

NORTH CAROLINA

REGISTER

IN THIS ISSUE



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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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20	TREASURER	28 Landscape Contractors	
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		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.

**EXECUTIVE ORDER NO. 91
GOVERNOR'S TASK FORCE FOR HEALTHY CAROLINIANS**

WHEREAS, North Carolina is blessed with some of the finest medical facilities and medical care found anywhere in the world; and

WHEREAS, despite these resources, many North Carolinians die or are disabled prematurely every year due to preventable causes, exacting an enormous economic, social and personal toll upon our state; and

WHEREAS, most premature deaths and disabilities are preventable by relatively simple changes in behavior that would reduce the causes of these deaths and disabilities, including diabetes, stroke, and obesity; and

WHEREAS, in order to provide to the citizens of our state a way to prevent these tragic losses, a realistic plan needs to be developed that communities and individual citizens may implement to improve their health status and avoid premature death and disability; and

WHEREAS, this plan must promote the advantages of healthy living and disease prevention.

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

Section 1. Establishment and Rescission of Prior Orders

The Governor's Task Force for Healthy Carolinians (Governor's Task Force) is hereby established. The Governor's Task Force established herein is the successor organization to the Governor's Task Force on Health Objectives for the Year 2000, established in Executive Order No. 56 issued by Governor James B. Hunt, Jr. on July 13, 1994. This Executive Order replaces Executive Order No. 13 dated October 9, 2001.

Section 2. Membership

The Governor's Task Force shall have 37 members. The Governor shall appoint 33 members, including the Chair. The Vice Chair shall be elected by the Governor's Task Force. The President Pro Tempore of the Senate shall be invited to appoint two Members of the Senate, one of whom serves on the Public Health Study Commission. The Speaker of the House of Representatives shall be invited to appoint two members of the House, one of whom serves on the Public Health Study Commission. Each member of the Task Force shall be appointed for terms of four years, and will serve until appointment of a successor. A vacancy on the Governor's Task Force shall be filled by the original appointing authority.

The Governor shall appoint representatives from the following:

- a. Secretary, Department of Health and Human Services, or designee;
- b. Association of North Carolina Boards of Health;
- c. North Carolina Hospital Association;
- d. North Carolina Medical Society;
- e. North Carolina Academy of Family Physicians;
- f. North Carolina Association of Local Health Directors;
- g. Dean, School of Public Health, University of North Carolina-CH, or designee;
- h. North Carolina Citizens for Business and Industry;
- i. North Carolina Commission on Indian Affairs;
- j. North Carolina Association of County Commissioners;
- k. National Association for the Advancement of Colored People;
- l. Mental Health/Developmental Disabilities/Substance Abuse Services Division, DHHS;
- m. State Health Director, Division Of Public Health, DHHS;
- n. Director, Office of Research, Demonstrations and Rural Health Development, DHHS or designee;
- o. North Carolina Dental Society;
- p. North Carolina Nurses' Association
- q. Old North State Medical Society;
- r. North Carolina Public Health Association;
- s. Commissioner, NC Department of Agriculture and Consumer Services, or designee;
- t. Office of Minority Health, DHHS;
- u. Superintendent of Public Instruction, or designee;

- v. Governor's Council on Physical Fitness and Health;
- w. Eleven at-large members, including a representative of local education, religious organization, older adults, and non-profit organizations.

Section 3. Functions

- a. The Governor's Task Force shall meet regularly at the call of the Chair.
- b. The Governor's Task Force will advise the State Health Director and the Secretary of the Department of Health and Human Services on policies, programs and resources needed to improve the public's health in North Carolina.
- c. The Governor's Task Force shall have the responsibility to periodically review the state health objectives, make amendments as necessary, and report progress toward achieving the objectives to the Governor, Secretary of DHHS, and the State Health Director.
- d. The Governor's Task Force shall have the power to designate local Healthy Carolinians Task Forces, comprised of representatives of public and private organizations, and community members and leaders, which support the goals of the Governor's Task Force.
- e. The Governor's Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Governor's Task Force.
- f. The Governor's Task Force shall review the Preventative Health and Health Services Block Grant annually and carry out the necessary functions of the advisory committee as required by federal law.

Section 4. Administration

- a. Administrative support for the Governor's Task Force shall be provided by the Department of Health and Human Services.
- b. It shall be the responsibility of each Cabinet department to make every reasonable effort to cooperate with the Governor's Task Force in carrying out the provisions of this Order.

This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 27th day of September 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
SOCIAL SERVICES COMMISSION**

NOTICE OF DATE FOR PUBLIC HEARING

Social Services Commission - Contract Services Rules: 10A NCAC 67B .0201-.0204; .0301-.0302; .0401-.0404; and .0501-.0505, originally noticed in NC Register Volume 20, Issue 05, pages 244-246.

Date: *November 16, 2005*

Time: *10:00 a.m.*

Location: *Albemarle Building, 8th floor (Conf. Room 832), 325 N. Salisbury St., Raleigh, NC*

U.S. Department of Justice

Civil Rights Division

JKT:JBG:ALP:mef
DJ 166-012-3
2005-1255

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

September 29, 2005

Karen M. McDonald, Esq.
City Attorney
433 Hay Street
Fayetteville, NC 28302

Mr. Jerry Wilson
Reapportionment Group 2000
3009 Rainbow Drive, Suite 143
Decatur, Georgia 30034

Dear Ms. McDonald and Mr. Wilson:

This refers to the annexation (Ordinance No. 2004-09-469) and its designation to District 7 of the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 5, 2005.

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

Sincerely,

John Tanner
Chief, Voting Section

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated May 1, 2003 by)
the Secretary of Revenue)
)
Vs.)
)
Fredy Barahona,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 455

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of State Treasurer, on Tuesday, February 8, 2005 Pursuant to the petition of Fredy Barahona (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on February 24, 2004, regarding the proposed assessment of unauthorized substance tax dated May 1, 2003. The Taxpayer protested the assessments and requested a hearing before the Secretary of Revenue. After conducting a hearing on December 16, 2003, the Assistant Secretary of Revenue issued final decisions that sustained the proposed assessments. Form the Assistant Secretary's Final Decision in Docket Number 2003-242, the Taxpayer filed a petition for administrative review with the Board pursuant to N.C. Gen. Stat. 105-241.2.

ISSUES

The issues considered by the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of an unauthorized controlled substance without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

The Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary and the final decision issued by the Assistant Secretary as provided in N.C. Gen. Stat. 105-241.2(b).

FINDINGS OF FACT

The Board reviewed and considered the findings of fact and entered by the Assistant Secretary in his decision regarding this matter.

CONCLUSIONS OF LAW

The Board reviewed and considered the conclusions of law entered by the Assistant Secretary in his decision regarding this matter.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. 105-241(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary's final decision, concluded that the findings of fact made by the Assistant Secretary were supported

by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.
Made and entered into this 29th day of April 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 2000)
and 2001 by the Secretary of Revenue)
of North Carolina)
Vs.)
Michael H. Finneran,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 456

This Matter is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by Michael H. Finneran (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessments of additional individual income tax for taxable years 2000 and 2001.

Pursuant to N.C. Gen. Stat. 105-241.1, assessments proposing additional tax, penalty and accrued interest for taxable years 2000 and 2001 were mailed to the Taxpayer on September 30, 2002. The Taxpayer protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on November 4, 2003, that sustained the proposed assessments against the Taxpayer for tax years 2000 and 2001. Pursuant to N.C. Gen. Stat. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

Pursuant to N.C. Gen. Stat. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayer's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into this 29th day of April 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated February 26, 2003 by)
the Secretary of Revenue)
)
Vs.)
)
Daniel G. Hamamoto,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 457

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Tuesday, February 8, 2005 pursuant to the petition of Daniel G. Hamamoto (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on October 15, 2003, regarding the proposed assessment of unauthorized substance tax dated February 26, 2003. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing on July 22, 2003, the Assistant Secretary of Revenue entered a Final Decision that sustained the proposed assessment. From the Assistant Secretary decision, the Taxpayer filed a notice of intent and petition for administrative with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

ISSUES

The issues considered by the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of an unauthorized controlled substance without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

The Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary and the final decision issued by the Assistant Secretary as provided in N.C. Gen. Stat. § 105-241.2(b).

FINDINGS OF FACT

The Board reviewed and considered the findings of fact entered by the Assistant Secretary in his decision regarding this appeal.

CONCLUSIONS OF LAW

The Board reviewed and considered the conclusions of law entered by the Assistant Secretary in his decision regarding this appeal.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary's final decisions, concluded that the findings of fact made by the Assistant Secretary were supported

by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 29th day of April 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated February 11, 2003 by)
the Secretary of Revenue)
)
Vs.)
)
Theodore Franklin Check,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 458

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Tuesday, February 8, 2005 pursuant to the petition of **Theodore Franklin Check** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on November 18, 2003, regarding the proposed assessment of unauthorized substance tax dated February 11, 2003. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing on July 22, 2003, the Assistant Secretary of Revenue entered a Final Decision that sustained the proposed assessment. From the Assistant Secretary decision, the Taxpayer filed a notice of intent and petition for administrative with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

ISSUES

The issues considered by the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of an unauthorized controlled substance without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

The Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary and the final decision issued by the Assistant Secretary at provided in N.C. Gen. Stat. § 105-241.2(b).

FINDINGS OF FACT

The Board reviewed and considered the findings of fact entered by the Assistant Secretary in his decision regarding this appeal.

CONCLUSIONS OF LAW

The Board reviewed and considered the conclusions of law entered by the Assistant Secretary in his decision regarding this appeal.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary's final decisions, concluded that the findings of fact made by the Assistant Secretary were supported

by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.
Made and entered into the 29th day of April 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Individual)
Income Tax for taxable years 2001 and)
2002 by the Secretary of Revenue)
)
Vs.)
)
Larry A. and Geneva M. Gillus,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 459

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Tuesday, February 8, 2005 pursuant to the petition of **Larry A. and Geneva M. Gillus** (hereinafter "Taxpayers") for administrative review of the final decision entered by the Assistant Secretary of Revenue on November 13 2003, regarding the proposed assessment of individual income tax, plus penalties and interest. The Taxpayers protested the assessments and requested a hearing before the Secretary of Revenue. After conducting a hearing on August 21, 2003, the Assistant Secretary of Revenue issued his decision and ruled that the proposed tax assessment, as corrected, for taxable year 2001 and the proposed assessment for tax year 2002 were lawful and proper and sustained the tax, penalties and interest in this matter. From the Assistant Secretary's Final Decision, the Taxpayers filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

ISSUES

The Board considered the following issues in this matter:

1. Whether the Taxpayers were residents of North Carolina for income tax purposes during the entire taxable years of 2001 and 2002.
2. Whether the assessments for additional tax, penalties and interest proposed against the Taxpayers for taxable years 2001 and 2002 were lawful and proper.

EVIDENCE

The Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary and the final decision issued by the Assistant Secretary as provided in N.C. Gen. Stat. § 105-241.2(b).

FINDINGS OF FACT

The Board reviewed and considered the findings of fact entered by the Assistant Secretary in his decision regarding this matter.

CONCLUSIONS OF LAW

The Board reviewed and considered the conclusions of law entered by the Assistant Secretary in his decision regarding this matter.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary's final decision, concluded that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record as to the proposed tax and interest assessed in this matter; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact as to the proposed tax and interest assessed in this matter; therefore the decision of the Assistant Secretary sustaining the proposed tax and interest is sustained. Because the failure of the Taxpayers to pay the income taxes assessed in this matter was not the result of an intentional or negligent disregard of the law, the Board determines that the Taxpayers acted in good faith and finds reasonable cause to waive the penalties that were imposed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision, as modified herein is confirmed.

Made and entered into the 29th day of April 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated August 13, 2002 by)
the Secretary of Revenue)
Vs.)
James Patrick Rusk,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 460

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Monday, April 25, 2005 pursuant to the petition of **James Patrick Rusk** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue regarding the proposed assessment of unauthorized substance tax dated August 13, 2002. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision that sustained the proposed assessment. From the Assistant Secretary's final decision, the Taxpayer filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

The Board having conducted an administrative hearing in this matter and having reviewed the Assistant Secretary's final decision concluded that the findings of fact made by the Assistant Secretary were not supported by competent evidence of record, that the conclusions of law made by the Assistant Secretary were not supported by the findings of fact, and that the decision by the Assistant Secretary was not supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision is reversed in every respect.

Made and entered into the 19th day of July 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated February 4, 2003 by)
the Secretary of Revenue)
Vs.)
William Alexander Richards, Jr.,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 461

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Monday, April 25, 2005 pursuant to the petition of **William Alexander Richards, Jr.** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue regarding the proposed assessment of unauthorized substance tax dated February 4, 2003. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision that sustained the proposed assessment. From the Assistant Secretary's final decision, the Taxpayer filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

The Board having conducted an administrative hearing in this matter, and having considered the Assistant Secretary's final decision concluded that the findings of fact made by the Assistant Secretary were fully supported by competent evidence of record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision is confirmed in every respect.

Made and entered into the 19th day of July 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated May 14, 2003 by)
the Secretary of Revenue)
Vs.)
Jashua Dean Cumbie,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 462

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Monday, April 25, 2005 pursuant to the petition of **Jashua Dean Cumbie** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue regarding the proposed assessment of unauthorized substance tax dated May 14, 2003. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision that sustained the proposed assessment. From the Assistant Secretary's final decision, the Taxpayer filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

The Board having conducted an administrative hearing in this matter, and having reviewed the Assistant Secretary's final decision concluded that the findings of fact made by the Assistant Secretary were fully supported by competent evidence of record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the final decision by the Assistant Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision is confirmed in every respect.

Made and entered into the 19th day of July 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1998)
through 2000 by the Secretary of Revenue)
)
Vs.)
)
Michael J. Williams,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 463

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by Michael J. Williams (hereinafter "Taxpayer") regarding the final decision of Eugene J. Cella, Assistant Secretary of Revenue (hereinafter "Assistant Secretary"), entered on February 17, 2004, sustaining the proposed assessment of additional income tax for taxable years 1998 through 2000.

Pursuant to G.S. 105-241.1, the Department of Revenue mailed the Taxpayer Notices of Individual Income Tax Assessments, assessing tax, penalties and accrued interest for the taxable years 1989 through 2000. The Taxpayer objected to the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision on February 17, 2004, sustaining the proposed assessments. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, and the records and documents transmitted by the Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly deemed by the Courts to be lacking in legal merit. Thus, the Board concludes that Taxpayer's petition is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for review be and is hereby **Dismissed**.

Made and entered into the 19th day of July 2005.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated August 13, 2002 by)
the Secretary of Revenue)
Vs.)
Jeffery Lynn Prince,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 464

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Monday, April 25, 2005 pursuant to the petition of **Jeffery Lynn Prince** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue sustaining the proposed assessment of unauthorized substance tax dated August 13, 2002. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision that sustained the proposed assessment. From the Assistant Secretary final decision, the Taxpayer filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

The Board having conducted an administrative hearing in this matter concluded that the findings of fact made by the Assistant Secretary were fully supported by competent evidence of record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the final decision by the Assistant Secretary was supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision is confirmed in every respect.

Made and entered into the 25th day of July 2005.

TAX REVIEW BOARD

Signature _____
Stacey A. Phipps, Chief Deputy Treasurer,
on behalf of Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Sales and)
Use Tax for the period of May 1, 2000 through)
March 31, 2003 by the Secretary)
of Revenue)
Vs.)
Greene Bros. Well and Pump, W.T., Inc.,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 465
Docket Number 2003-441

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Monday, April 25, 2005 pursuant to the petition of **Greene Bros. Well and Pump, W.T., Inc.** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue regarding the proposed assessment of sales and use tax for the period of May 1, 2000 through March 31, 2003. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision that sustained the proposed assessment. From the Assistant Secretary's final decision, the Taxpayer filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

The Board having conducted an administrative hearing in this matter, and having considered the petition and the Assistant Secretary's final decision, concluded that the findings of fact made by the Assistant Secretary were supported by competent evidence of record, and that the conclusions of law made by the Assistant Secretary were supported by the findings of fact. The Assistant Secretary's final decision was supported by the conclusions of law. Because the Taxpayer's failure to pay the tax assessed in this matter was not the result of an intentional or negligent disregard of the law, the Board, in its discretion, deems that the Taxpayer acted in good faith and finds reasonable cause to waive the penalties that were imposed.

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision, as modified herein, is confirmed.

Made and entered into the 25th day of July 2005.

TAX REVIEW BOARD

Signature _____
Stacey A. Phipps, Chief Deputy Treasurer, on behalf of
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

Proposed Effective Date: March 1, 2006

Public Hearing:

Date: January 18, 2006

Time: 2:00 p.m.

Location: Holiday Inn(North)-2805 Highwoods Blvd., Raleigh, NC 27604

Reason for Proposed Action: *The proposed amendment of 10A NCAC 27G .1301 and the adoption of 10A NCAC 27G .1700 is necessary to strengthen current residential treatment facility licensure rules.*

The proposed rule changes represent the first part of 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.*

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

Comment period ends: January 18, 2006

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** – 10A NCAC 27G .1701-.1708
- Local** – 10A NCAC 27G .1701-.1708
- Substantive** (≥\$3,000,000) – 10A NCAC 27G .1701-.1708
- None** – 10A NCAC 27G .1301

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 FOR CHILDREN OR ADOLESCENTS

10A NCAC 27G .1301 SCOPE

(a) The rules of this Section apply only to a residential treatment facility that provides residential treatment, level II, program type service.

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

(c) A residential treatment 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~~ or 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.~~

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

(e)(e) Services shall be designed to support the child or adolescent in gaining the skills necessary to return to the 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.~~

~~(f)(d) Treatment, services, and discharge plans provided by. The residential treatment facilities facility shall coordinate be eordinated with other individuals and agencies within the client's local system of care.~~

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

SECTION .1700 - RESIDENTIAL TREATMENT STAFF SECURE FOR CHILDREN OR ADOLESCENTS

10A NCAC 27G .1701 SCOPE

(a) A residential treatment staff secure facility for children or adolescents is one that is a free-standing residential facility that provides intensive, active therapeutic treatment and interventions within a system of care approach. It shall not be the primary residence of an individual who is not a client of the facility.

(b) Staff secure means staff are required to be awake during client sleep hours and supervision shall be continuous as set forth in Rule .1704 of this Section.

(c) The population served shall be children or adolescents who have a principal diagnosis of mental illness, emotional disturbance or substance-related disorders; and may also have co-occurring disorders including developmental disabilities. These children or adolescents shall not meet criteria for inpatient psychiatric services.

(d) The children or adolescents served shall require the following:

- (1) removal from home to a community-based residential setting in order to facilitate treatment; and
- (2) treatment in a staff secure setting.

(e) Services shall be designed to:

- (1) include individualized supervision and structure of daily living;
- (2) minimize the occurrence of behaviors related to functional deficits;
- (3) ensure safety and deescalate out of control behaviors including frequent crisis management with or without physical restraint;
- (4) assist the child or adolescent in the acquisition of adaptive functioning in self-control, communication, social and recreational skills; and
- (5) support the child or adolescent in gaining the skills needed to step-down to a less intensive treatment setting.

(f) The residential treatment staff secure facility shall coordinate with other individuals and agencies within the child or adolescent's system of care.

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

10A NCAC 27G .1702 REQUIREMENTS OF QUALIFIED PROFESSIONALS

(a) Each facility shall utilize at least one direct care staff who meets the requirements of a qualified professional as set forth in 10A NCAC 27G .0104(18). In addition, this qualified professional shall have two years of direct client care experience.

(b) For each facility of five or less beds:

- (1) the qualified professional specified in Paragraph (a) of this Rule shall perform clinical and administrative responsibilities a minimum of 10 hours each week; and
- (2) 70% of the time shall occur when children or adolescents are awake and present in the facility.

(c) For each facility of six or more beds:

- (1) the qualified professional specified in Paragraph (a) of this Rule shall perform clinical and administrative responsibilities a minimum of 32 hours each week; and
- (2) 70% of the time shall occur when children or adolescents are awake and present in the facility.

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

- (1) supervision of its associate professional(s) as set forth in Rule .1703 of this Section;
- (2) oversight of emergencies;
- (3) provision of direct psychoeducational services to children or adolescents;
- (4) participation in treatment planning meetings;
- (5) coordination of each child or adolescent's treatment plan; and
- (6) provision of basic case management functions.

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

10A NCAC 27G .1703 REQUIREMENTS FOR ASSOCIATE PROFESSIONALS

(a) In addition to the qualified professional specified in Rule .1702 of this Section, each facility shall have at least one full-time direct care staff who meets or exceeds the requirements of 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 its associate professional(s). 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.

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

10A NCAC 27G .1704 MINIMUM STAFFING

REQUIREMENTS

- (a) One direct care staff shall be present in the facility at all times when children or adolescents are away from the facility.
- (b) A qualified professional shall be available by telephone or page. An additional direct care staff shall be able to reach the facility within 30 minute at all times.
- (c) The minimum number of direct care staff required when children or adolescents are present and awake is as follows:
 - (1) two direct care staff shall be present for one, two, three or four children or adolescents;
 - (2) three direct care staff shall be present for five, six, seven or eight children or adolescents; and
 - (3) four direct care staff shall be present for 9, 10, 11 or 12 children or adolescents.
- (d) The minimum number of direct care staff during child or adolescent sleep hours is as follows:
 - (1) two direct care staff shall be present and awake for eight or less children or adolescents; and
 - (2) three direct care staff shall be present of which two shall be awake and the third may be asleep for 9, 10, 11 or 12 children or adolescents.
- (e) In addition to the minimum number of direct care staff set forth in Paragraphs (a)-(d) of this Rule, more direct care staff shall be required in the facility based on the child or adolescent's individual needs as specified in the treatment plan.
- (f) Each facility shall be responsible for insuring supervision of children or adolescents when they are away from the facility in accordance with the child or adolescent's individual strengths and needs as specified in the treatment plan.

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

10A NCAC 27G .1705 REQUIREMENTS OF LICENSED PROFESSIONALS

- (a) Face to face clinical consultation shall be provided in each facility at least four hours a week by a licensed professional. For purposes of this Rule, licensed professional means an individual who holds a license or provisional license issued by the governing board regulating a human service profession in the State of North Carolina. For substance-related disorders this shall include a certified Clinical Addiction Specialist or a Clinical Certified Supervisor.
- (b) The consultation specified in Paragraph (a) of this Rule shall include:
 - (1) clinical supervision of the qualified professional specified in Rule .1702 of this Section;
 - (2) individual, group or family therapy services; and
 - (3) involvement in child or adolescent specific treatment plans or overall program issues.

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

10A NCAC 27G .1706 OPERATIONS

- (a) Each facility shall serve no more than a total of 12 children and adolescents.
- (b) Family members or other legally responsible persons shall be involved in development of plans in order to assure a smooth transition to a less restrictive setting.
- (c) The residential treatment staff secure facility shall coordinate with the local education agency to ensure that the child's educational needs are met as identified in the child's education plan and the treatment plan. Most of the children will be able to attend school; for others, the facility will coordinate services across settings such as alternative learning programs, day treatment, or a job placement.
- (d) Psychiatric consultation shall be available as needed for each child or adolescent.
- (e) If an adolescent has his 18th birthday while receiving treatment in the facility, he may remain for six months or until the end of the state fiscal year, whichever is longer.
- (f) Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.
- (g) Each facility shall operate 24 hours per day, seven days per week, and 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 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 the transfer or discharge of a child or adolescent from the facility.
- (b) A child or adolescent shall not be discharged or transferred from a facility, except in case of emergency, without the advance written notification of the treatment team, including the legally responsible person. For purposes of this Rule, treatment team means the same as the existing child and family team or other involved persons as set forth in Paragraph (c) of this Rule.
- (c) The facility shall meet with existing child and family teams or other involved persons including 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 the facility.
- (d) 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.

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

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for DMH/DD/SAS intends to adopt the rules cited as 10A NCAC 27G .1801-.1806.

Proposed Effective Date: April 1, 2006

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 November 16, 2005.

Reason for Proposed Action: The proposed adoption is necessary to establish a new licensure category for Intensive Residential Treatment for Children or Adolescents. The proposed rule changes represent a part of a comprehensive plan to revamp the child residential treatment service continuum. The proposed rules establish additional safeguards for children and adolescents and establish higher standards for providers of intensive 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.

Comments may be submitted to: Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, Phone (919)715-2780, fax (919)733-1221 or email cindy.kornegay@ncmail.net.

Comment period ends: January 3, 2006

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

CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

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

SECTION .1800 – INTENSIVE RESIDENTIAL TREATMENT FOR CHILDREN OR ADOLESCENTS

10A NCAC 27G .1801 SCOPE

(a) An intensive residential treatment facility is one that is a 24-hour residential facility that provides a structured living environment within a system of care approach for children or adolescents whose needs require more intensive treatment and supervision than would be available in a residential treatment staff secure facility.

(b) It shall not be the primary residence of an individual who is not a client of the facility.

(c) The population served shall be children or adolescents who have a principal diagnosis of mental illness, severe emotional and behavioral disorders or substance-related disorders; and may also have co-occurring disorders including developmental disabilities. These children or adolescents shall not meet criteria for acute inpatient psychiatric services.

(d) The children or adolescents served shall require the following:

- (1) removal from home to an intensive integrated treatment setting; and
- (2) treatment in a locked setting.

(e) Services shall be designed to:

- (1) assist in the development of symptom and behavior management skills;
- (2) include intensive, frequent and pre-planned crisis management;
- (3) provide containment and safety from potentially harmful or destructive behaviors;
- (4) promote involvement in regular productive activity, such as school or work; and
- (5) support the child or adolescent in gaining the skills needed for reintegration into community living.

(f) The intensive residential treatment facility shall coordinate with other individuals and agencies within the child or adolescent's system of care.

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

10A NCAC 27G .1802 REQUIREMENTS OF LICENSED PROFESSIONALS

(a) Each facility shall have at least one full-time a licensed professional. For purposes of this Rule, licensed professional means an individual who holds a license or provisional license

issued by the governing board regulating a human service profession in the State of North Carolina.

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

- (1) supervision of direct care staff;
- (2) oversight of emergencies;
- (3) provision of direct clinical psychoeducational services to children, adolescents or families;
- (4) participation in treatment planning meetings; and
- (5) coordination of each child or adolescent's treatment plan.

(c) Licensed professionals shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Intensive Residential Treatment Services, including subsequent amendments and editions. A copy of Clinical Policy 8D-2 is available at no cost from the Division of Medical Assistance website at <http://www.dhhs.state.nc.us/dma/>.

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

10A NCAC 27G .1803 REQUIREMENTS OF QUALIFIED PROFESSIONALS

(a) Each facility shall have at least one full-time qualified professional as set forth in 10A NCAC 27G .0104(18). In addition, the qualified professional shall have two years of direct client care experience.

(b) For each facility:

- (1) a qualified professional shall perform clinical and administrative responsibilities a minimum of 40 hours each week; and
- (2) 75% shall occur when children or adolescents are awake and present in the facility.

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

- (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 treatment planning meetings; and
- (4) provision of basic case management functions.

(d) The qualified professional shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Intensive Residential Treatment Services, including subsequent amendments and editions. A copy of Clinical Policy 8D-2 is available at no cost from the Division of Medical Assistance website at <http://www.dhhs.state.nc.us/dma/>.

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

10A NCAC 27G .1804 MINIMUM STAFFING REQUIREMENTS

(a) One direct care staff is required to be present in the facility at all times when children or adolescents are away from the facility.

(b) An additional on-call direct care staff shall be readily available by telephone or page and able to reach the facility within 30 minutes of the call or page.

(c) If children or adolescents are cared for in separate units/buildings, the minimum staffing numbers shall apply to each unit/building.

(d) The minimum number of direct care staff required when children or adolescents are present and awake is as follows:

- (1) three direct care staff shall be present for five or six children or adolescents;
- (2) four direct care staff shall be present for seven, eight or nine children or adolescents; and
- (3) five direct care staff shall be present for 10, 11 or 12 children or adolescents.

(e) During child or adolescent sleep hours three direct care staff be present of which two shall be awake and the third may be asleep.

(f) Direct care staff shall meet the Provider Requirement and Supervision standards as set forth in the Division of Medical Assistance Clinical Policy Number 8D-2, Intensive Residential Treatment Services, including subsequent amendments and editions. A copy of Clinical Policy 8D-2 is available at no cost from the Division of Medical Assistance website at <http://www.dhhs.state.nc.us/dma/>.

(g) In addition to the minimum number of direct care staff set forth in Paragraphs (a)-(e) of this Rule, more direct care staff may be required in the facility based on the child or adolescent's individual needs as specified in the treatment plan.

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

10A NCAC 27G .1805 OPERATIONS

(a) Each facility shall serve no more than 12 children or adolescents.

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

(c) Educational services within the facility are arranged and designed to maintain the educational and intellectual development of the child or adolescent. Treatment staff shall coordinate with the local education agency to ensure that the child or adolescent's educational needs are met as identified in the education plan.

(d) Psychiatric consultation shall be available as needed for each child or adolescent.

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

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

(g) Each facility shall operate 24 hours per day, seven days per week, and each day of the year.

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

10A NCAC 27G .1806 TRANSFER OR DISCHARGE

- (a) The purpose of this Rule is to address the transfer or discharge of a child or adolescent from the facility.
- (b) A child or adolescent shall not be discharged or transferred from a facility, except in case of emergency, without the advance written notification of the treatment team, including the legally responsible person. For purposes of this Rule, treatment team means the same as the existing child and family team or other involved persons as set forth in Paragraph (c) of this Rule.
- (c) The facility shall meet with existing child and family teams or other involved persons including 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 the facility.
- (d) 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.
- (e) In case of an emergency, notification may be by telephone. A service planning meeting as set forth in Paragraph (c) of this Rule shall be held within five business days of an emergency transfer or discharge.

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

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Attorney General intends to adopt the rules cited as 12 NCAC 02J .0101-.0104, .0201-.0211, .0301-.0304.

Proposed Effective Date: March 1, 2006

Public Hearing:

Date: January 10, 2006

Time: 9:00 a.m.

Location: Old Education Building, Room G-22, 114 W. Edenton Street, Raleigh, NC

Reason for Proposed Action: Due to ratification of Senate Bill 527, the Campus Police Act, in July 2005, the rules governing Campus Police, which were previously combined with Company and Railroad Police, have been moved to a separate Subchapter within Title 12, Chapter 02. These new rules also reflect new requirements within the Campus Police Program.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objections, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Vickie Huskey,

Company Police Program Administrator, Department of Justice, 114 W. Edenton Street, Raleigh, NC 27602.

Comments may be submitted to: Vickie Huskey, Company Police Program Administrator, Department of Justice, 114 W. Edenton Street, Raleigh, NC 27602, phone 919-716-6470, fax 919-716-6752, email vhuskey@ncdoj.com.

Comment period ends: January 10, 2006

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 2 - OFFICE OF THE ATTORNEY GENERAL

SUBCHAPTER 02J- CAMPUS POLICE

SECTION .0100 - GENERAL PROVISIONS

12 NCAC 02J .0101 LOCATION

The administrative office for the commissioning of campus police officers and the certification of campus police agencies is located in the office of the Criminal Justice Standards Division. Correspondence shall be directed to:

Campus Police Administrator
Campus Police Program
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6470

Authority G.S. 74G; 143A-54.

12 NCAC 02J .0102 PURPOSES

The purposes of the Attorney General's Office in granting campus police commissions are:

- (1) to allow those private institutions of higher education described in G.S. 74G-2 to apply for certification as a campus police agency;
- (2) to allow those private institutions of higher education described in G.S. 74G-2 to employ

- (3) individuals commissioned as campus police officers pursuant to G.S. 74G-6; and to ensure the integrity, proficiency, and competence of campus police officers and establishing minimum standards for obtaining and maintaining both campus police officer commissions and campus police agency certifications.

Authority G.S. 74G-2; 74G-6.

12 NCAC 02J .0103 ADMINISTRATIVE STAFF

The administrative staff responsible for campus police commissions and campus police agency certifications consists of assigned personnel from the Criminal Justice Standards Division. The duties of this staff are to carry out the policies of the law and regulations herein and to actively police the individuals already commissioned as campus police officers to assure compliance with the law in all respects.

Authority G.S. 74G-4.

12 NCAC 02J .0104 DEFINITIONS

In addition to any definitions set forth in G.S. 74G, the following definitions will apply throughout this Chapter, unless the context clearly defines otherwise:

- (1) "Agency Records" means those records specified pursuant to this Subchapter and that documentation required to be maintained and compiled under the requirements of G.S. 74G.
- (2) "Badge" means a shield bearing the title of "Campus Police" and the name of the certified campus police agency and the officer's issued identification card provided by the Attorney General which identifies the individual as a campus police officer.
- (3) "Calendar Year" shall be defined solely for the purpose of in-service training as a period beginning January 1 and ending on December 31.
- (4) "Certification" means:
 - (a) campus police officers - the authority granted by the North Carolina Criminal Justice Education and Training Standards Commission to those individuals who meet the minimum requirements as a sworn law enforcement officer pursuant to Title 12, Chapter 09B of the North Carolina Administrative Code.
 - (b) campus police agency - the authority granted by the Attorney General to those Campus Police agencies who meet the minimum requirements established for such agencies pursuant to this Chapter.
- (5) "Commission" as it pertains to criminal offenses, means a finding by an administrative body, pursuant to the

- (6) "Commissioned Campus Police Officer" means those individuals authorized by the Campus Police Administrator to exercise all law enforcement powers within the constraints provided in G.S. 74G and classified as a campus police officer pursuant to G.S. 74G-6(b).
- (7) "Campus Police Administrator" means the individual who serves as the head of the administrative staff to whom the Attorney General designated the authority to act upon any campus police agency commission or campus police agency certification pursuant to the provisions of G.S. 74G and the rules promulgated thereunder. Said administrator is responsible for the individual officer's or agency's compliance with the Campus Police Act.
- (8) "Campus Police Agency" means any public or private campus as defined by G.S. 74G-2(b).
- (9) "Conviction or convicted" means and includes, for the purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilty by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (10) "Department Head" means the chief administrator of any campus police agency. The Department Head is to include the Campus Police Chief or a designee formally appointed in writing as the Department Head, and who shall hold and maintain a commission as a campus police officer.
- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "High School" means a school accredited as a high school by:
 - (a) the Department or Board of Education of the state in which the high school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which the high school is located.
- (13) "In-Service Training" means any and all training as prescribed in 12 NCAC 02J .0201 which must be satisfactorily completed by campus police officers, in accordance with the standards established therein, during each

- full calendar year of commissioning as a campus police officer.
- (14) "Insurance Carrier" means any entity, corporation, campus or professional association as defined in G.S. 58 and who is authorized by the North Carolina Commissioner of Insurance to do business in North Carolina as an insurance carrier or underwriter.
- (15) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Criminal Justice Education and Training Standards Commission.
- (a) "Class A Misdemeanor" is defined in 12 NCAC 09A .0103(22)(a).
- (b) "Class B Misdemeanor" is defined in 12 NCAC 09A .0103(22)(b).
- (16) "On Duty" means that period of time which the commissioned campus police officer is being compensated for his or her services by the officer's employer and ending once the officer's compensation for his duties terminates.

from the Institute of Government, the University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27514, and these Rules.

Applicants will be advised in writing of test dates and sites at least five days prior to the examination. In the event an applicant fails to successfully complete the examination, only one re-test will be allowed. Upon an applicant's failure to successfully complete the second test, the applicant must successfully complete accredited Basic Law Enforcement Training coursework prior to re-testing:

- (4) meet the minimum standards for criminal justice officers established by the North Carolina Criminal Justice Education and Training Standards Commission, appearing in Title 12, Chapter 09 of the North Carolina Administrative Code; which Standards are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
- (5) applicants who do not hold general certification as a law enforcement officer issued by the Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, must submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation;
- (6) be at least 20 years of age;
- (7) have produced a negative result on a drug screen administered according to the following specifications:
- (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive test result using a gas chromatography mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
- (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
- (c) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically

Authority G.S. 74G.

SECTION .0200 - COMMISSIONING

12 NCAC 02J .0201 MINIMUM STANDARDS FOR CAMPUS POLICE OFFICERS

Every campus police officer must meet the following requirements to obtain and maintain a campus police commission:

- (1) be a citizen of the United States;
- (2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency. A specific exception to this educational requirement is granted to:
- (a) an applicant who was the holder of a valid campus police commission on June 30, 1972; or
- (b) an applicant properly certified as a law enforcement officer by the Criminal Justice Education and Training Standards Commission on March 14, 1973;

In either case, the exception will not be applicable if the applicant has had more than a 12 month break in service:

- (3) have attained a score of not less than 80 percent on a written examination of basic knowledge of laws of arrest, search, and investigation, and of these Rules to be administered by a representative of the North Carolina Department of Justice;

Note: All examination questions will be based on the book Arrest, Search, and Investigation as published by and available

- (e) include any later amendments and editions of the referenced material;
- (f) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
- (g) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Subitem (7)(c) of this Rule; and
- (8) every agency head shall be responsible for making adequate arrangements for the services of a Medical Review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (8) notify the Campus Police Administrator in writing of all criminal offenses for which the officer is arrested, pleads no contest, pleads guilty, or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Item, as an offense where the maximum punishment allowable is 60 days or less. The notifications required must specify the nature of the offense, the court in which the case was handled and the date of the conviction. The notifications must be received by the Campus Police Administrator within 30 days of the date of the case disposition. Applicants and officers required to notify the Campus Police Administrator under this Item shall also make the same notification to their Department Head within 20 days of the date the case was disposed of in court. However, the notification to the Campus Police Administrator does not excuse the officer from making an independent notification otherwise required by either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission. The notifications required by this section shall be required while the application is pending as well as, subsequent to a commission being issued;

- (9) be of good moral character as referred to in G.S. 17C-10(c);
- (10) not having committed or been convicted of a crime or crimes as specified in 12 NCAC 02J .0209(b), such that the applicant would be ineligible for commissioning as a Campus Police officer.

Authority G.S. 74G-4.

12 NCAC 02J .0202 APPLICATION FOR CAMPUS POLICE AGENCY

Each campus police agency shall complete and submit to the Campus Police Administrator the following items and documentation:

- (1) an application form;
- (2) articles of incorporation or other agency originating documentation, which specifies the agency's law enforcement functions;
- (3) names and addresses for all corporate officers and directors;
- (4) a copy of the campus police agency's insurance policy, or if self insured, the certificate of self insurance (applicable to non-public entities only);
- (5) a criminal history record check on each corporate officer and director of the corporation through the clerk of superior court in each county where the individual resided or maintained a residence over a five year period prior to such application. However, this Rule does not require the agency to submit a criminal history record check on currently commissioned campus police officers;
- (6) the appropriate fees as required by 12 NCAC 02J .0205;
- (7) a listing of the names and addresses of all institutions for which the campus police agency has contracted with to provide services.

Authority G.S. 74G.

12 NCAC 02J .0203 APPLICATION FOR CAMPUS POLICE OFFICER

The application for a campus police officer must contain:

- (1) a written request from the Department Head of the campus, or agency requesting that a campus police commission be issued to the applicant. An oral request will not satisfy this requirement; and
- (2) if the applicant holds general certification issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, the application must contain the following:

- (a) Medical History Statement (Form F-1);
- (b) Medical Examination Report (Form F-2);
- (c) Two complete fingerprint cards;
- (d) One digital photograph of applicant, not more than three months old, in JPEG format to be emailed to the Campus Police Administrator for picture I.D.;
- (e) Proof of a negative drug screen as specified in 12 NCAC 02J .0201(7);
- (f) Proof of successful completion of all in-service training requirements specified by the North Carolina Criminal Justice Education and Training Standards Commission, which standards are hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced material;
- (g) Authorization for release of records (CP-1);
- (h) Drug Screen Consent Form (CP-2);
- (i) Appropriate fees as specified in 12 NCAC 02J .0205;
- (j) An appropriate background investigation as specified in 12 NCAC 02J .0204 (Form F-8); and
- (k) Personal History Statement (Form F-3) not more than three months old;
or
- (3) if the applicant does not hold general certification, the application must contain the following:
 - (a) Medical History Statement (Form F-1);
 - (b) Medical Examination Report (Form F-2);
 - (c) Personal History Statement not more than three months old, (Form F-3);
 - (d) Report of Qualification Appraisal Interview (Form F-4);
 - (e) Proof of High School graduation or GED;
 - (f) Two complete fingerprint cards;
 - (g) One digital photograph of applicant, not more than three months old, in JPEG format to be emailed to the Campus Police Administrator for picture I.D.;
 - (h) Proof of satisfactory completion of a Criminal Justice Education and Training Standards Commission accredited basic law enforcement training course;
 - (i) Proof of a negative drug screen;

- (j) Authorization for Release of Records (CP-1);
- (k) Drug Screen Consent Form (CP-2);
- (l) Appropriate fees as specified in 12 NCAC 20J .0205; and
- (m) Background investigation as specified in 12 NCAC 02J .0204 (Form F-8); or

All other documentation currently valid in the commissioned officer's file will be transferred to a new file for the officer under Chapter 74G.

Authority G.S. 74G.

12 NCAC 02J .0204 BACKGROUND INVESTIGATION

(a) Any campus police agency contemplating the commissioning of an applicant as a campus police officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a campus police officer and shall determine whether the applicant is of good moral character as referred to in G.S. 17C-10(c). The investigation shall be submitted to the Campus Police Administrator utilizing the Commission-approved Form F-8 (Summary of Background Investigation).

(b) Prior to the investigation, the applicant shall complete a Personal History Statement (Form F-3) to provide a basis for the investigation.

(c) The Department Head shall conduct the applicant's background investigation. The Department Head shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
- (2) family data;
- (3) scholastic data;
- (4) employment data;
- (5) interviews with the applicant's references; and
- (6) a summary of the Department Head's findings and conclusions regarding the applicant's moral character as referred to in G.S. 17C-10(c).

(d) The agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs. However, the campus police program's "Summary of Background Investigation" form shall be used as a guide for minimum information collected and recorded by the investigator.

(e) In the event that an individual applying for commission as a campus police officer is the Department Head, he shall not conduct his own background investigation. The investigation must be performed by a city or county agency in the county where the campus police agency has jurisdiction, or contract with a private investigator.

Authority G.S. 74G-4.

12 NCAC 02J .0205 FEE

(a) Upon notification that an application for a campus police agency certification or a campus police officer commission has been approved, the applicant shall forward a certified check or money order made out to the North Carolina Department of Justice to the:

Campus Police Administrator
Campus Police Program
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6470

(b) The following fees shall be due and payable prior to the issuance of campus police agency certification or a campus police officer commission.

- (1) Application for certification as a campus police agency - \$250.00.
- (2) Annual renewal of certification as a campus police agency - \$200.00.
- (3) Application for reinstatement of certification as a campus police agency - \$1,000.00.
- (4) Application for commission as a campus police officer - \$100.00.
- (5) Annual renewal of commission as a campus police officer - \$50.00.
- (6) Application for reinstatement of commission as a campus police officer - \$150.00.

(c) Currently commissioned campus police officers will be required to submit the Application for Commission as a campus police officer fee as set forth in Subparagraph (b)(4) of this Rule.

Authority G.S. 74G-12.

12 NCAC 02J .0206 OATH

Every campus police officer so appointed shall, before entering upon the duties of his office, take and subscribe to the oath provided for in G.S. 11-11 before an officer authorized by G.S. 11-7.1 to administer oaths, and shall forward a copy of the executed oath within 10 days of the day on which the oath is subscribed to the Campus Police Administrator.

Authority G.S. 11-11; 74G-6.

12 NCAC 02J .0207 LIABILITY INSURANCE

(a) Any applicant for a non-public campus police agency certification must file with the Campus Police Administrator, either a copy of the liability insurance policy or a certificate of self insurance, at the following address:

Campus Police Administrator
Campus Police Program
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6470

(b) Any notice of cancellation by an insurance carrier shall be delivered by certified mail, return receipt requested, to the following address:

Campus Police Administrator
Campus Police Program
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

Telephone: (919) 716-6470

Authority G.S. 74G-3.

12 NCAC 02J .0208 SUSPENSION, REVOCATION OR DENIAL OF AGENCY CERTIFICATION

(a) A campus police agency certification may be suspended, revoked or denied upon a finding that the agency has:

- (1) failed to pay any required fees;
- (2) failed to produce or maintain a copy of a liability insurance policy or a certificate of self insurance;
- (3) failed to meet any of the requirements for certification provided in 12 NCAC 02J .0202;
- (4) failed to provide any of the required documentation pursuant to 12 NCAC 02J .0202;
- (5) failed to allow for the reasonable inspection of the Campus Police agency records pursuant to G.S. 74G-4(3);
- (6) failed to ensure compliance by the agency's campus police officers of any and all in-service training requirements as specified by 12 NCAC 09E .0100;
- (7) failed to submit the required in-service training compliance reports as required by 12 NCAC 09E .0100;
- (8) failed to submit any and all reports, notification or other information required or requested by the Campus Police Administrator;
- (9) knowingly made a material misrepresentation of any information required for certification or commissioning from the Campus Police Administrator or the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (10) knowingly and willfully by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, certification or commissioning from the Campus Police Administrator of the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (11) aided another in obtaining or attempting to obtain credit, training, or certification from the Campus Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission by means of deceit, fraud or misrepresentation or cheating; or
- (12) failed to ensure that any employee not commissioned as a campus police officer is

not violating a prohibition set forth in 12 NCAC 02J .0302.

(b) An agency whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

Authority G.S. 74G-4.

12 NCAC 02J .0209 SUSPENSION, REVOCATION, OR DENIAL OF OFFICER COMMISSION

(a) A campus police commission shall be revoked or denied upon a finding that the officer has committed or been convicted of:

- (1) any felony (unless pardoned by the President of the United States or a state Governor); or
- (2) any crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Attorney General, or his designee, may revoke, suspend, or deny the commission of a campus police officer when the Campus Police Administrator finds that the applicant for commission or the commissioned campus police officer has committed or been convicted of:

- (1) a crime or unlawful act as defined in 12 NCAC 09A .0103(22)(b) as a Class B misdemeanor and which occurred after the date of initial certification;
- (2) a crime or unlawful act as defined in 12 NCAC 09A .0103(22)(b) as a Class B misdemeanor within a five-year period prior to the date of application for certification;
- (3) four or more crimes or unlawful acts as defined in 12 NCAC 09A .0103(22)(b) as Class B misdemeanors regardless of the date of commission or conviction;
- (4) four or more crimes or unlawful acts as defined in 12 NCAC 09A .0103(22)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts as defined in 12 NCAC 09A .0103(22)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of the application for certification.

(c) In addition, a campus police commission shall be revoked or denied upon a finding that the officer:

- (1) lacks good moral character as referred to in G.S. 17C-10(c);
- (2) fails to meet any of the required minimum standards as specified in 12 NCAC 02J .0203;
- (3) has been terminated from employment with the campus police agency for which the officer is commissioned or is no longer employed with such campus police agency;
- (4) has committed any act prohibited by 12 NCAC 02J .0302; or

(5) termination, suspension, or revocation of the certification of the campus police agency with which the officer is commissioned.

(d) An officer whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

Authority G.S. 74G-4.

12 NCAC 02J .0210 PERIOD OF SUSPENSION, REVOCATION OR DENIAL

(a) When the Attorney General, or his designee, suspends or denies the commission of a campus police officer, the period of sanction shall not be less than three years. However, the Attorney General, or his designee, may either reduce or suspend the period of sanction under 12 NCAC 02J .0211(b) or substitute a period of probation in lieu of suspension of a commission following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a crime other than those listed in Paragraph (a) of Rule 12 NCAC 02J .0208;
- (2) refusal to submit to the applicant or lateral transferee drug screen required by 12 NCAC 02J .0201(7);
- (3) production of a positive result on a drug screen reported to the Campus Police Administrator where the positive result cannot be explained to the Campus Police Administrator's satisfaction;
- (4) material misrepresentation of any information required for campus police commissioning;
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempting to obtain credit, training or commissioning as a campus police officer by any means of false pretense, deception, defraudation, misrepresentation or cheating; or
- (6) failure to make either of the notifications as required by 12 NCAC 02J .0201(8).

(b) When the Attorney General, or his designee, suspends or denies the commission of a campus police officer, the period of sanction shall be continued so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy all basic training requirements;
- (2) failure to meet or maintain the minimum standards of employment specified in 12 NCAC 02J .0201(4);
- (3) discharge from a criminal justice agency for impairment of physical or mental capabilities; or
- (4) failure to meet the in-service training requirements as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission.

Authority G.S. 74G-4.

12 NCAC 02J .0211 SUMMARY SUSPENSIONS

(a) The Campus Police Administrator, through designation by the Attorney General, may summarily suspend the commission of the campus police officer before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Campus Police Administrator, the public health, safety, or welfare requires this emergency action of summary suspension. The Campus Police Administrator has determined that the following conditions specifically affect the public health, safety, or welfare, and therefore, the Campus Police Administrator may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification; or
- (2) the commissioned campus police officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in Title 12, Chapter 09 of the North Carolina Administrative Code.

(b) A summary suspension shall be effective on the date specified in the order of the summary suspension or upon the service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain in effect during the proceedings.

(c) Upon verbal notification by the Campus Police Administrator that the campus police commission of any officer is being summarily suspended by written order, the Department Head of the campus police agency shall take such steps as are necessary to ensure that the officer does not perform duties requiring a campus police commission through the Attorney General.

Authority G.S. 74G-4; 74G-10.

SECTION .0300 - CONDUCT OF COMMISSIONED POLICEMEN

12 NCAC 02J .0301 TENURE

A campus police officer commission or campus police agency certification shall remain in effect until:

- (1) The Attorney General directs termination;
- (2) The campus police officer ceases to be employed by a campus police agency;
- (3) The required liability insurance is terminated or suspended by the agency's insurance carrier;
- (4) The need for a commission no longer exists;
- (5) Evidence is presented that the person has committed an act which would have originally caused denial of the application or an act prohibited by Rule .0304 of this Section; or
- (6) The Criminal Justice Education and Training Standards Commission suspends or revokes an officer's certification for cause.

Authority G.S. 74G-4; 74G-6; 74G-10.

12 NCAC 02J .0302 PROHIBITED ACTS

In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74G, the following acts are prohibited and may result in civil or criminal action or both:

- (1) use of excess force while in the performance of their official duties;
- (2) carrying a concealed weapon except:
 - (a) when on his own business property or at home;
 - (b) in conformity with G.S. 74G-6;
- (3) activating or operating a red light in or on any vehicle in this State unless such vehicle is exempted from the provisions of G.S. 20-130.1(b);
- (4) activating or operating a blue light in or on any vehicle in this State except:
 - (a) when operating a motor vehicle used primarily by campus police in the performance of their official duties;
 - (b) when in property jurisdiction limitations specifically described under G.S. 74G-6; or
 - (c) when in continuous or immediate pursuit of a person for an offense committed upon real property owned by or in the possession or control of their employer or real property or in the possession and control of a person who has contracted with the employer to provide on-site police security personnel services for the property; or
 - (d) during the transportation of an arrestee, which the campus police agency has taken into custody;
- (5) activating or operating a siren when operating any motor vehicle used primarily by any campus police agency in the performance of their official duties when outside of the property jurisdiction limitations specifically described under G.S. 74G-6 unless in immediate and continuous pursuit;
- (6) representing in any manner at any time that he is a federal, state, county, or municipal law enforcement officer, unless the campus police officer is dually certified as one of the classifications listed in this Rule;
- (7) impeding traffic, stopping motorists or pedestrians, or in any manner imposing or attempting to impose his will upon another person as police authority unless:
 - (a) he is on the property specifically described under G.S. 74G-6; or
 - (b) when in immediate and continuous pursuit of any person for an offense which occurred within the property

- jurisdiction limitations specifically described under G.S. 74G-6;
- (8) using or attempting to use authority granted under a campus police commission pursuant to this Subchapter outside the political boundaries of North Carolina; or
- (9) violating Rule .0304 of this Section.

Authority G.S. 74G-4; 74G-6.

12 NCAC 02J .0303 TRANSFERS

No individual commissioned as a campus police officer can transfer his campus police commission from one employing campus police agency to another.

Authority G.S. 74G-4; 74G-6.

12 NCAC 02J .0304 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

(a) Badges:

- (1) All campus police officers shall, when on duty, wear a badge bearing the name of the certified campus police agency and the general title of Campus Police.
- (2) The badge is to be carried at all times by the campus police officer. The badge shall always be worn in plain view, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0302 of this Section.
- (3) No identification card shall be issued to or possessed by any campus police officer except in the form of identification issued to the officer by the Attorney General.

(b) Uniforms:

- (1) All campus police officers shall, when on duty, wear the uniform of the campus police agency unless directed to wear other attire by the Department Head.
- (2) When wearing civilian attire, the campus police officer shall comply with 12 NCAC 02I .0304(a).
- (3) Those campus police agencies which employ both campus police commissioned and non-commissioned security personnel shall provide the commissioned campus police officers with a uniform of a different color that would clearly distinguish the campus police officer from other employees of the agency.
- (4) The uniform of the campus police officer shall bear shoulder patches that contain:
(A) the term "Campus Police,"; and
(B) the name of the campus police agency.

(c) Vehicles:

- (1) Each marked vehicle used by a campus police agency subject to this Rule shall prominently

display the agency name and the agency classification of " Campus Police".

- (2) The Department Head shall ensure that employees who have not been commissioned as campus police officers do not operate any marked vehicle used by the campus police agency.
- (3) The Department Head shall ensure that employees who are not commissioned as a campus police officer do not operate any campus police vehicle with a blue light contained therein.
- (4) The Department Head shall ensure that any marked campus police agency vehicle is not operated outside of those property jurisdiction limitations set forth in G.S. 74G-6, unless such operation is performed by an on-duty officer in the performance of his official duties and authorized by the Department Head.

(d) All campus police agencies shall comply with the provisions of this Rule for badges, vehicles, uniforms, and other equipment no later than January 1, 2006.

Authority G.S. 74G-7.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 02 – BOARD OF ARCHITECTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Architecture intends to adopt the rule cited as 21 NCAC 02 .0220 and amend the rules cited as 21 NCAC 02 .0205-.0206, 0208-.0210, .0213, .0217, .0302-.0303, .0901, .0904, .0906, .0910.

Proposed Effective Date: March 1, 2006

Public Hearing:

Date: November 16, 2005

Time: 1:00 p.m.

Location: NC Board of Architecture, 127 W. Hargett Street, Suite 304, Raleigh, NC

Reason for Proposed Action: *To clarify submission requirements for plans and specifications done by architects; to clarify license renewal process and unprofessional conduct rules for active architects and those on emeritus status; to clarify continuing education requirements; to clarify architectural firm name and to adopt a new rule to allow non-resident firms to respond to Request for Proposals prior to firm registration. To revise examination and continuing education rule provisions that are no longer applicable because phase in periods have expired. To bring exam score retention in line with National Council of Architecture Registration Boards standards*

Procedure by which a person can object to the agency on a proposed rule: Any objections and its reason may be submitted, in writing, until the expiration of the comment period on January 3, 2006 to Cathe Evans, Executive Director, NC Board of Architecture, 127 W. Hargett Street, Suite 304, Raleigh, NC 27601.

Comments may be submitted to: Cathe Evans, Executive Director, NC Board of Architecture, 127 W. Hargett Street, Suite 304, Raleigh, NC 27601, email cathe@ncbarch.org.

Comment period ends: January 3, 2006

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

SECTION .0200 - PRACTICE OF ARCHITECTURE

21 NCAC 02 .0205 NAME OF FIRM

(a) A licensee shall not engage in the practice of architecture under a professional or firm name which is misleading or deceptive in any way as to the legal form of the firm or the persons who are partners, officers, members, or shareholders in the firm. Examples of misleading or deceptive firm names include but are not limited to the following:

- (1) Use of the plural in any form when the number of architects in a firm does not warrant such use or,
- (2) Use of the name of an employee unless that employee is a partner, member or shareholder or,
- (3) Use of the name of a deceased architect in order to benefit from his reputation, when that architect was not a former partner, officer, member or shareholder in the present firm, or
- (4) Use of a name which is deceptively similar to that of existing firm name.
- (5) Use of a fictitious name by a sole proprietor or partnership or limited liability partnership

(b) Names of all architectural firms, ~~whether sole proprietorships, partnerships, professional limited liability companies, registered limited liability partnerships or professional corporations,~~ shall be approved in writing by the Board before adopted or used by such firm. Provided, however, that this Rule shall not be construed to require any firm to seek approval of, or to change, any name duly adopted in conformity with Board rules in effect at the date of such adoption other than a change that results in a violation of Subparagraph (a)(1) of this Rule.

(c) Only firms established pursuant to 21 NCAC 02 .0214 (professional corporations), 21 NCAC 02 .0215 (qualified foreign corporations), or 21 NCAC 02 .0218 (professional limited liability companies) may engage in the practice of architecture under a fictitious name; provided, however, a registered firm in good standing having obtained written approval of its fictitious name prior to the adoption of this Rule and having continuously used such name may continue to use the previously approved name only for so long as:

- (1) said name complies with Paragraphs (a) and (b) of this Rule,
- (2) the firm's use of said name is continuous, and
- (3) the firm complies with any applicable statutes pertaining to the registration of fictitious names, including but not limited to G.S. 66, Article 14.

Authority G.S. 55B-5; 83A-6; 83A-9; 83A-12.

21 NCAC 02 .0206 REQUIREMENT FOR AND USE OF PROFESSIONAL SEAL

(a) As more fully set out in this Rule, an architect must seal his work whether or not the work is for an exempt project. An architect shall not sign nor seal drawings, specifications, reports or other professional work which were not prepared by the architect or under his direct supervision.

- (1) Provided, however, that the architect may sign or seal those portions of the professional work that:
 - (A) were prepared by or under the direct supervision of persons who are registered under the architecture registration laws of this jurisdiction if the architect has reviewed in whole or in part such portions and has either coordinated their preparation or integrated them into his or her work; and
 - (B) are not required by law to be prepared by or under the direct supervision of an architect if the architect has reviewed and adopted in whole or in part such portions and has integrated them into his or her work.
- (2) Individual Seal Design. Every licensed architect shall have an individual seal which shall be composed of two concentric circles with outer and inner circle diameters of

- approximately ~~12 inches and 1 inch respectively.~~ 1.5 inches and 1 inch respectively. The architect's name and place of business shall be between the inner and outer circles. The words "Registered Architect, North Carolina" shall be along the inside perimeter of the inner circle. The architect's North Carolina registration number shall be in the center of the inner circle. The signature of the individual named on the seal is a required part of an individual seal and a seal image lacking said signature is incomplete and shall not be considered a "seal" for purposes of these Rules.
- (3) Corporate Seal Design. Every corporation which shall have obtained from the Board a certificate for corporate practice shall have a corporate seal, which shall be composed of two concentric circles with outer and inner circle diameters of approximately ~~12 inches and 1 inch respectively.~~ 1.5 inches and 1 inch respectively. The Architectural Corporation's approved North Carolina name and place of business shall be between the inner and outer circles. The words "Registered Architectural Corporation, North Carolina" shall be along the inside perimeter of the inner circle. The corporation's North Carolina registration number shall be in the center of the inner circle.
- (4) Seal Types. The seal required for use on opaque original ~~contract documents~~ technical submissions not intended for duplication shall be of a type which will produce an impression facsimile of the seal, or a rubber stamp which will produce an ink facsimile of the seal. The seal required for use on transparent original ~~contract documents~~ technical submissions intended for duplication shall be of a type which will produce an ink facsimile of the seal such as a rubber stamp, or ~~computer generated type.~~ a substantially similar electronic or digital representation of the design. The use of pre-printed documents bearing a pre-printed facsimile of the seal is prohibited. Technical submissions shall be defined to mean plans, drawings, specifications, studies and other technical reports prepared for use in this state in the course of practicing architecture.
- (5) Individual Seal, Signature and Date Required. Architects shall affix their seal on one original of all their drawings and sets of specifications prepared by them for use in this State as follows:
- (A) on each design and each drawing;
- (B) on the index page identifying each set of specifications; and
- (C) on the index page of all other technical submissions.
- The original signature of the individual named on the seal shall be considered part of an individual seal and appear across the face of each original seal imprint along with the date of affixation. For the purposes of this Rule, the term "for use in this State" means drawings and sets of specifications prepared for bidding, permitting or for construction. For purposes of this Rule, "original" means the version of drawings and sets of specifications from which all lawful copies can be made.
- (6) Presentation Documents. Presentation documents (renderings, drawings used to communicate conceptual information only) are not required to be sealed or signed.
- (7) Incomplete Documents. Documents considered incomplete by the architect may be released for interim review without the architect's seal or signature affixed, but shall be dated, bear the architect's name and be conspicuously marked to clearly indicate the documents are for interim review and not intended for bidding, permit, or construction purposes.
- (8) Sheets or Pages Prepared By Licensed Professional Consultants. Those sheets or pages prepared by licensed professional consultants (such as, for example, structural, mechanical or electrical engineers) retained by the architect shall bear the seal and registration number of the consultant responsible ~~therefore.~~ therefore and shall not be sealed by the architect.
- (9) Original Signature. The use of signature reproductions such as rubber stamps or computer generated or other facsimiles shall not be permitted in lieu of actual signatures. signatures; provided, however, a digital signature as defined in Paragraph (f) of this Rule may be used in lieu of a hand written signature.
- (10) Security of Seal. Authorized use of the prescribed seal is an individual act whereby the architect must personally sign over the imprint of the seal. The architect is responsible for security of the seal when not in use.
- (11) Use of Corporate Seal. The use of the corporate seal does not replace the statutory requirement for an architect's individual seal as required in Paragraph (d). The corporate seal must be affixed in addition to the individual seal on the cover sheet and each page of the table of contents of specifications and drawings.
- (b) Standard Design Documents. Standard design documents prepared by architects who are registered in this state or in their

state of origin may be sealed by a succeeding licensed architect registered in North Carolina provided:

- (1) the seal of the original architect appears on the documents to authenticate authorship;
- (2) the words "standard design document" be placed on each sheet of the documents by the original architect;
- (3) the succeeding North Carolina architect clearly identifies all modifications to the standard design documents;
- (4) the succeeding North Carolina architect assumes responsibility for the adequacy of the design for the specific application in North Carolina and for the design conforming with applicable building codes; and
- (5) the succeeding North Carolina architect affixes his seal to the standard design documents and a statement substantially as follows: "These documents have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and I assume responsibility for the adequacy of the design for the specific application in North Carolina."

(c) Record Drawings – Post Construction record drawings prepared by an architect, but based upon representations of contractors, are not plans that are for "bidding, permit or construction purposes" and therefore need not be sealed by the architect as long as the documents bear the name of the architect and include language stating "these drawings are based in part upon the representations of others and are not for bidding, permit or construction purposes".

~~(d)~~ Direct Supervision. Responsible Control No architect shall affix his seal and signature to contract documents developed by others not under his ~~direct supervision. Direct supervision includes~~ responsible control. Responsible control includes:

- (1) Dissemination of programmatic requirements.
- (2) Ongoing coordination and correlation of services with other aspects of the total design of the project,
- (3) Verification with consultant that owner's requirements are being met,
- (4) Authority over the services of those who assisted in the preparation of the documents,
- (5) Assumption of responsibility for the services, and
- (6) Incorporation of services into design documents to be issued for permitting purposes.

(e) Incidental Practice of Engineering. - An architect shall prepare no engineering documents except those documents clearly defined as engineering incidental to the practice of architecture. An architect who performs the incidental practice of engineering shall maintain supporting data that is adequate to refute the Board's presumption that the architect is not qualified prepare engineering documents. "Incidental Practice of Engineering" means:

- (1) a minor engineering item, but not a complete engineering system;
- (2) work of a secondary nature that is typically a smaller portion of the main engineering project;
- (3) work that is an addition to the main engineering system and does not affect the primary engineering system. Incidental engineering items are usually included in the architectural drawings.

(f) For purposes of this Rule the term "Signature" shall mean handwritten or digital as follows:

- (1) A handwritten message identification containing the name of the person who applied it; or
- (2) A digital signature that is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be:
 - (A) Unique to the person using it,
 - (B) Capable of verification,
 - (C) Under the sole control of the person using it, and
 - (D) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed. A digital signature that uses a process approved by the board will be presumed to meet the criteria set for in Parts (f)(2)(A) through (2)(D) of this Rule.

Authority G.S. 83A-6; 83A-10; 83A-12.

21 NCAC 02 .0208 DISHONEST CONDUCT

- (a) Deception. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for registration renewal.
- (b) Contributions. An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the ~~judgement~~ judgment of an existing or prospective client in connection with a project in which the architect is interested.
- (c) Registration of Others. An architect shall not assist the application for registration of a person known by the architect to be unqualified with respect to education, training, experience, or character.
- (d) Knowledge of Violation. An architect possessing knowledge of a violation of these Rules by another architect shall report such knowledge to the Board.

Authority G.S. 14-353; 83A-6; 83A-14; 83A-15.

21 NCAC 02 .0209 UNPROFESSIONAL CONDUCT

In addition to those grounds as stated in G.S. 83A-15(3) the following acts or omissions, among others, may be deemed to

be "unprofessional conduct", and to be cause for the levy of a civil penalty or for denial, suspension, or revocation of a license or certificate of registration to practice architecture:

- (1) **Compliance With Laws.** It shall be deemed unprofessional conduct for an architect, in the conduct of his or her professional practice, to knowingly violate any state or federal criminal law. A criminal conviction shall be deemed prima facie evidence of knowingly violating the law.
- (2) **Compliance With Foreign Registration.** It shall be deemed unprofessional conduct for an architect to knowingly violate the laws governing the practice of architecture or the rules promulgated by any other architectural licensing board in any United States jurisdiction. A finding by a foreign architectural registration board that an architect has violated a law or rule governing the practice of architecture shall be deemed prima facie evidence of knowingly violating the law or rule.
- (3) **Product Specification.** It shall be deemed unprofessional conduct for an architect to solicit or accept financial or other valuable consideration from material or equipment suppliers for specifying their products.
- (4) **Advertising.** It shall be deemed unprofessional conduct for an architect to engage in any false, deceptive, fraudulent, or misleading advertising.
- (5) **False Statements.** It shall be deemed unprofessional conduct for an architect to knowingly make false statements about the professional work or to maliciously injure the prospects, practice, or employment position of others active in the design and construction of the physical environment.
- (6) **Evasion.**
 - (a) It shall be deemed unprofessional conduct for an architect, through employment by building contractors, or by another not holding an individual or corporate certificate from the Board, to enable the employer to offer or perform architectural services, except as provided in G.S. 83A-13. In design/build arrangements, the architect shall not be an employee of a person or firm not registered or licensed to practice architecture in North Carolina.
 - (b) It shall be deemed unprofessional conduct for an architect to furnish limited services in such manner as to enable owners, draftsmen, or others to evade the public health and safety requirements of Chapter 83A, G.S.

133-2, ~~G.S. 153A-26~~, G.S. 153A-357, or G.S. 160A-417.

- (c) When building plans are begun or contracted for by persons not properly licensed and qualified, it shall be deemed unprofessional conduct for an architect to take over, review, revise, or sign or seal such drawings or revisions thereof for such persons, or do any act to enable either such persons or the project owners, directly or indirectly, to evade the requirements of Chapter 83A, G.S. 133-2, ~~G.S. 153A-26~~, G.S. 153A-357, or G.S. 160A-417.
- (7) **Branch Office.** It shall be deemed unprofessional conduct for an architect to maintain or represent by sign, listing, or other manner that he maintains an architectural office or branch office unless such office is continuously staffed with a registered architect in charge. Provided, however, that this Rule does not apply to on-site project offices during construction.
- (8) **Misrepresentation Regarding Prior Experience.** An architect shall accurately represent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.
 - (a) It shall be the responsibility of each registered architect to clearly and appropriately state prior professional experience of the architect and/or the firm the architect is representing in presenting qualifications to prospective clients, both public and private. If an architect uses visual representations of prior projects or experience, all architects-of-record must be clearly identified. Architect-of-record means persons or entities whose seals appear on plans, specifications and/or contract documents.
 - (b) An architect who has been an employee of another architectural practice may not claim unconditional credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of his/her participation in the project.

- (c) An architect who was formerly a principal in a firm may legitimately make additional claims provided he/she discloses the nature of ownership in the previous architectural firm (e.g. stockholder or junior partner) and identifies with specificity his/her responsibilities for that project.
 - (d) An architect who presents a project that has received awards recognition must comply with the requirements in Subparagraph (8) of this Rule with regard to project presentation to the public and prospective clients.
 - (e) Projects which remain unconstructed and which are listed as credits should be listed as "unbuilt or a similar designation.
- (9) **Influencing Government Officials.** An architect shall neither offer nor make any payment or gift to a government official (whether elected, employed or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.
 - (10) **Fee Bidding on Public Projects.** An architect shall not knowingly cooperate in a violation of any provisions of G.S. 143-64.31.
 - (11) **Cooperation with Board.** An architect shall fully cooperate with the Board in connection with any inquiry it shall make. Full cooperation includes responding in a timely manner to all inquiries of the Board or representative of the Board and claiming Board correspondence from the U.S. Postal Service.
 - (12) Copyright Infringement. It shall be deemed unprofessional conduct for an architect to be found by a court to have infringed upon the copyrighted works of other architects or design professionals.

Authority G.S. 83A-6; 83A-14; 83A-15.

21 NCAC 02 .0210 INCOMPETENCE

- (a) In practicing architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.
- (b) In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.

- (c) An architect shall undertake to perform professional services only when he, together with those whom the architect may engage as consultants, are qualified by education, training and experience in the specific technical areas involved.
- (d) No person shall be permitted to practice architecture, if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.
- (e) Architects preparing plans for building permits for projects not exempt under G.S. 83A-13 shall submit plans that are reasonably complete and buildable. Such plans shall conform with the State Building Code and local plan submission requirements. Professional judgment shall be exercised to reflect sufficient documentation necessary for plan approval. Provided, however, this Rule does not alter any standard of liability applicable to licensees

Authority G.S. 83A-6; 83A-14; 83A-15.

21 NCAC 02 .0213 INDIVIDUAL LICENSES

- (a) **Renewal.** Licenses must be renewed on or before the first day of July in each year. No less than 30 days prior to the renewal date, a renewal application shall be mailed to each individual licensee. The licensee shall complete the current license renewal form adopted by the Board, including continuing education credit earned. The completed form for license renewal, along with the annual license renewal fee shall be forwarded to the Board. If the application form is incomplete or the annual renewal fee is not paid, the application for renewal shall not be accepted. Also, if the accompanying draft or check in the amount of the renewal fee is dishonored by the architect's drawee bank for any reason, the annual license renewal shall be deemed to be not renewed. Once the annual renewal has been completed according to the provisions of G.S. 83A-11, as well as Section .0900 of these Rules, the Executive Director shall issue to the licensee a current license for the ensuing year.
- ~~(b) **Late Renewal and Reinstatement.** If the Board has not received the annual renewal fee and completed application on or before August 1st, the license shall be deemed automatically revoked. The license may be renewed at any time within one year following August 1st, upon the return of the completed application, the annual renewal fee and the late renewal penalty and compliance with Section .0900 of these Rules. After one year from the date of revocation for non payment of the annual renewal fee, reinstatement shall occur according to the directives of G.S. 83A-11 and Section .0900 of these Rules.~~
- Late Renewal and Reinstatement.** If the Board has not received the annual renewal fee and completed application on or before July 1st, the license shall expire and be deemed delinquent. The license may be renewed at any time within one year, upon the return of the completed application, the annual renewal fee and the late renewal penalty and compliance with Section .0900 of these Rules. After one year from the date of expiration for non payment of the annual renewal fee the license shall be deemed automatically revoked. Reinstatement shall occur according to the directives of G.S. 83A-11 and Section .0900 of these Rules

Authority G.S. 83A-6; 83A-11.

21 NCAC 02 .0217 ARCHITECT EMERITUS

~~Upon request, a licensee may apply for architect emeritus status. Such request must be accompanied by a renewal application and the annual renewal fee on or before the first day of July in each year. An architect who is granted such status may use only the title "architect emeritus," and may not actively engage in the practice of architecture nor seal any documents as an architect. Resident architects who have been registered in this state who are retired from active practice or other related professional activities in any jurisdictions whatsoever, may apply for "Emeritus Status" by submitting a form provided by the Board showing compliance with the requirements of this Section. "Retired" means that the architect no longer practices architecture in that he/she no longer seals and certifies documents with his/her seal or otherwise offers to practice or practices architecture as defined in G.S. 83A-1 as amended. Nonresident architects who have been continuously certified by NCARB who are retired from active practice [or other related professional activities] in any jurisdictions whatsoever, and who are "emeritus", inactive or retired in every other jurisdictions in which they are licensed may also apply for "Emeritus Status" by submitting a form provided by the Board showing compliance with the requirements of this Section . Any such "architect emeritus" must renewal that status on forms provided by the Board on or before the first day of July in each year. Any reference to an architect on "Emeritus Status" on any letter, title, sign, card or device shall list such architect as "Architect Emeritus".~~

Authority G.S. 83A-4; 83A-6; 83A-11; 83A-12.

21 NCAC 02 .0220 NON-RESIDENT FIRM OFFERING TO PRACTICE

~~A non-resident architectural firm, duly authorized to practice architecture in its principal state of business may, for the purposes of offering to practice architecture and prior to rendering services in this state, respond to a requests for proposal if:~~

- ~~(1) The non-resident firm complies with registration requirements prior to becoming engaged to render services in this state; and~~
- ~~(2) The firm consents to the jurisdiction of the board; and~~
- ~~(3) One member of the non-resident architectural firm holds a valid NCARB Certificate; and~~
- ~~(4) The non-resident firm discloses in writing to the prospective client that the firm is not yet registered in this State but represents that it can be registered in this State.~~

Authority 83A-1(7); 83A-6(2); 83A-7(b).

SECTION .0300 - EXAMINATION PROCEDURES

21 NCAC 02 .0302 EXAMINATION

(a) Licensure Examination. All applicants for architectural registration in North Carolina by examination must pass the Architectural Registration Examination (ARE), prepared by the National Council of Architectural Registration Boards

(NCARB). Provided, applicants who have never been registered in any state or territory may transfer credits for portions of the examination previously passed in another state if at the time of taking the exam elsewhere they otherwise qualified for taking the exam under the rules in this Chapter.

- (1) Description. The nature of the examination is to place the candidate in areas relating to actual architectural situations whereby his abilities to exercise competent value judgments will be tested and evaluated.
- (2) Qualifications. The prequalifications necessary for an applicant's admission to the Architectural Registration examination (ARE) are as follows:

- (A) be of good moral character as defined in G.S. 83A-1(5);
- (B) be at least 18 years of age;
- (C) ~~beginning July 1, 1991, the professional education qualification shall be a~~ is the NAAB (National Architectural Accrediting Board) accredited professional degree in architecture; ~~provided that an applicant whose education equivalents otherwise qualified under the Board's rules in effect prior to 1989 may apply for admission to the Architectural Registration Examination. However, an applicant who does not hold a NAAB accredited professional degree may not accumulate more than three and one half years of education credits in the aggregate from all degree programs in which he was enrolled. Further provided, the applicant must file with the Board by December 31, 1991, a notice of intent to sit for the examination on or before June 30, 1995;~~
- (D) ~~if an applicant failed to send the notice of intent under Part (a)(2)(C) of this Rule and does not have the five year professional degree in architecture from an NAAB accredited institution, the Board in its discretion, may admit the applicant to sit for the ARE for the first time no later than the June 1996 exam only upon each of the following conditions:~~
 - (i) ~~the applicant received a four year degree in architecture from an NAAB accredited institution prior to 1989; and~~
 - (ii) ~~the applicant's education equivalents otherwise~~

~~qualified under the Board's rules in effect prior to 1989; and~~

~~(iii) the applicant completely qualified and applies for the exam no later than March 1, 1996; and~~

~~(iv) the applicant has demonstrated a continuing intention to seek licensure in North Carolina by either:~~

~~(I) completing the four-year degree in architecture in North Carolina; or~~

~~(II) obtaining the practical training or experience required by Part (a)(2)(E) of this Rule in North Carolina; and~~

~~(E)(D)~~ all applicants who apply for architectural registration ~~subsequent to July 1, 1987~~ shall be required to follow the Intern Development Program (IDP) through the National Council of Architectural Registration Boards or an equivalent program approved by the North Carolina Board of Architecture in order to satisfy the requirements of this Section.

(b) Retention of Credit. ~~Transfer credits for parts of the examination passed prior to the 1983 Architectural Registration Examination (ARE), shall be as established by the Board. Information as to transfer credits shall be available at no cost at the Board Office. Passing grades on any part of the ARE shall remain valid for a period of time established by the exam provider, NCARB.~~

(c) Practical Training. Practical training means practical experience and diversified training as defined by the Intern Development Program (IDP) through the National Council of Architectural Registration Boards. However, the Board reserves the right to judge each case on its own merits.

(d) Personal Audience. The candidate may be required to appear personally before the examining board or a designated representative of the Board and afford the Board an opportunity to judge his natural endowments for the practice of architecture, his ethical standards, and by questions gain further knowledge of his fitness for the practice of architecture. The time for this audience will be set by the examining body.

(e) Grading. The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB.

(1) An applicant must receive a passing grade in each division. Grades from the individual divisions may not be averaged. A passing grade for any division on any examination

taken after July 1, 1996 and before January 1, 2006, shall be valid only for five years.

(2) Each candidate shall be assigned a number by ~~the Board~~ that will be unique for each candidate. ~~This number together with photo identification, shall be required for admittance to the examination.~~

(f) A person currently employed under the responsible control of an architect, who holds a first Professional Degree from a NAAB accredited program, and who maintains in good standing or has successfully completed a National Council of Architectural Registration Boards Record in the Intern Development Program (IDP) may use the title "Architectural Intern" in conjunction with his current employment.

Authority G.S. 83A-1; 83A-6; 83A-7.

21 NCAC 02 .0303 REGISTRATION BY RECIPROcity WITHOUT WRITTEN EXAMINATION

(a) Registration by "Blue Cover." The only means of individual reciprocity recognized by the Board is for an individual to hold a current license in good standing from another state and a Council Certificate (also known as "Blue Cover") issued by the National Council of Architectural Registration Boards (NCARB) or comply with the requirements of Paragraph (b) of this Rule. Upon receipt of a verified application from NCARB and the payment of the individual license application fee, the Board, in its discretion, may issue a license to an applicant without written examination as provided in G.S. 83A-7(b). Revocation of the "Blue Cover" certificate by NCARB shall automatically terminate the architect's license to practice in North Carolina until such time as the "Blue Cover" is reinstated by NCARB.

(b) Registration other than "Blue Cover." The Board may grant a reciprocal certificate to an individual who does not hold qualify for a "Blue Cover" but who submits an NCARB "Buff Cover", or other verified evidence that he meets the following requirements:

- (1) the applicant has been continuously licensed in good standing in another jurisdiction; and
- (2) the applicant otherwise met the requirements for the "Blue Cover" or North Carolina registration in effect at the time of his original registration as an architect; and
- (3) the applicant agrees to an interview with the Board or a designee to satisfy the Board that he has had sufficient recent architectural practice experience to be able to competently practice architecture in this state.

(c) Conditional reciprocal registration – A non-resident individual having no office established in this state may, prior to transmittal of an NCARB Council Registration as provided in Paragraph (a) of this Rule, be issued a license by the Board pending full compliance with Paragraph (a) of this Rule if the applicant meets each of the following conditions:

- (1) has and maintains NCARB certification in good standing.

- (2) is and remains licensed in good standing in the jurisdiction in which he has his principal place of business.
- (3) does not reside in nor establish an office in North Carolina.
- (4) agrees to comply with all the laws and rules pertaining to the practice of architecture in this state.
- (5) consents to the jurisdiction and venue of this Board.
- (6) agrees to comply with the registration requirement of Paragraph (a) of this Rule prior to agreeing to render or rendering any services included in the definition of the "practice of architecture" in this state.
- (7) submits an application and reciprocal registration fee within 45 business days of receipt of notice of award of the contract.
- (8) agrees to comply with the requirements of Paragraph (a) of this Rule prior to the renewal of this license or the events described in Subparagraph (6) of this Paragraph, whichever first occurs.
- (9) limits his architecture practice in this state to offering to render architectural services, and
- (10) does not allow any individual or firm not licensed in this state to offer or render architectural services through his license or otherwise trade upon this license.

Authority G.S. 83A-6; 83A-7.

SECTION .0900 - CONTINUING EDUCATION

21 NCAC 02 .0901 SCOPE

- (a) The rules in this Section set forth the continuing education requirements to be earned by registrants. ~~registrants in calendar year 1999 and reported for renewal by July 1, 2000.~~
- (b) ~~These Rules shall apply to every active registrant except those excepted by Rule .0906 of this Section.~~

Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11.

21 NCAC 02 .0904 DETERMINATION OF CREDIT

- (a) The Board has final authority with respect to approval of course sponsors, courses, programs, and contact hours.
- (b) The Board shall not pre-approve individual courses or programs. The Board may enter into agreements with course and program sponsors in which the sponsor agrees to offer courses and programs that comply with the subject matter requirements of G.S. 83A-6(a) and the credit calculation requirements of Rule .0902 of this Section, agrees to maintain for a period of two years records of course content and attendance, and agrees to permit a representative of the Board to monitor or review any course or program the sponsor offers to North Carolina registrants for credit. Courses or programs offered and approved by the American Institute of Architects and other approved course sponsors shall indicate, in advance, the contact hours for each course or program. Provided the

sponsor complies with the sponsor agreement, the Board shall accept as presumptively valid contact hours earned by registrants from approved sponsors.

(c) ~~Credit for the Architect Development Verification Program or Credit for the Monographs developed by the National Council of Architectural Registration Boards (NCARB) shall be approved for the contact hours assigned by NCARB.~~

(d) Credit for teaching or instructing qualifying courses or programs shall be twice the contact hours earned by participants and shall be claimed for credit only once.

(e) Registrants may claim contact hours for courses or programs that have not been presented by approved sponsors but only credit from approved sponsors shall be presumptively valid. The Board may randomly audit the compliance of individual registrants and require proof in the form of records maintained pursuant to Rule .0905(b) of this Section of participation in courses or programs that conform with the content and contact hours calculation requirements contained in G.S. 83A-6(a) and these Rules.

Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11.

21 NCAC 02 .0906 EXCEPTIONS

A registrant shall be exempt from the continuing education requirements for any of the following reasons:

- (1) New registrants by way of examination or reciprocity for the current registration year.
- (2) A registrant serving on temporary active duty in the armed forces of the United States for a period of time exceeding 90 consecutive days in a ~~year~~ year or as provided by statute, whichever is greater.
- (3) Registrants experiencing physical disability or illness if supporting documentation is approved by the Board. Such documentation shall be in the form of a sworn statement by the registrant, a statement from a physician, or medical records which show that the disability or illness prevented registrant's participation in a course which the registrant had enrolled, or prevented registrant's participation in the continuing education program for at least 90 consecutive days in a year.
- (4) Registrants who receive emeritus status from the Board. In order to return to active practice, registrants shall complete continuing education requirements for each exempted year not to exceed two years.

Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11.

21 NCAC 02 .0910 NON-COMPLIANCE

- (a) If any credits are disallowed by the Board, then the registrant shall have 90 calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements.

(b) Failure to comply with the requirements of this Section shall result in non renewal of registration with the following exceptions:

- (1) After the first year of implementation of these requirements, the registrant shall be renewed and assessed a two hundred fifty dollars (\$250.00) civil penalty. Said civil penalty shall be stayed and shall be dismissed if the required contact hours are earned prior to the next renewal.
- (2) After the second year of implementation of these requirements, the registrant shall pay the civil penalty of two hundred fifty dollars (\$250.00).

(b) Licensees who fail to complete the continuing education requirement by the end of the previous calendar year shall have his or her license placed on probation and shall complete the outstanding continuing education by December 30th of the current calendar year. If the licensee fails to complete the outstanding continuing education requirements his or her license shall be suspended for 60 days. If the licensee fails to complete the outstanding continuing education within the suspension period his or her license shall be revoked

Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11; 83A-15.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16B .0401-.0406, amend the rules cited as 21 NCAC 16B .0101, .0201-.0202, .0301, .0303, 16M .0101 and repeal the rules cited as 21 NCAC 16B .0203, .0304-.0309, .0315.

Proposed Effective Date: March 1, 2006

Public Hearing:

Date: November 17, 2005

Time: 8:00 p.m.

Location: Board Office, 15100 Weston Parkway, Suite 101, Cary, NC 27513

Reason for Proposed Action: To adopt and amend dental licensure and examination rules pursuant to recent amendments to G.S. 90-30 and 90-39 allowing the Board to administer its own dental licensure examination or to accept the results of other Board-approved regional or national third-party clinical examinations. Subchapter 16B, Section .0100 will cover general provisions for licensure. Subchapter 16B, Section .0200 will cover qualifications for dental licensure. A new section .0400 will cover licensure by Board examination. The existing Section .0400 will be renumbered to .0500. Existing Section .0500 will be renumbered to Section .0600 and existing Section .0600 will be renumbered to Section .0700. 21 NCAC 16M .0101 will be amended to set out a fee for general dentistry license and to set out a Board examination processing fee.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections regarding the proposed rules changes to Bobby White, North Carolina State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513.

Comments may be submitted to: Bobby White, NC State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513

Comment period ends: January 3, 2006

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 16B - LICENSURE DENTISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16B .0101 EXAMINATION REQUIRED

All persons desiring to practice dentistry in North Carolina are required to appear before the Board and pass Board approved written and clinical examinations before receiving a license.

Authority G.S. 90-28; 90-30; 90-36; 90-38; 90-48.

SECTION .0200 - QUALIFICATIONS

21 NCAC 16B .0201 IN GENERAL

(a) An applicant for licensure as a dentist must be a graduate of and have a diploma from a reputable university or college accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) Graduates of foreign colleges may be accepted as applicants for licensure after completing at least two years in a dental school accredited by the Commission on Accreditation of the American Dental Association, passing Board approved written and clinical examinations, and graduating with a dental degree from that dental school.

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

21 NCAC 16B .0202 STUDENT MAY APPLY

Applications for a dental license will be accepted from students currently enrolled in schools of dentistry who expect to graduate prior to the examination. ~~receiving a license. Such applications will automatically be deemed denied if the applicant should fail to complete the required course of study satisfactorily. or fail Board approved licensure examinations.~~

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

21 NCAC 16B .0203 TRANSCRIPTS REQUIRED

Applicants are required to furnish transcripts of undergraduate college and dental college credits. ~~These transcripts are to accompany the application, or may be mailed to the Board's office from the record department of each school attended.~~

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

SECTION .0300 - APPLICATION FOR LICENSURE

21 NCAC 16B .0301 APPLICATION FOR LICENSURE

(a) All applications are to be made on the forms furnished by the Board, and no application shall be deemed complete which does not set forth all the information required by said Board relative to the applicant. Any candidate who changes his address should immediately notify the Board office. Applicants are required to furnish transcripts of undergraduate college and dental college credits.

(b) The application fee shall accompany the application. Such fee is non-refundable.

(c) Applicants who are licensed in other states shall furnish verification of licensure from the secretary of the dental board of each state in which they are licensed. A photograph, taken within six months prior to the date of the application, must be affixed to the application.

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

(e) All applicants shall submit to the Board examination scores as required by Rule .0303(a) of this Subchapter. All applicants shall furnish to the Board examination scores as required by Rule .0303(c) of this Subchapter, if applicable.

Authority G.S. 90-28; 90-30; 90-39; 90-48.

21 NCAC 16B .0303 BOARD APPROVED EXAMINATIONS

A fee of five hundred dollars (\$500.00) for each examination or re-examination must accompany the application. ~~Such fee is non-refundable.~~

(a) The Board, having reviewed and evaluated the written examinations as administered by the Joint Commission on National Dental Examinations and having found the same to be reliable, accurate and valid examinations, has adopted as part of

its written examination the National Board Dental Examination. Applicants for dental licensure shall achieve a passing score upon such examination. Each applicant shall be responsible for furnishing to the Board the National Board score.

(b) All applicants for dental licensure shall achieve passing scores on the Board's sterilization and jurisprudence examinations. Additional written examinations may be given in such areas or subject matter fields as the Board may designate.

(c) The Board, having reviewed and evaluated the clinical examinations as administered by the Council of Interstate Testing Agencies (CITA) and having found the same to be reliable, accurate and valid examinations, shall accept passing scores upon such examinations in order to fulfill the clinical examination component for dental licensure. The Board shall accept scores upon such examinations for a period of five years following the date of such examinations. Each applicant will be responsible for furnishing to the Board the applicant's scores.

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

21 NCAC 16B .0304 OTHER REQUIREMENTS

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

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

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

21 NCAC 16B .0305 TIME FOR FILING

~~The completed application, fee, photographs, and undergraduate college and dental school transcripts must be postmarked or delivered to the Board's office at least 90 days prior to the date of examination. Dental school transcripts for those still in dental school must be sent in upon graduation and before the examination date. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.~~

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

21 NCAC 16B .0306 FOREIGN GRADUATES

~~Graduates of foreign colleges may, at the discretion of the Board, be accepted as candidates for examination after completing at least two years in a dental school accredited by the Commission on Accreditation of the American Dental Association and graduating with a dental degree from that dental school.~~

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

21 NCAC 16B .0307 EXAMINATIONS

~~(a) The Board, having reviewed and evaluated the written examinations as administered by the Joint Commission on National Dental Examinations and having found the same to be reliable, accurate and valid examinations, has adopted as part of its written examination the National Board Dental Examination. Applicants for dental licensure must achieve a passing score upon such examination. The results of the National Board Dental Examination will be required by the Board before the candidate will be admitted for clinical examination. Each applicant will be responsible for furnishing to the Board the National Board score.~~

~~(b) Additional written examinations may be given in such areas or subject matter fields as the Board may designate.~~

~~(c) Each candidate is required to present a dental diploma or certification of completion of requirements for graduation at the initial examination session.~~

~~(d) Written instructions designating the subject areas to be covered will be made available to candidates prior to the date fixed for each examination.~~

~~(e) Each candidate will be given a numbered badge. This badge will contain the candidate's photograph and will be presented to the candidate at the opening session. The number on the badge will be the only identification allowed on any paper or manuscript during this examination. This badge must be returned to the Board at the completion of the examination.~~

~~(f) The Board reserves the right to dismiss any candidate who may be detected using or attempting to use any unfair assistance. If such violation is discovered by the Board after a license has been issued to the violator, the license will be revoked.~~

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

21 NCAC 16B .0308 PATIENTS AND SUPPLIES FOR CLINICAL EXAM

~~(a) Each candidate must furnish his own patients and instruments for the clinical examination. Additional instructions concerning supplies will be mailed to each candidate. A dental unit, chair, and stand to hold instrument cases are available for each candidate.~~

~~(b) Supplies necessary for all clinical work are provided except gold and artificial teeth.~~

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

21 NCAC 16B .0309 SCOPE OF CLINICAL EXAMINATION

~~(a) The clinical examination may cover such of the following subject areas as the Board may designate:~~

- ~~(1) Clinical operative dentistry;~~
- ~~(2) Oral surgery, radiography, radiographic interpretation and oral diagnosis;~~
- ~~(3) Fixed and removable prosthodontics;~~
- ~~(4) Periodontics;~~
- ~~(5) Simulated clinical procedures;~~
- ~~(6) Endodontics.~~

~~(b) Each classification will be examined separately by at least three examiners.~~

~~(c) The clinical examination will begin and end promptly as designated.~~

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

21 NCAC 16B .0315 REEXAMINATION

~~(a) A complete application, except for school transcripts and National Board scores, is required in case of reexamination.~~

~~(b) Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, shall successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination and shall provide additional experience and expertise in clinical dentistry for the applicant. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.~~

~~(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period from the date of the initial examination and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination within the one year period, the applicant must retake both the written and clinical portions of the examination upon reexamination subsequent to the one year period. Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times shall successfully complete an additional course of study, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.~~

~~(d) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination need not retake the written portion of the examination upon subsequent reexamination during one calendar year.~~

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

SECTION .0400 – LICENSURE BY CREDENTIALS

21 NCAC 16B .0401 APPLICATION FOR BOARD EXAMINATION

(a) All applications are to be made on the forms furnished by the Board, and no application shall be deemed complete which does not set forth all the information required by said Board relative to the applicant. Any candidate who changes his address should immediately notify the Board office.

(b) The fee for each examination or re-examination must accompany the application. Such fee is non-refundable.

(c) A photograph, taken within six months prior to the date of the application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-

clipped to the application to be used as part of the identification badge.

Authority G.S. 90-28; 90-30; 90-39; 90-41; 90-48.

21 NCAC 16B .0402 TIME FOR FILING

The completed application, fee, photographs, and undergraduate college and dental school transcripts must be postmarked or delivered to the Board's office at least 90 days prior to the date of examination. Dental school transcripts for those still in dental school must be sent in upon graduation. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

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

21 NCAC 16B .0403 BOARD EXAMINATION

(a) Written instructions designating the subject areas to be covered will be made available to candidates prior to the date fixed for each examination.

(b) Each candidate will be given a numbered badge. This badge will contain the candidate's photograph and will be presented to the candidate at the opening session. The number on the badge will be the only identification allowed on any paper or manuscript during this examination. This badge must be returned to the Board at the completion of the examination.

(c) The Board reserves the right to dismiss any candidate who may be detected using or attempting to use any unfair assistance. If such violation is discovered by the Board after a license has been issued to the violator, the license will be revoked.

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

21 NCAC 16B .0404 PATIENTS AND SUPPLIES FOR BOARD CLINICAL EXAMINATION

(a) Each candidate must furnish his own patients and instruments for the clinical examination. Additional instructions concerning supplies will be mailed to each candidate. A dental unit, chair, and stand to hold instrument cases are available for each candidate.

(b) Supplies necessary for all clinical work are provided except gold and artificial teeth.

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

21 NCAC 16B .0405 SCOPE OF BOARD CLINICAL EXAMINATION

(a) The clinical examination may cover such of the following subject areas as the Board may designate:

- (1) Clinical operative dentistry;
- (2) Oral surgery, radiography, radiographic interpretation and oral diagnosis;
- (3) Fixed and removable prosthodontics;
- (4) Periodontics;
- (5) Simulated clinical procedures;
- (6) Endodontics.

(b) Each classification will be examined separately by at least three examiners.

(c) The clinical examination will begin and end promptly as designated.

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

21 NCAC 16B .0406 BOARD REEXAMINATION

(a) A complete application is required in case of reexamination.

(b) Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, shall successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination and shall provide additional experience and expertise in clinical dentistry for the applicant. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period from the date of the initial examination and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination within the one year period, the applicant must retake both the written and clinical portions of the examination upon reexamination subsequent to the one year period. Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times shall successfully complete an additional course of study, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(d) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination need not retake the written portion of the examination upon subsequent reexamination during one calendar year.

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

SUBCHAPTER 16M - FEES PAYABLE

SECTION .0100 – FEES PAYABLE

21 NCAC 16M .0101 DENTISTS

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

- (1) Application for general dentistry ~~examination~~ license \$675.00\$ 395.00
- (2) Renewal of general dentistry license \$ 189.00
- (3) Application for instructor's license or renewal thereof \$ 140.00

- (4) Application for provisional license
\$ 100.00
- (5) Application for intern permit or renewal thereof
\$ 150.00
- (6) Certificate of license to a resident dentist desiring to change to another state or territory
\$ 25.00
- (7) Duplicate license
\$ 25.00
- (8) Reinstatement of license after retirement from practice in this State
\$ 225.00
- (9) Fee for late renewal of any license or permit
\$ 50.00
- (10) Application for license by credentials
\$ 2000.00
- (11) Application for limited volunteer dental license
\$ 100.00
- (12) Renewal of limited volunteer dental license
\$ 25.00
- (13) Board examination processing fee
\$ 1400.00

(b) Each dentist renewing a license to practice dentistry in North Carolina shall be assessed a fee of forty dollars (\$40.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

Authority G.S. 90-28; 90-39; 90-48; 150B-19(5).

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rules cited as 21 NCAC 32S .0101-.0102, .0104, .0108-.0112, .0118 and repeal the rule cited as 21 NCAC 32S .0103.

Proposed Effective Date: March 1, 2006

Public Hearing:

Date: December 6, 2005

Time: 10:00 a.m.

Location: North Carolina Medical Board, Hearing Room, 1203 Front St. Raleigh, NC 27609

Reason for Proposed Action: *To update physician assistant rules in order to streamline the administrative process of approving a physician assistant to perform medical acts, tasks and functions and to ensure clinical competency for physician assistants reactivating an inactive license.*

Procedure by which a person can object to the agency on a proposed rule: *A person may submit objections to the proposed amendments by January 3, 2006 by writing to R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609.*

Comments may be submitted to: *R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front St., Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-1131, email david.henderson@ncmedboard.org.*

Comment period ends: January 3, 2006

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 32S - PHYSICIAN ASSISTANT REGULATIONS

21 NCAC 32S .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the North Carolina Medical Board.
- (2) "Physician Assistant" means a person licensed by and registered with the Board to perform medical acts, tasks, or functions under the supervision of a physician licensed by the Board, who performs tasks traditionally performed by the physician, and who has graduated from a physician assistant or surgeon assistant program accredited by the Commission on Accreditation of Allied Health Education Programs, or its predecessor or successor agencies.
- (3) "Physician Assistant License" means the document issued by the Board showing approval for the physician assistant to perform medical acts, tasks, or functions under North Carolina law.
- (4) "Registering" means paying the annual fee and providing the information requested by the Board as outlined in Rule .0105 of this Section.
- (5) "Supervising Physician" means a physician who is licensed by the Board and who is not prohibited by the Board from supervising

physician assistants. The physician may serve as a primary supervising physician or as a back-up supervising physician.

- (a) The "Primary Supervising Physician" is the physician who ~~who, by signing the application to the Board,~~ accepts full responsibility for the physician assistant's medical activities and professional conduct at all times, whether the physician personally is providing supervision or the supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume responsibility for assuring the Board that the physician assistant is qualified by education and training to perform all medical acts required of the physician assistant and shall assume responsibility for the physician assistant's performance in the particular field or fields in which the physician assistant is expected to perform medical acts.
- (b) The "Back-up Supervising Physician" means the physician who ~~who, by signing the statement required in Rule .0110 of this Section,~~ accepts the responsibility for supervision of the physician assistant's activities in the absence of the Primary Supervising Physician. The Back-up Supervising Physician is responsible for the activities of the physician assistant only when providing supervision.
- (6) "Supervising" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant.
- (7) "Supervisory Arrangement" is the written statement that describes the medical acts, tasks and functions delegated to the physician assistant by the primary supervisory physician appropriate to the physician assistant's qualification, training, skill and competence.
- ~~(7)~~(8) "Volunteer practice" means performance of medical acts, tasks, or functions without expectation of any form of payment or compensation.
- ~~(8)~~(9) "Examination" means the Physician Assistant National Certifying Examination or another examination as approved by the Board.

Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before the individual may practice as a physician assistant. The Board may grant a license as a physician assistant to an applicant who has met all the following criteria:

- (1) submits a completed application on forms provided by the Board;
- (2) pays the fee established by Rule .0121(1) in this Section;
- (3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Commission on Accreditation of Allied Health Education Programs or its predecessor or successor agencies and; if licensed in North Carolina after June 1, 1994, has successfully completed a licensing examination approved by the Board;
- (4) certifies that he or she is mentally and physically able to engage safely in practice as a physician assistant;
- (5) has no license, certificate, or registration as a physician assistant currently under discipline, revocation, suspension or probation for cause resulting from the applicant's practice as a physician assistant;
- (6) has good moral character;
- (7) submits to the Board any other information the Board deems necessary to evaluate the ~~applicant's~~ applicant's qualifications; and
- (8) if two years or more have passed since graduation from an approved program, the applicant must affirm submit documentation of the completion of that he/she has successfully completed at least 100 hours of continuing medication education (CME) during the preceding two years. The Board may, at its discretion, require submission of documentation of CME as part of application process.
- (9) An applicant may be required to appear, in person, for an interview with the Executive Director, a Board member, an agent of the Board, or the full Board upon completion of all credentials.

Authority G.S. 90-11; 90-18(13); 90-18.1.

21 NCAC 32S .0103 TEMPORARY LICENSE

- ~~(a) During the years prior to 2002, the Board may grant a temporary license, valid for a period not to exceed one year, to an applicant who meets the qualifications for a license except that the applicant has not yet passed a licensing examination approved by the Board. The Board shall not grant a temporary license to an applicant who has twice failed a licensing examination approved by the Board.~~
- ~~(b) A temporary license becomes void at the time the Board grants the physician assistant a full license or at the expiration date shown on the temporary license.~~

Authority G.S. 90-18(13); 90-18(c)(13); 90-18.1.

21 NCAC 32S .0102 QUALIFICATIONS FOR LICENSE

~~(e) A temporary license shall expire 30 days after the physician assistant receives notice of non passing scores on the second attempt of taking a licensing examination approved by the Board or at the expiration date of the temporary license, whichever is sooner. The licensee must notify the Board within 15 days upon the receipt of scores.~~

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0104 INACTIVE LICENSE STATUS

(a) By notifying the Board in writing any physician assistant may elect to place his or her license on an inactive status. A physician assistant with an inactive license shall not practice as a physician assistant. Any physician assistant who engages in practice while his or her license is on inactive status shall be considered to be practicing without a license, which shall be grounds for discipline under G.S. 90-14(a)(7). A physician assistant requesting reactivation from inactive status shall be required to pay the current renewal fee, to provide documentation to the Board verifying completion of continuing medical education during the preceding two years as required in Rule .0106 of this Section, and shall be required to meet the criteria for renewal as specified in 21 NCAC 32S .0105.

(b) A physician assistant requesting reactivation from inactive status that is more than year after the date the license became inactive shall be required to pay the current renewal fee, to provide documentation to the Board verifying completion of continuing medical education during the preceding two years as required in Rule .0106 of this Section, shall complete forms provided by the Board, shall provide proof that he/she has successfully completed a licensing examination approved by the Board, and shall be required to meet the criteria for renewal as specified in 21 NCAC 32S .0105.

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0108 SCOPE OF PRACTICE

(a) Physician assistants perform medical acts, tasks or functions with physician ~~supervision.~~ supervision pursuant to the supervisory arrangement as defined by Rule .0101(7) of this Section. Physician assistants perform those duties and responsibilities, including the prescribing and dispensing of drugs and medical devices, that are delegated by their supervising physician(s).

(b) Physician assistants shall be considered the agents of their supervising physicians in the performance of all medical practice-related activities, including but not limited to, the ordering of diagnostic, therapeutic and other medical services.

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0109 PRESCRIPTIVE AUTHORITY

A physician assistant is authorized to prescribe, order, procure, dispense and administer drugs and medical devices subject to the following conditions:

- (1) The physician assistant and the supervising physician(s) shall acknowledge that each is familiar with the laws and rules regarding prescribing and shall agree to comply with

these laws and rules by incorporating the laws and rules into the written prescribing instructions required for each approved practice site; and

- (2) The physician assistant has received from the supervising physician written instructions for prescribing, ordering, and administering drugs and medical devices and a written policy for periodic review by the physician of these instructions and policy; and
- (3) In order to compound and dispense drugs, ~~both the physician assistant and the supervising physician~~ must obtain approval from the Board of Pharmacy and must carry out the functions of compounding and dispensing by current Board of Pharmacy rules and any applicable federal guidelines; and
- (4) In order to prescribe controlled substances, the physician assistant must have a valid DEA registration and the physician assistant shall prescribe in accordance with information provided by the Medical Board and the DEA. All prescriptions for substances falling within schedules II, IIN, III, and IIIN, as defined in the federal Controlled Substances Act, shall not exceed a legitimate 30 day supply; and
- (5) Each prescription issued by the physician assistant shall contain, in addition to other information required by law, the following:
 - (a) the physician assistant's name, practice address, telephone number; and
 - (b) the physician's assistant's license number and, if applicable, the physician assistant's DEA number for controlled substances prescription; and
 - (c) the responsible supervising physician's (primary or back-up) name and telephone number; and
- (6) Documentation of prescriptions must be noted on the patient's record and must include the medication name and dosage, amount prescribed, directions for use, and number of refills.
- (7) Physician Assistants who request, receive, and dispense professional medication samples to patients must comply with all applicable state and federal regulations.

Authority G.S. 90-18(c)(13); 90-18.1; 90-171.23(14); 58 Fed. Reg. 31,171(1993) (to be codified at 21 C.F.R. 301).

21 NCAC 32S .0110 SUPERVISION OF PHYSICIAN ASSISTANTS

(a) A physician assistant may perform medical acts, tasks, or functions only under the supervision of a physician. Supervision shall be continuous but, except as otherwise

provided in these Rules, shall not be construed as requiring the physical presence of the supervising physician at the time and place that the services are rendered.

(b) It is the obligation of each team of physician(s) and physician assistant(s) to ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the skills of the supervising physician(s) as well as the physician assistant's level of competence; that the relationship of, and access to, each supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established. A primary supervising physician and a physician assistant in a new practice arrangement will meet monthly for the first six months to discuss practice relevant clinical problems and quality improvement measures. Thereafter, regular meetings between the primary supervising physician and the physician assistant shall occur no less than every six months. A record of these meetings shall be signed and dated by both the supervising physician and the physician assistant, and shall be available for inspection upon request by the Board's representative. ~~A statement—statement, as defined by Rule .0101(7) of this Section,~~ describing these supervisory arrangements in all settings must be signed by each supervising physician and the physician assistant and shall be kept on file at all practice sites. This statement describing supervisory arrangements and instructions for prescriptive authority shall be available upon request by the Board or its representatives.

(c) Entries by a physician assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution.

Authority G.S. 90-18(c)(13); 90-18.1.

21 NCAC 32S .0111 SUPERVISING PHYSICIANS

~~(a) A physician wishing to serve as a primary supervising physician must:~~

- ~~(1) notify the Board of the physician's intent to serve as a primary supervising physician for a physician assistant; and~~
- ~~(2) submit a statement to the Board that the physician is willing and qualified to exercise supervision of the physician assistant in accordance with rules adopted by the Board and that the physician will retain professional responsibility for the care rendered by the physician assistant within the scope of the supervisory arrangements established pursuant to Rule .0110 of this Section.~~

(a) A physician wishing to serve as a primary supervising physician must exercise supervision of the physician assistant in accordance with rules adopted by the Board and that the physician will retain professional responsibility for the care rendered by the physician assistant within the scope of the supervisory arrangements established pursuant to Rule .0110 of this Section.

(b) A physician wishing to serve as a back-up supervising physician must be licensed to practice medicine by the Board and not prohibited by the Board from supervising a physician assistant and be approved by the primary supervising physician

as a person willing and qualified to assume responsibility for the care rendered by the physician assistant in the absence of the primary supervising physician. An ongoing list of all approved back-up supervising physicians, signed and dated by each back-up supervising physician, the primary supervising physician, and the physician assistant, must be retained as part of the inspectable supervisory arrangements statement described in Rule .0110 of this Section.

(c) It is the responsibility of the supervising physicians to ensure that the physician assistant has adequate back-up for any procedure performed by the physician assistant in any practice location (office, home, hospital, etc.).

Authority G.S. 90-18(13); 90-18.1.

21 NCAC 32S .0112 NOTIFICATION OF INTENT TO PRACTICE

(a) Prior to the performance of any medical acts, tasks, or functions under the supervision of any primary supervising physician, a physician assistant licensed by the Board shall submit notification of such intent on forms provided by the Board. The physician assistant shall not commence practice until acknowledgment of the notification of intent to practice form is received from the Board. Such notification of intent to practice shall include:

- (1) the name, practice addresses, and telephone number of the physician assistant; and
- (2) the name, practice addresses, and telephone number of the primary supervising physician(s).

(b) The physician assistant shall notify the Board of any changes or additions in a previously ~~approved—acknowledged~~ practice setting within 15 days of the occurrence.

Authority G.S. 90-14; 90-14.2.

21 NCAC 32S .0118 PRACTICE DURING A DISASTER

A physician assistant licensed in this State or in any other state is authorized to perform acts, tasks, or functions as a physician assistant under the supervision of a physician licensed to practice medicine in North Carolina during a disaster within a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared (in accordance with G.S. 166A-4(3) or G.S. 166A-6). ~~The physician assistant shall notify the Board in writing of the names, practice locations, and telephone numbers for the physician assistant and each primary supervising physician within 15 days of the first performance of medical acts, tasks, or functions as a physician assistant during the disaster.~~ A team of physician(s) and physician assistant(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required in Rules .0109 and .0110 of this Section. The Board may waive other regulatory requirements regarding licensure and practice to facilitate a physician assistant practicing during a disaster consistent with G.S. 90-12.2.

Authority G.S. 166A-4(3); 166A-6.

CHAPTER 36 –BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0232 and amend the rules cited as 21 NCAC 36 .0120, .0318, .0322.

Proposed Effective Date: April 1, 2006

Public Hearing:

Date: January 27, 2006

Time: 1:00 p.m.

Location: NC Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC

Reason for Proposed Action:

21 NCAC 36 .0120 - To define terms utilized in 21 NCAC 36 .0232. Text in bold/italics was approved by the NC Board of Nursing at their September 2005 meeting. This language is pending Rules Review meeting in November 2005 with an effective date of December 1, 2005.

21 NCAC 36 .0232 – To require an applicant to submit to the Board evidence of the applicant's continuing competence in the practice of nursing at the time of license renewal or reinstatement per Sessions Law 2005-186, Senate Bill 3.

21 NCAC 36 .0318, .0322 – The Board of Nursing has been in the process of revising these rules for two (2) years in an effort to make them more current, to elevate the rules of nursing education in North Carolina, and to allow programs flexibility to meet the educational needs for nursing.

Procedure by which a person can object to the agency on a proposed rule:

Persons may submit objections to these rules by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129, phone (919) 782-3211 x252, fax (919) 781-9461 or email jeans@ncbon.com or polly@ncbon.com.

Comments may be submitted to: Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129, phone (919) 782-3211 x252, fax (919) 781-9461 or email jeans@ncbon.com or polly@ncbon.com.

Comment period ends: January 27, 2006

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

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 36 .0120 DEFINITIONS.

The following definitions shall apply throughout this chapter unless the context indicates otherwise:

- (1) "Academic term" means one semester of a school year.
(2) "Active Practice" means activities that are performed either for compensation or gratuitously that demonstrate the application of judgment or skill based upon a systemized body of nursing knowledge as defined in G.S. 90-171.20.
(3)(+) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
(4) "Accredited institution" means an institution accredited by a United States Department of Education approved institutional accrediting body.
(5)(6-) "Advanced Practice Registered Nurse (APRN)" means for the purposes of Board qualification a nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
(6)(2) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
(7) "Clinical experience" means application of nursing knowledge in demonstrating clinical judgment.
(8) "Clinical judgment" means the application of the nursing student's knowledge, skills, abilities and experience in making decisions about client care.
(9) "Competent" means having the knowledge, skills and ability to safely perform an activity or role.
(10) "Continuing Competence" means the on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.

- (11) "Contact Hours" means fifty (50) minutes of an organized learning experience.
- (12) "Continuing Education Activity" means an offering given by a provider recognized by the Board for continued education and related to the practice of nursing or contributing to the competency of the nurse.
- (13) "Controlling institution" means the degree-granting organization or hospital under which the nursing education program is operating.
- (14) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives/outcomes.
- (15)(3) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
- (16) "Dimensions of Practice" means those aspects of nursing practice that include professional responsibility, knowledge-based practice, legal/ethical practice and collaborating with others, consistent with G. S. 90-171.20.
- (17) "Distance education" means the teaching/learning strategies used to meet the learning needs of students, when the students and faculty are separate from each other.
- (18) "Faculty directed clinical practice" means the responsibility of nursing program faculty in overseeing student clinical learning including the utilization of preceptors.
- (19) "Focused client care experience" means a clinical experience that simulates an entry-level work experience. The intent is to assist the student to transition to an entry-level practice. There is no specific setting requirement. Supervision may be by faculty/preceptor dyad or direct faculty supervision.
- (20) "Interdisciplinary faculty" means faculty from professions other than nursing.
- (21) "Interdisciplinary team" means all individuals involved in providing a client's care, who cooperate, collaborate, communicate and integrate care to ensure that care is continuous and reliable.
- (22) "Level of Licensure" means practice of nursing by either a Licensed Practice Nurse or a Registered Nurse as defined in G.S. 90-171.20(7) and (8).
- (23) "Level of student" means the point in the program to which the student has progressed.
- (24) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.
- (25) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place. It is based upon stated course objectives/outcomes for learning experiences in classroom, laboratory and clinical settings.
- (26)(7) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- (27) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- (28) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- (29) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United States Department of Education.
- (30) "Nursing program faculty" means individuals employed full or part time by academic institution responsible for developing, implementing, evaluation and updating nursing curricula.
- (31)(5) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- (32) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.
- (33) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical experience.
- (34)(8) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.
- (35) "Program Closure" means to cease operation of a nursing program.
- (36) "Program Type" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three program types are:

- (a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions and current trends in health care. For this program type, the client is the individual, family, group, and community.
- (b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum components for the ADN/Diploma in Registered Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions and current trends in health care. For this program type, client is is the individual, group of individuals, and family.
- (c) Practical Nurse Diploma - Curriculum prepares for functioning in a dependent role in providing direct nursing care under the direction of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the attainment of knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development and current trends in health care. For this program type client is the individual, or group of individuals.
- (37) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods including review of written reports and materials, on-site observations and review of documents or in person or telephone interview(s) and conference(s).
- (38) "Rescind Approval" means a Board action that removes the approval status previously granted.
- (39) "Self Assessment" means the process whereby the individual reviews own nursing practice and identifies the knowledge and

skills possessed, as well as those skills to be strengthened.

- (40)(9) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of that group of patients and the likely co-morbidities, interventions and responses to those problems.
- (41)(4) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (42) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing nursing programs compliance with Section .0300 of this Chapter.

Authority G.S. 90-171.23; 90-171.38.

SECTION .0200 - LICENSURE

21 NCAC 36 .0232 CONTINUING COMPETENCE

(a) Effective July 1, 2006, upon application for license renewal or reinstatement, the licensee will be informed of the Board's requirement for continuing competence and shall complete the following components of the continuing competence process:

- (1) Self-assessment of practice including the dimensions of: professional responsibility, knowledge based practice, legal/ethical practice and collaborating with others;
- (2) Development of a plan for continued learning;
- (3) Identification of one or more objectives consistent with the dimensions of practice; and
- (4) Selection and implementation of a learning activity option from those outlined in Paragraph (b) of this Rule.

(b) Effective July 1, 2008, upon application for license renewal or reinstatement, the licensee shall be required to attest to having completed one of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board.

- (1) National Certification or re-certification related to the nurse's practice role by a national credentialing body recognized by the Board;
- (2) Thirty contact hours of continuing education activities related to the nurse's practice;
- (3) Completion of a Board approved refresher course;
- (4) Completion of a minimum of two semester hours of post-licensure academic education related to nursing practice;
- (5) Fifteen contact hours of a continuing education activity related to the nurse's practice and completion of a nursing project as principal or co-principal investigator to

- include statement of the problem, project objectives, methods and summary of findings;
- (6) Fifteen contact hours of a continuing education activity related to the nurse's practice and authoring or co-authoring a published nursing-related article, paper, book or book chapter;
- (7) Fifteen contact hours of a continuing education activity related to the nurse's practice and designing, developing, and conducting an educational presentation or presentations totaling a minimum of five contact hours for nurses or other health professionals; or
- (8) Fifteen contact hours of a continuing education activity related to the nurse's practice and 640 hours of active practice within the previous two years.

(c) The following documentation will be accepted as evidence of completion of learning activity options outlined in Paragraph (b) of this Rule:

- (1) Evidence of national certification shall include a copy of certificate which includes name of licensee, name of certifying body, date of certification, date of certification expiration. Certification shall be initially attained during the licensure period, or have been in effect during the entire licensure period, or have been re-certified during the licensure period.
- (2) Evidence of contact hours of continuing education shall include name of licensee; title of educational activity, name of the recognized provider, number of contact hours and date of activity.
- (3) Evidence of completion of a Board approved refresher course shall include written correspondence from the provider with name of licensee, name of provider, and verification of successful completion of the course.
- (4) Evidence of post-licensure academic education shall include a copy of transcript with name of licensee, name of educational institution, date of attendance, name of course with grade and number of credit hours received.
- (5) Evidence of completion of a nursing project shall include an abstract or summary of the project, name of licensee, role of licensee as principal or co-principal investigator, date of project completion, statement of the problem, project objectives, methods used and summary of findings.
- (6) Evidence of authoring or co-authoring a published nursing-related article, paper, book or book chapter which shall include a copy of the publication to include name of licensee and publication date.

(7) Evidence of developing and conducting an educational presentation or presentations totaling at least five contact hours for nurses or other health professionals shall include a copy of program brochure or course syllabi, objectives, content and teaching methods, and date and location of presentation.

(8) Evidence of 640 hours of active practice in nursing shall include documentation of name of licensee, number of hours worked in calendar or fiscal year, name and address of employer and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.

(d) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (b) of this rule throughout the renewal cycle.

(e) Effective July 1, 2008, at the time of license renewal or reinstatement, licensees shall be subject to random audit for proof of compliance with the Board's requirements for continuing competence.

(f) Licensees will be informed of their selection for audit upon notice of license renewal or request for reinstatement. Documentation of acceptable evidence shall be consistent with Paragraph (c) of this Rule and shall be submitted to the Board no later than the last day of the renewal month.

(g) Failure to meet the Board's requirement, established in G.S. 90-171.23(b) and Paragraphs (a) - (f) of this Rule shall result in disciplinary review, pursuant to G.S. 90-171.37(1) and (8) and 21 NCAC 36.0217.

Authority G.S. 90-171.23(b); 90-171.37(1) and (8).

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0318 FACULTY

(a) ~~Both full-time~~ Full-time and part-time faculty members shall be considered nursing program faculty. When part-time faculty are utilized, ~~evidence~~ they shall ~~exist of their participation~~ participate in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall ~~reflect those~~ be consistent with those for other faculty of the institution. ~~Variations in these policies may be necessary due to because of~~ however, variations in these policies may be necessary due to the nature of the nursing curriculum.

(c) ~~Qualifications for nurse~~ Nurse faculty members shall be stated and reflect academically qualified and sufficient in number to accomplish program outcomes, knowledge and experiences in clinical nursing and teaching which are appropriate for assigned responsibilities.

(d) ~~Faculty members who teach non nursing courses required in the nursing curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.~~

~~(d)(e)~~ Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall ~~be held accountable for validating~~ validate and ~~documenting~~ document current ~~registered nurse~~ licensure to practice as a registered nurse in North Carolina.

(e) Nursing faculty who teach in a program leading to initial licensure as a nurse shall:

- (1) hold either a baccalaureate in nursing or a master's degree in nursing from an accredited institution;
- (2) have a master's degree or a nursing doctorate from an accredited institution by January 1, 2015;
- (3) if employed after December 31, 1983, have two calendar years or the equivalent of full time clinical experience as a registered nurse;
- (4) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of education coursework;
 - (D) national certification in nursing education; or
 - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;
- (5) by December 31, 2010, all current faculty shall meet the requirements in Subparagraph (e)(4) of this Rule;
- (6) maintain competence in the areas of assigned responsibility; and
- (7) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

~~(f)~~ Each nurse faculty member shall hold a baccalaureate in nursing or a baccalaureate with a major in nursing. Exceptions are:

- (1) ~~the individual who holds a master's degree in nursing and a baccalaureate in another discipline; and~~

- (2) ~~the individual employed as a faculty member prior to January 1, 1998, who holds a baccalaureate in another discipline. This exception applies to continuing employment in the current setting.~~

~~(g)~~ Each nurse faculty member employed after January 1, 1984, shall have had a minimum of two years prior employment in direct patient care. Each nurse faculty member employed after January 1, 1998, shall have had a minimum of two years prior employment in direct patient care as a registered nurse. Each nurse faculty member employed after July 1, 1992, shall have had a minimum of two calendar years prior full-time employment or the equivalent in clinical nursing practice as a registered nurse.

~~(h)~~ In addition to all qualifications for nurse faculty members, the nurse director of a practical nurse education program employed as such after January 1, 1984, shall have had at least two years full-time experience teaching in nursing program(s).

~~(i)~~ In addition to all qualifications for nurse faculty member, the nurse director of a program preparing individuals for registered nurse practice shall hold a baccalaureate and a master's degree, one of which shall be in nursing; and if employed after January 1, 1984, shall have had at least two years full-time experience teaching at or above the academic level of the program. For purposes of this standard, associate degree and diploma nursing program levels are considered comparable.

~~(j)~~ In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for registered nurse practice who has primary responsibility, designated by the program, for coordinating the planning, implementation, and evaluation, of each major clinical nursing course shall hold a master's degree. This nurse faculty member shall also have had a minimum of one academic year of full-time teaching experience in a nursing program.

~~(k)~~ In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for practical nurse licensure who has primary responsibility, designated by the program, for coordinating the planning, implementation and evaluation of each major clinical nursing course, shall have had a minimum of one academic year of full-time teaching experience in a nursing program.

~~(f)~~ Upon request by a nursing education program, the Board shall waive Subparagraph (e)(2) of this Rule for an instructor who possesses an earned baccalaureate degree in nursing and who will be matriculated in a graduate program in an accredited institution with an expected graduation date within five years of the waiver. The program administrator shall request and complete a waiver on forms supplied by the Board. The waiver must be requested by the program and granted by the Board before the faculty appointment is approved by the program and shall be limited to one time for any individual.

~~(g)~~ Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

~~(h)~~ Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed

clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

~~(i)(4)~~ The nurse Nurse faculty members shall have the appropriate authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

~~(j)(m)~~ The nurse Nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation, environment. The faculty student ratio in clinical areas shall depend upon the level of students, the acuity of patients, and the average daily census in the unit. The faculty-student clinical ratio shall be 1:10 or less. Request to exceed the 1:10 ratio shall be submitted to the Board or its designated representatives for approval prior to implementation. Request may be approved for one academic term only.

~~(k)(n)~~ There shall be written annual evaluation of each nurse faculty member by the program director or a designee; and evidence of a written evaluation of the program director by an immediate supervisor according to the institutional policy.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

21 NCAC 36 .0322 FACILITIES

(a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.

~~(b)(1)~~ Classrooms, practice laboratories, audio and video tutorial laboratories, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable for the number of students and purposes for which the rooms are to be used.

~~(c)(2)~~ Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy including conferences with students.

~~(3)~~ The library facilities shall be readily accessible to students and faculty, and must offer adequate resources and services.

~~(A)~~ Adequate library services shall include a librarian and a system of cataloging.

~~(B)~~ A system of acquisition and deletion shall exist that ensures currency and appropriateness of holdings including audio and video tutorial resources that support implementation of the nursing curriculum.

~~(C)~~ Library space for use by students and faculty shall be adequate to accommodate the program.

~~(D)~~ Library hours shall meet the needs of the students in the program.

(d) Learning resources, including clinical experiences, shall be comprehensive, current, developed with nursing faculty input, accessible to students and faculty and support the implementation of the curriculum.

~~(b)~~ Clinical facilities shall support the program curriculum as outlined in 21 NCAC 36 .0321.

Authority G.S. 90-171.23(b)(8); 90-171.38.

CHAPTER 61 – RESPIRATORY CARE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Respiratory Care Board intends to amend the rules cited as 21 NCAC 61 .0103, .0202.

Proposed Effective Date: March 1, 2006

Public Hearing:

Date: November 17, 2005

Time: 1:00 p.m.

Location: NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC

Reason for Proposed Action:

21 NCAC 61 .0103 – To define Assessment

21 NCAC 61 .0202 – To clarify the exemption for unlicensed individuals as it relates to specific respiratory care equipment and to define the credentialed health care providers that are exempt from respiratory care practitioner license requirements.

Procedure by which a person can object to the agency on a proposed rule:

A person may object to the Board on a proposed rule by sending a written objection addressed to Floyd Boyer, RRT, RCP Executive Director, NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609, phone (919) 878-5595, fax (919) 878-5565, email fboyer@ncrcb.org.

Comments may be submitted to: Floyd Boyer, RRT, RCP Executive Director, NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609, phone (919) 878-5595, fax (919) 878-5565, email fboyer@ncrcb.org.

Comment period ends: January 3, 2006

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

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to this Chapter. In addition, the following definitions apply with regard to these Rules:

- (1) Assessment shall mean a clinical evaluation of the individual patient and the suitability, and efficacy of a respiratory care procedure or treatment, including an assessment of the suitability and efficacy of equipment for the individual patient if equipment is to be used in the procedure or treatment. Assessment can be performed by physician, RCP or other licensed health care provider within their scope of practice.

Authority G.S. 90-652(1); 90-652(13).

SECTION .0200 – APPLICATION FOR LICENSE

21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons from the requirement of obtaining a license:

- (1) A respiratory care practitioner who is on active duty in the Armed Forces of the United States or serving in the United States Public Health Service, or employed by the Veterans Administration; but this exemption shall only apply to activities and services provided in the course of such service or employment.
- (2) A student or trainee who is working under the direct supervision of a respiratory care practitioner to fulfill an experience requirement or to pursue a course of study to meet licensure requirements. For purposes of this subpart, direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time while the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner must be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory

(3)

care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.

~~A person who provides only support activities as defined in G. S. 90-648(13). Unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver; but may not engage in the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.~~

A person who provides only support activities as defined in G.S. 90-648(13). Unlicensed individuals may not engage in the teaching, administration, or performance of respiratory care. Except as specifically provided below for Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure Equipment (Bi-Level), and Ventilator equipment, unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of any apparatus, including demonstrating its mechanical operation for the patient, or caregiver. However, instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.

- (a) With regard to the delivery and set up of any noninvasive CPAP or Bi-Level equipment, an unlicensed individual may not deliver or set up such equipment for a patient who is under the age of 18, unless, within no more than 24 hours after delivery and set up of any CPAP or Bi-Level equipment, an appropriately licensed and credentialed respiratory care

practitioner will be present in a face-to-face encounter with the patient to give instructions to the patient and/or caregiver regarding the clinical use of the equipment, and to provide any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment.

- (b) With regard to the delivery and set up of any noninvasive CPAP or Bi-Level equipment for patients who are 18 years old or older and who are otherwise competent to receive such instruction, unlicensed individuals may deliver and set up the equipment as long as an assessment of the patient that meets the requirements of 21 NCAC 61 .0103(1) has been performed prior to the delivery of the equipment.
 - (c) At the time of the delivery and set up of Ventilator equipment or invasive CPAP or Bi-Level equipment, an appropriately licensed and credentialed respiratory care practitioner will be present in a face-to-face encounter with the patient to give instructions to the patient and/or caregiver regarding the clinical use of the equipment, and to provide any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment.
- (4) A person who is licensed by another North Carolina licensing board to carry on an occupation, who is acting within the recognized scope of practice for the license issued by that other board, or who otherwise is carrying out functions recognized as appropriate for the licensed person by that board; and any other person who is working under the supervision of such a licensed person, provided that the supervision of the other person also is recognized as being within the appropriate scope of practice or functions of the licensed person. With regard to other persons who are not licensed by a North Carolina licensing board, the Board shall consider whether there is evidence establishing that such persons meet the requirements of G.S. 90-664(1).
- (a) The following occupations are exempt from the requirement of

licensure by the North Carolina Respiratory Care Board as long as the respiratory care practice functions provided by the individual are recognized as being within the occupation's scope of practice. Students enrolled in a recognized academic program under the direct supervision of the credentialed individual are also exempt.

- (1) Certified Cardiographic Technicians as credentialed by the Cardiovascular Credentialing International (CCI).
- (2) Registered Clinical Exercise Physiologists as credentialed by the College of Sports Medicine (ACSM).
- (3) Certified Exercise Specialists as credentialed by the College of Sports Medicine (ACSM).
- (4) Certified Medical Technologists as credentialed by the American Society for Clinical Pathology (ASCP).
- (5) Certified Medical Laboratory Technicians as credentialed by the American Society for Clinical Pathology (ASCP).
- (6) Certified Phlebotomy Technicians as credentialed by the American Society for Clinical Pathology (ASCP).
- (7) Certified Nuclear Medicine Technologists as credentialed by the Nuclear Medicine Technology Certification Board (NMTCB).
- (8) Certified and Registered Pulmonary Function Technologists as credentialed by the National Board for Respiratory Care (NBRC).
- (9) Certified Hyperbaric Technologists as credentialed by the National Board of Diving Medical Technology (NBDMT).

Authority G.S. 90-648(13); 90-652(2); 90-664.

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*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
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Rhonda Lynnette Rhodes v. Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
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Terry Ramey, d/b/a Ramey Wrecker Service v. Dept. of Crime Control & Public Safety, Division Of State Highway Patrol	05 CPS 0511	Lassiter	10/18/05	
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Richard McKinley Whited v. DHHS	02 DHR 0024	Gray	08/04/05	
Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT	03 DHR 0488	Conner	06/29/05	
Aundria Shante Edwards v DHHS, Division of Facility Services	03 DHR 0806	Gray	08/10/05	
Jamie Kearney v. DHHS	03 DHR 0924	Gray	10/04/05	
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Louise Li Lai Fong v. DHHS, Division of Facility Services	03 DHR 1714	Wade	06/27/05	
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1 – Combined Cases

2 – Combined Cases

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
04 DHR 1300

Betty Louise Bridgers,)
)
 Petitioner,)
)
 v.)
)
 Department of Health and Human Services,)
 Division of Facilities Services,)
)
 Respondent.)

DECISION

THIS MATTER came on for hearing before the undersigned James L. Conner, II, Administrative Law Judge, on Thursday, June 2, 2005 in Elizabethtown, North Carolina.

APPEARANCES

Petitioner: George G. Hearn
Attorney At Law
Johnson, Hearn, Vinegar, Gee & Mercer, PLLC
P.O. Box 1776
Raleigh, NC 27602

Respondent: Susan K. Hackney
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether Respondent deprived Petitioner of property, exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, failed to act as required by rule or law, or otherwise substantially prejudiced Petitioner’s rights when it substantiated the following allegations of abuse and neglect against Petitioner and when it decided to place Petitioner on the Health Care Personnel Registry by an Entry of Finding of 07/06/2004 and by two separate Entries of Finding of 07/28/2004:

1. Entry of Finding dated 07/06/2004 attached to Respondent’s 07/06/2004 letter to Petitioner from Shirley Anderson, R.N. (Pet. Ex. 2):

Nature of Allegation

On or about 3/8/04 Betty Bridgers, a health care personnel, abused a resident (CLP) when she slapped him in the face; and neglected a resident when she failed to notify the Department of Social Service that the resident had drugs in his possession on more than one occasion.

2. (First) Entry of Finding dated 07/28/2004 attached to Respondent’s 7/28/2004 letter to Petitioner from Shirley Anderson, R.N. (Pet. Ex. 3):

Nature of Allegation

On or about 3/8/04 Betty Bridgers, a health care personnel, neglected a resident (CLP) by failing to provide for his safety and the safety of the other residents in her home when she failed to notify the Department of Social Service that she had found drugs in the resident’s possession on more than one occasion.

3. (Second) Entry of Finding dated 07/28/2004 attached to Respondent's 7/28/04 letter to Petitioner from Shirley Anderson, R.N. (Pet. Ex. 3):

Nature of Allegation

On or about 3/8/04 Betty Bridgers, a health care personnel, abused a resident (CLP) when she slapped him in the face, causing the resident to become angry and request that he be removed from her home.

APPLICABLE STATUTES AND RULES

N.C.G.S. § 131E-256;
N.C.G.S. § 131D-2;
42 CFR § 488.301;
10A N.C.A.C. 130;
N.C.G.S. § 150B-23 et seq.

EXHIBITS

Petitioner's Exhibits 1-16 were admitted into the record.

Respondent's Exhibits 1, 3, 4, and 6-24 were admitted into the record.

FINDINGS OF FACT

In making the following Findings of Fact, the undersigned has weighed all of the evidence and has assessed the credibility of the witnesses. The undersigned has taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness, any interests, bias or prejudice the witness may have. Further, the undersigned has carefully considered the opportunity of the witness to see, hear, know or remember 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 this case. After a thorough examination of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the undersigned makes the following FINDINGS OF FACT:

1. Betty L. Bridgers, Petitioner herein ("Petitioner"), is a citizen and resident of Clarkton, N.C. (T. p. 23-24).
2. Respondent, The Department of Health and Human Services (hereinafter "Respondent" or "Department") inspects and licenses all adult care homes for aged, mentally disabled or physically disabled persons, except those exempt by statute. N.C.G.S. § 131D-2(b)(1)
3. Since approximately 1998, Respondent has licensed Petitioner to operate Bridgers Family Care Home (hereinafter "Home"), located at 19 Poe Elkins Road, Clarkton, N.C. This Home is licensed for no more than six residents. (T. p. 24).
4. Among the services Petitioner and her staff provide for the residents at the Home are cooking their food; purchasing their clothes; keeping up with the residents' money; monitoring doctor's orders; and maintaining custody of and dispensing medicines prescribed by the doctors. (T. pp. 25-26; 72; 209-210).
5. Petitioner keeps the residents' medicines locked up as required by State law. She keeps the medicines in locked cabinets for which only she and the Home supervisor-in-charge have keys. (T. p. 26).
6. A male resident, whose name for purposes of this Hearing was designated as "CP", was placed in Petitioner's Home in November, 2002, by the Bladen County Department of Social Services (hereinafter "DSS"). (T. p. 208)
7. Emily Bronson (hereinafter "Ms. Bronson") is an Adult Home Specialist with DSS and, along with fellow DSS employee, Janet Miller (hereinafter "Ms. Miller"), directed the placement of CP in Petitioner's Home in November, 2002. (T. pp. 112; 191-192; 208).
8. Prior to DSS placing CP in Petitioner's Home, CP had been placed in a previous facility; and he was a diabetic. (T. p. 192).

9. Diane Brigman (hereinafter “Ms. Brigman”), Petitioner’s daughter-in-law, is the supervisor-in-charge at Petitioner’s Home, and has worked there almost six years.

10. As part of her duties at the Home, Ms. Brigman assists Petitioner in writing Incident Reports required to be completed and filed with DSS. Typically, Ms. Brigman and Petitioner would write the Incident Reports together and Petitioner would tell her what to write and Petitioner would call Social Services about the incident while Ms. Brigman prepared the Report. A copy of the Report would be placed in CP’s file at the Home. Normally, Petitioner would hand-deliver reports to DSS after telephoning them about the incident, or Petitioner and Ms. Brigman would talk to a DSS representative about the incidents the next time that a representative came to the Home or telephoned. (T. pp. 70, 200).

11. On 12/27/02, Petitioner received information which indicated that CP had obtained from two different doctors extra prescriptions for medicines, as well as possibly having ordered other medicines from the doctors at the Veterans Administration Hospital (hereinafter “VA”). That day Petitioner learned that on 12/05/02, CP picked up at the VA a prescription for Klonopin - 1 mg.; on 12/13/02, he also picked up a prescription for Percodan (47 pills); and on 12/23/02 he picked up a prescription for Percodan (53 pills).

12. Petitioner on 12/27/02 requested of CP that he turn the pills over to her, which request he refused. Petitioner then telephoned DSS and spoke to Ms. Miller, who advised to give CP a 30-day discharge notice. Later, CP complied and Petitioner decided and advised DSS that she would put CP on probation, having explained to him if he were caught in this type of activity again, it would be grounds for his discharge as soon as DSS could find placement for him. (Pet.’s Ex. 5). Petitioner informed Ms. Bronson about the pills by telephone, and Ms. Bronson told Petitioner to take the pills to Dr. Eskander, which Petitioner did. (T. pp. 205-206).

13. On 5/28/03, CP was seen by a physician at the VA. Later that physician telephoned the Home and informed Ms. Brigman that CP had been scheduled to stay for tests but left the hospital. The doctor identified the prescriptions that CP had been given. Ms. Brigman informed the doctor of the medicines CP was then taking from his regular doctor. The physician with whom Ms. Brigman spoke informed her that CP should not take the two medicines together. Ms. Brigman gave this information to Petitioner. Therefore, when CP arrived at the Home, Petitioner asked CP for the pills he received from the VA, which were oxycodone, and CP gave them to her. Petitioner took the pills to CP’s regular physician, Dr. Eskander, and he destroyed them. (T. pp. 204-205).

14. On 7/2/03, Ms. Brigman found empty bottles, formerly containing CP’s prescription medicine, in the trash at the Home. Ms. Brigman told Petitioner about these empty bottles. Ms. Brigman talked to Ms. Miller at DSS about this incident, and prepared and signed an Incident Report regarding this instance dated 7/3/03. (T. pp. 206-207; Pet. Ex. 7).

15. On 9/29/03, Ms. Brigman found a bottle of Klonopin prescription medicine in CP’s room at the Home while she was cleaning his room. The Klonopin was in a box which had been mailed to CP from the VA. CP was required to turn in to Ms. Brigman and Petitioner medicines that were mailed to him. Ms. Brigman counted the number of pills, informed Petitioner about the medicine, and then locked up the medicine. The prescription bottle label indicated it was a refill for 90 pills of Klonopin. When the bottle was found by Ms. Brigman, there were only 24 pills in the bottle. CP had had the medicine mailed to him general delivery so that he himself could pick it up at the Post Office in Clarkton. Ms. Brigman prepared and signed an Incident Report 9/29/03 detailing this incident. (T. pp. 208-211; Pet. Ex. 8).

16. Following the 9/29/03 incident regarding the bottle of Klonopin pills, Ms. Brigman and Petitioner talked to the U.S. Postal Service postal carrier, Ms. Dove, who delivered mail to the Home. They asked her to blow her vehicle horn to alert them if she was delivering medicine to the Home, and if she had seen medicine at the Post Office general delivery, for CP, to let Petitioner and Ms. Brigman know and bring the medicine to them. This was done so that the medicine would be placed in the custody of Petitioner and Ms. Brigman rather than CP. Ms. Brigman discussed the foregoing incident with Petitioner and Ms. Miller. (T. pp. 211-212).

17. On 1/12/04, Ms. Brigman discovered a bottle of Klonopin pills in a drawer in CP’s room while she was putting away his laundered clothes. CP was not authorized to have prescription medicines in this drawer. The medicine should have been in possession of Petitioner and Ms. Brigman. Ms. Brigman took the pills, counted them, and found that 45 of the pills, compared to the number on the label, were missing. She locked up the bottle of Klonopin pills. On that date she wrote up and signed an Incident Report and placed a copy of it in CP’s file at the home. (T. pp. 212-214; Pet. Ex. 9).

18. To the best of Ms. Brigman’s knowledge, all Incident Reports were written up and were signed by either Ms. Brigman or Petitioner, and copies of the report were placed in CP’s file at the Home. (T. pp. 214-215).

19. Ms. Brigman discussed CP with Ms. Bronson on a majority of Ms. Bronson’s visits to the home. General issues regarding CP were discussed with Ms. Bronson, including what was going on with him and his doctor visits. Ms. Bronson was aware of the information contained in the Incident Reports because Ms. Brigman and Petitioner talked with Ms. Bronson about these. The means

of communication would be when Petitioner would telephone Ms. Bronson as well as discussions with Ms. Bronson during her visits to the home. In addition, Ms. Brigman believes that the Incident Reports were faxed to or taken over to DSS. She herself has faxed at least one. (T. pp. 216-218).

20. Ms. Bronson would look in CP's file when she visited the Home and to Ms. Brigman's knowledge, Ms. Bronson looked at the Incident Reports during her visits to the home. (T. p. 215).

21. On 3/4/04, Petitioner went to Baldwin Woods pharmacy in Whiteville, N.C. to pick up 31 Demerol pills that were owed on a previous prescription for CP but which pills had not been picked up. There Petitioner learned that CP had gone to this pharmacy on his own on 2/19/04 and picked up the Demerol that had been owed. Petitioner thereafter asked CP about the Demerol pills. Ms. Brigman prepared and signed an Incident Report dated 3/4/04 regarding this incident and related that CP denied having the medication. Petitioner telephone DSS about the incident and Petitioner informed Ms. Brigman that she had talked to Ms. Bronson about it. (T. pp. 218-220; Pet. Ex. 10).

22. Following Petitioner's conversation with Ms. Bronson 3/4/04, Petitioner related to Ms. Brigman that Ms. Bronson said Petitioner could give CP a 30-day notice for discharge if she wanted to. It was Ms. Brigman's understanding that such a discharge was up to Petitioner and no mandatory discharge regarding CP had ever been given to Petitioner by DSS. (T. pp. 220-221).

23. Petitioner's response to Ms. Bronson's recommendation on 3/4/04 that CP could be given a notice of discharge was that CP was scheduled for physician's tests that she wanted him to complete, with the next one being an eye examination that Friday in Wilmington. (T. p. 221).

24. On Sunday evening 3/7/04 while upstairs at the Home, Petitioner heard a loud crash and ran downstairs. She discovered CP in the medicine room holding a Phillips screwdriver. CP had taken a door off of the locked medicine cabinet and had dropped the door. She observed CP taking the screws out of the hinges with the screwdriver. CP told Petitioner he was fixing the door and Petitioner told him he did not have permission to fix anything. Petitioner informed CP that if she caught him in such a situation again, that the main door to this medicine room would be locked. CP had permission to go in that room because the telephone and the microwave oven were there. Petitioner prepared and signed an Incident Report dated 3/7/04 regarding this incident. (T. pp. 35-37; 71-72).

25. On Monday 3/8/04 at 10:15 a.m., Ms. Brigman found CP's plastic bag of medications lying on a shelf in the medicine room. Ms. Brigman counted the medicine in the bag and found 32 Klonopin pills to be missing. She informed Petitioner about her finding. CP's medicine bag had been locked in the medicine cabinet. Ms. Brigman wrote up and signed an Incident Report dated 3/8/04 regarding this incident. (T. pp. 224-225; Pet. Ex. 12).

26. On 3/8/04, shortly after learning from Ms. Brigman about the Klonopin missing from CP's bag, Petitioner walked to the open door separating the kitchen and the recreation room at the Home to speak to CP about the medicine. At this time, CP was seated in a lounge chair on the other side of the recreation room. Petitioner stated to CP that Ms. Brigman had found his medication bag in the medicine room and 32 Klonopin were missing. Petitioner then told CP that she wanted those pills. CP responded that he did not take them. Petitioner replied that she knew that he did and she asked him to hand them over to her. (T. pp. 41-42; Pet. Ex. 13).

27. At this point in the conversation, CP said to Petitioner that she was a liar if she said that CP took the pills. Petitioner responded to him that he was a liar and that she wanted the pills. At this point CP rose from his chair, began cursing Petitioner, walked fast toward her where she was standing in the doorway at the top of the steps between the kitchen and recreation room. CP continued screaming and cursing. He then stiffened his muscles, drew up his shoulders and in Petitioner's recollection, charged toward her "like an elephant" screaming curse words at her. CP then ran into Petitioner, striking her with his body. CP is six feet in height and at this time weighed approximately 180 pounds. Petitioner is 5 feet, 2 inches tall. (T. pp. 45; 355; Pet. Ex. 13).

28. At the time CP stiffened his body, cursed Petitioner, and forcibly bumped into her at the top of the steps, Petitioner's husband, Franklin Bridgers, was seated in a wheelchair and had moved the chair to the back of Petitioner's legs. Because of this obstruction she could not move back. When CP forcibly bumped into Petitioner, she reacted by raising her hand and slapping his cheek with an open hand, a light slap that did not leave fingerprints or make a red mark on CP's face. (T. p. 46; Pet. Ex. 13).

29. Following this confrontation, CP declared to Petitioner that what she did was what he wanted her to do and he had been waiting a long time to try to get her to do something for which he could sue her. (T. p. 96; Pet. Ex. 13)

30. Petitioner then called Ms. Bronson and DSS and reported this entire incident, including what happened the previous evening when CP took the medicine cabinet door off. Petitioner informed Ms. Bronson that CP was in the process of calling his lawyer and said that he was going to sue Petitioner. Ms. Bronson advised Petitioner to take out breaking and entering charges against CP and call

the police. CP swore out assault charges against Petitioner. Both of the charges brought by Petitioner and by CP were voluntarily dismissed by them through mutual settlement. (T. pp. 104-105; Pet. Ex. 15).

31. Petitioner showed Ms. Bronson the Incident Reports for the 3/7 and 3/8 incidents at the time of Ms. Bronson's 3/8 visit to the Home. Petitioner also completed a "To Whom It May Concern" statement about the 3/8/04 incident for Ms. Bronson. (T. pp. 56, 171).

32. By letter of 3/24/2004 to Petitioner from Shirley Anderson, R.N. (hereinafter "Ms. Anderson"), a nurse investigator for Respondent's Health Care Personnel Registry, Petitioner was notified that an investigation would be conducted by Respondent into the allegation that on or about 3/8/2004 Petitioner allegedly abused a resident at the home. (Resp. Ex. 19).

33. On 6/14/04, Ms. Anderson interviewed Petitioner about the 3/8/04 incident and later prepared a "Report for Record" about the interview. Although Ms. Anderson wrote that Petitioner elected not to provide a statement of the incident, she also wrote that Petitioner did provide information about the incident as requested. (Pet. Ex. 15).

34. On 6/16/04, Ms. Anderson telephoned Petitioner to further interview her about the allegation of abuse, but Petitioner replied that on advice of counsel she had nothing to add to the statement she had already provided. (Resp. Ex. 1).

35. On 6/24/04, Ms. Anderson interviewed Ms. Bronson by telephone about the 3/8/04 incident. In this interview Ms. Bronson related to Ms. Anderson that CP's "main problem was drug-seeking and abusing prescription drugs." Ms. Bronson asserted that she did not find out until after the 3/8 incident that CP apparently had "other infractions" in the Home. Ms. Bronson further asserted to Ms. Anderson in the interview that it was neglect on Petitioner's part with respect to CP and other residents, not to have notified DSS of drugs in the residents' possession. Ms. Bronson asserted that the reports regarding the incidents were not given by Petitioner to DSS until after the 3/8 incident. She related that following his discharge from the home, CP was placed in another adult care home, but then was discharged following an apparent drug incident. (T. p. 309; Resp. Ex. 23).

36. After interviewing Ms. Bronson on 6/24/04, Ms. Anderson did not interview or attempt to interview Petitioner about the allegations on matters other than the 3/8/04 incident. (T. p. 309).

37. Ms. Anderson ended the investigation of Petitioner and prepared an investigation report dated 6/24/04. In this Report Ms. Anderson concluded based on the investigation, Petitioner abused CP on 3/8/04 based on Petitioner's admission and facility documentation. The report recited that CP was a "known substance abuser". Ms. Anderson reported that in Ms. Bronson's opinion, Petitioner, after finding the missing medicine on 3/8/04, should have given CP a written document stating that he was to be discharged and Petitioner should have notified DSS immediately for placement. (Pet. Ex. 16).

38. She concluded that there were facts to substantiate against Petitioner the separate charge of Petitioner's neglecting CP. Ms. Anderson wrote that the evidence supporting this additional allegation included that Petitioner "admitted the allegation and facility documentation." Her Report does not disclose any information or response directly from Petitioner on these allegations but related only information provided by Ms. Bronson. (Pet. Ex. 16).

39. By letter of 7/6/04 Ms. Anderson wrote that an Entry of Finding would be entered into the Health Care Personnel Registry. An Entry of Finding of 7/6/2004 was attached. Ms. Bronson wrote that the Department's "investigation of the allegation that you abused a resident of Bridgers Family Care Home" was substantiated. (Pet. Ex. 2).

40. The 7/6/04 Entry of Finding attached to Ms. Anderson's letter to Petitioner of same date set forth the allegation as follows:

On or about 3/8/04 Betty Bridgers, a health care personnel, abused a resident (CLP) when she slapped him in the face; and neglected the resident when she failed to notify the Department of Social Service that the resident had drugs in his possession on more than occasion.

(Pet. Ex. 2)

41. The part of the Entry of Finding regarding alleged neglect of CP by failing to notify DSS about drugs in CP's possession was the first instance Petitioner received notice of this allegation. (Pet. Ex. 2)

42. By Department regulation and protocol, Ms. Anderson was required to notify Petitioner of the additional allegation of neglect prior to an Entry of Finding, but she failed to do this, and she acknowledged that this was error on her part. (T. pp. 261; 273-274).

43. Ms. Anderson wrote Petitioner again by letter of 7/28/2004, informing her that during the course of the investigation on the allegation of abuse, "an additional allegation of neglect was reported to the Department" and . . . "that the original investigation was expanded to include the allegation of neglect" and to clarify that both allegations had been substantiated against her. Two separate

Entries of Finding dated 7/28/2004 were attached to this letter. One Entry of Finding related to the additional allegation of neglect; the other Entry of Finding related to the allegation regarding the 3/8/2004 incident of alleged abuse. (Pet. Ex. 3).

44. Ms. Anderson did not ask Petitioner about the allegation of neglect during the Department's investigation, and Petitioner did not admit to an allegation of neglect.

45. Petitioner did not admit in her "To Whom It May Concern" statement to DSS dated 3/8/04 that she abused CP nor in her interview by Ms. Anderson. (Pet. Ex. 13; 15).

46. At the conclusion of the Respondent's evidence, Petitioner moved to dismiss the Entry of Finding relating to abuse and the Entry of Finding relating to neglect both of which had been substantiated by Respondent.

Based upon the foregoing Findings of Fact, the undersigned makes the following
CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and the Notice of this hearing was timely.

2. Respondent, The North Carolina Department of Health and Human Services, Division of Facility Services, Health Care Personnel Registry Section is required by N.C. General Statute § 131E-255 and 256 to maintain a Registry containing the names of all health care personnel working in health care facilities against whom a finding of resident abuse or neglect has been substantiated.

3. Bridgers Family Care Home is a "family care home" as described in N.C. General Statute § 131D-2 (5). Petitioner is the administrator of said family care home and is therefore considered "health care personnel" and is subject to the provisions of N.C. General Statute § 131-256.

4. The definition of "abuse" in 42 CFR 488.301 is:

Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

5. The definition of "neglect" in 42 CFR 488.301 is:

Neglect means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

6. Respondent has the burden of proof to establish by competent evidence that the acts occurred or facts exist to support the substantiation of the allegations of abuse and neglect as set forth in the Entries of Finding of 7/6/04 and 7/28/04, respectively.

7. Respondent, through Ms. Bronson, knew from the time CP was placed with Petitioner that his main problem was drug seeking and abusing prescription drugs. Petitioner also was aware of that fact. If thereafter, according to the testimony, Respondent's representatives did not inquire about how CP's situation was during Respondent's regular inspections of the Home, and if no Respondent representative asked about CP, particularly as to how things were going with his drug problem, there appears to be little or no basis for Respondent to find Petitioner neglectful because she intercepted the drugs on several, perhaps half a dozen, occasions.

8. Respondent failed to present sufficient evidence to support Respondent's Entry of Finding of 7/28/2004, and to the extent applicable, that part of the Entry of Finding of 7/6/04 regarding allegations that Petitioner neglected CP "by failing to provide for his safety and the safety other residents in the home" when she allegedly failed to notify DSS that she had found drugs in CP's possession on more than one occasion.

9. The definition of "neglect" in 42 CFR 488.301 means "the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness." Respondent's evidence does not establish that Petitioner neglected CP or any other resident in the Home.

10. There is sufficient evidence that Petitioner provided goods and services supportive of CP by providing living quarters and shelter, food, laundry services, money management, communicating with CP's physicians and transporting him to physicians' appointments, maintaining and securing medicines prescribed to CP and dispensing to CP on doctor's orders, and attempting to monitor and prevent CP's inappropriate obtaining and use of prescription medicine.

11. Although in this case one or more of Respondent's witnesses maintain that Petitioner was neglectful because she did not discharge CP after one or more incidents of drug seeking behaviors, Petitioner's efforts to prevent CP from having access to medicines not prescribed to him and to continue to take care of CP were acts that were supportive of him. By contrast, the action Respondent alleges Petitioner had to take to avoid being neglectful --discharging CP-- was not an action in any way helpful to CP, nor necessary to avoid physical harm, mental anguish, or mental illness. In fact, Respondent's witness testified that discharging CP would primarily protect Petitioner. The fact that Petitioner was willing to leave herself at some risk to keep trying to work with CP while reporting CP's issues to DSS and his doctors on a regular basis shows not neglect, but the opposite of neglect.

12. Petitioner's motion to dismiss Respondent's substantiated allegation of neglect as set forth in the Entry of Finding of 7/6/04 and the separate Entry of Finding regarding neglect of 7/28/04 should be granted.

13. Respondent erred in substantiating the allegations set forth in the Entries of Finding of 7/06/04 and 7/28/04 that Petitioner abused CP on 3/8/04 by slapping him in the face. The definition of "abuse" in 42 CFR 488.301, as set forth above, means, "the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish."

14. Considering all of the evidence in the record, while Petitioner did slap CP's face on 3/8/04, her doing so was a reflexive action rather than a willful act. Moreover, it was in the nature of self defense when CP, a male person, significantly larger than Petitioner in physical stature, in an anxious and agitated state of mind, cursing Petitioner, charged into Petitioner's body when Petitioner reasonably requested that he give her Klonopin that had been discovered missing from his medicine bag that morning.

DECISION

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Petitioner's Motion to Dismiss Respondent's substantiation and listing of the 7/06/04 and 7/28/04 allegations of neglect by Petitioner in the Health Care Personnel Registry is GRANTED; and
2. Respondent erred in substantiating and listing the 7/06/04 and 7/28/04 allegations of abuse by Petitioner in the Health Care Personnel Registry; and
3. Respondent shall remove from the Health Care Personnel Registry the Entries of Finding against Petitioner of 7/06/04 and 7/28/04 regarding alleged neglect and abuse.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with North Carolina General Statute § 150B-36(b).

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services, Division of Facility Services.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision and to present written arguments to those in the Agency who will make the final decision. N.C. General Statute § 150-36(a). The Agency is required by N.C. General Statute § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

In accordance with N.C. General Statute § 150B-36, the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 22nd day of September, 2005.

James L. Conner, II
Administrative Law Judge