If there was any misjudgment by the Petitioner it is not sufficient for discharge by the Respondent as the Respondent failed to consider lesser disciplinary sanctions and has failed to prove by a preponderance of evidence that Petitioner could be terminated for minor violations known to have occurred by other employees. Moreover, Respondent would face serious inconsistencies and issues of discrimination in issuing a dismissal to this Petitioner in light of the testimony showing similar or same violations by others which did not result in a termination action.

9. State Personnel Commission rules provide the Commission with various legal and equitable remedies when dismissal of an employee is not upheld, including reinstatement, back pay and attorney's fees.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

DECISION

It is the decision of the Undersigned that Respondent has failed to carry its burden of proof by a preponderance of the evidence that Petitioner was discharged for just cause. As such, it is the decision of the Undersigned that Respondent reinstate Petitioner to the same or similar position that she was in at the time of her dismissal and that Petitioner be awarded back pay and the return of all lost benefits. Further, Petitioner should be awarded reasonable attorney fees pursuant to 25 N.C.A.C. 1B.0414 upon submission by the Petitioner's counsel of a Petition to the North Carolina State Personnel Commission for Attorney Fees with an accompanying itemized statement of the fees and costs incurred in representing the Petitioner.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and to present written arguments regarding this Decision issued by the Undersigned in accordance with N. C. Gen. Stat. § 150B-36.

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, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. 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. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. 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 establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

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 North Carolina State Personnel Commission. State Personnel Commission procedures and time frames regarding appeal to the Commission are in accordance with Appeal to Commission, Section 0.0400 *et seq.* of Title 25, Chapter 1, SubChapter B of the North Carolina Administrative Code (25 NCAC 01B .0400 *et seq.*).

IT IS SO ORDERED.

This is the 19th day of January, 2005.

Augustus B. Elkins II
Administrative Law Judge