

# NORTH CAROLINA REGISTER

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February 15, 2008

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### **County and Municipality Government Questions or Notification**

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2008 – December 2008

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 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

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

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

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

*Note from the Codifier: 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.*

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

**NORTH CAROLINA BUILDING CODE COUNCIL**

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

**Citation to Existing Rule Affected by this Rule-Making:** *North Carolina Building, Mechanical, and Residential Codes.*

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

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

**Public Hearing:** *March 10, 2008, 1:00PM, NC Legislative Building, Third Floor Auditorium, 16 West Jones Street, Raleigh, NC 27603.*

**Comment Procedures:** *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on April 15, 2008.*

**Statement of Subject Matter:**

**1. Request by Bryan T. Readling, APA – The Engineered Wood Association to amend the 2006 NC Residential Code, Sections 4404.4, 4406.3 and 4408.4. The proposed amendment is as follows:**

**4404.4 Exterior Concrete Slab-on-grade Footings.** Vertical reinforcement shall be installed at intervals not to exceed Table 4404.1.1 and shall terminate in a double sole plate.

**Exception:** Vertical reinforcement (anchorage) shall be installed at intervals not to exceed Table 4401.1a. where the bars terminate in a single sole plate. Approved strap anchors or wood structural panels shall be installed to provide a continuous load-path from the single sole plate to the wall.

**4406.3 Gable endwalls.** Gable endwalls in the 110, 120, and 130 mph (48 m/s, 53 m/s, 57 m/s) wind zones shall either be supported by lateral bracing at the ceiling or have continuous studs from the floor to the roof. 2 x 4 studs at 16 inches (406 mm) on center are limited to 10 feet (3048) in length between supports. Nonbearing 2 x 6 SPF No.2 studs at 16 inches (406 mm) on center with 3/8 inch wood structural panel sheathing are limited to unsupported lengths of 18 feet (5486) in 110 mph (48 m/s), 16 feet (4877) in 120 mph (53 m/s) and 14 feet (4267 mm) in 130 mph (57 m/s) wind zones. Wood structural panel sheathing shall extend 12 inches (305 mm) beyond horizontal construction joints except where the horizontal joint occurs over minimum 1 inch (25 mm) thick OSB or plywood rimboard with a minimum 1-1/2 inch (38 mm) overlap.

**4408.4 Anchorage using wood structural panels.** Wood structural panel sheathing may be used to resist both lateral load and uplift simultaneously. Panels shall be installed as follows:

1. Panels may be installed with face grain parallel or perpendicular to studs.
2. Panels shall be 3/8 inch (9 mm) minimum thickness.
3. Nail spacing shall be 8d at 6 inches (152 mm) on center along vertical edges of panel and 12 inches (305 mm) at intermediate vertical framing.
4. Horizontal nail spacing at double row of 8d staggered at 3 inches (76 mm) on center.
5. Panel shall extend 12 inches (305 mm) beyond horizontal construction joints and shall overlap girders their full depth except where the horizontal joint occurs over minimum 1 inch (25 mm) thick OSB or plywood rimboard with a minimum 1-1/2 inch (38 mm) overlap.
6. Panel attachment to framing shall be as illustrated in Figure 4408.4.
7. Blocking shall be required at all joints if sheathing is used to resist uplift.

**2. Request by Julius Ballanco, President of JB Engineering and Code Consulting, P.C., to amend the 2006 NC Mechanical Code, Section 504.2. The proposed amendment is as follows:**

**504.2 Exhaust penetrations.** Where a clothes dryer exhaust duct penetrates a wall or ceiling membrane, the annular space shall be sealed with noncombustible material, approved fire caulking, or a noncombustible dryer exhaust duct wall receptacle. Ducts that exhaust clothes dryers shall not penetrate or be located within any fireblocking, draftstopping or any wall, floor/ceiling or other assembly required by the International Building Code to be fire-resistance rated, unless such duct is constructed of galvanized steel or aluminum of the thickness specified in Section 603.4 and the fire-resistance rating is maintained in accordance with the International Building Code. Fire dampers, combination fire/smoke dampers and any similar devices that will obstruct the exhaust flow, shall be prohibited in clothes dryer exhaust ducts.

**3. Request by Curt Willis, Construction Inspections Administrator with the City of Raleigh, to amend the 2006 NC Building and Residential Codes. The proposed amendment is as follows:**

**704.15 Soffit in Group R.** In Group R buildings of combustible construction the soffit material shall be securely attached to framing members and shall be constructed using either non-combustible soffit material, fire retardant treated soffit material, vinyl soffit installed over ¾ inch wood sheathing of 5/8 inch gypsum board, or aluminum soffit installed over ¾ inch wood sheathing or 5/8 inch gypsum board. Venting requirements shall apply to both soffit and underlayments and shall be per section 1203.2 of the NCSBC.

**1405.13.2 Flame Spread.** Vinyl Siding and vinyl soffit materials when used in Group R buildings shall have a Flame Spread Index of 25 or less as tested in accordance with ASTM E-84.

**R302.4 Flame Spread.** Vinyl Siding and vinyl soffit materials when used in Townhouse construction shall have a Flame Spread Index of 25 or less as tested in accordance with ASTM E-84.

**4. Request by David Smith, Residential Committee, to further amend the proposed 2009 NC Residential Code for One and Two Family Dwellings, Section R302. The proposed amendment is as follows:**

## **SECTION R302**

### **EXTERIOR WALL LOCATION**

~~**R302.1 Exterior walls.** Construction, projections, openings and penetrations of exterior walls of dwellings and accessory buildings shall comply with Table R302.1. These provisions shall not apply to walls, projections, openings or penetrations in walls that are perpendicular to the line used to determine the fire separation distance. Projections beyond the exterior wall shall not extend more than 12 inches (305 mm) into the areas where openings are prohibited.~~

#### **Exceptions:**

- ~~1. Detached tool sheds and storage sheds, playhouses and similar structures exempted from permits are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.~~
- ~~2. Detached garages accessory to a dwelling located within 2 feet (610 mm) of a lot line are permitted to have roof eave projections not exceeding 4 inches (102 mm).~~
- ~~3. Foundation vents installed in compliance with this code are permitted.~~

*Also delete Table R302.1. Add the following language from the 2003 IRC with NC Amendments.*

### **LOCATION ON LOT**

**R302.1 Exterior walls.** Exterior walls with a fire separation distance less than 3 feet (914mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

**Exception:** Detached garages accessory to a dwelling located within 2 feet of a lot line shall be permitted to have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

#### **Exceptions:**

1. Tool and storage sheds, playhouses and similar structures exempted from permits by R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
2. In Townhouse construction (with 3 or more attached dwellings) the soffit material shall be securely attached to framing members and shall be constructed using either non-combustible soffit material; fire retardant treated soffit material; vinyl soffit installed over ¾ inch wood sheathing or 5/8 inch gypsum board; or aluminum soffit installed over ¾ inch wood sheathing or 5/8 inch gypsum board. Venting requirements shall be provided in both soffit and underlayments. Vents shall be either nominal 2-inch continuous or equivalent intermittent and shall not exceed the minimum net free air requirements established in section R806.2 by more than 50%. Vents in soffit are not allowed within four feet of fire walls or property lines.

**R302.2 Openings.** Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than 3 feet (914 mm). This distance shall be measured perpendicular to the line used to determine the fire separation distance.

**Exceptions:**

1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.
2. Foundation vents installed in compliance with this code are permitted.

**R302.3 Penetrations.** Penetrations located in the exterior wall of a dwelling with a fire separation distance less than 3 feet (914mm) shall be protected in accordance with Section R317.3.

**Exception:** Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

**(R302.1 Exception 2 is currently in the Rules process under a separate amendment.)**

**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 Social Services Commission intends to adopt the rules cited as 10A NCAC 72 .0101 - .0102, .0201 - .0203, .0301.*

**Proposed Effective Date:** June 1, 2008

**Public Hearing:**

**Date:** April 16, 2008

**Time:** 10:00 a.m.

**Location:** Albemarle Building, Conference Room 832 (8<sup>th</sup> Floor), 325 Salisbury Street, Raleigh, NC 27603

**Reason for Proposed Action:** Session Law 2007-323, the Budget Bill, included provision 10.34 (a) establishing the Child Welfare Postsecondary Support Program, to be used for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12. Children adopted from public foster care after the age of 12 automatically meet the criteria of a "special needs child." The funds are to be used to provide assistance with the cost of attendance at any public institution of higher education in the state of North Carolina.

**Procedure by which a person can object to the agency on a proposed rule:** By submitting your objection in writing to Lisa Johnson, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401 or email lisa.johnson@ncmail.net and by telephone (919) 733-3055.

**Comments may be submitted to:** Lisa Johnson, APA Rulemaking Coordinator, Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-23401, phone (919) 733-3055, fax (919) 733-9386, email lisa.johnson@ncmail.net

**Comment period ends:** April 16, 2008

**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:** A copy of the fiscal note can be obtained from the agency.

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

**CHAPTER 72 – EDUCATIONAL ASSISTANCE**

**SECTION .0100 - GENERAL**

**10A NCAC 72 .0101 SCOPE**

The rules in this Chapter implement the North Carolina Child Welfare Postsecondary Educational Support Program established by section 10.34(a) of Session Law 2007-323.

Authority S.L. 207-323.

**10A NCAC 72 .0102 DEFINITIONS**

Unless the context indicates some other meaning, the words and terms below have the following meanings:

- (1) "Academic Year" means a period of time in which a student normally completes the equivalent of at least two semesters or three quarters of academic work.
- (2) "Approved Institution" means one of the branches of the University of North Carolina or one of the public North Carolina community colleges.
- (3) "Case Management Services" are a set of services provided by an agency contracting with the North Carolina Division of Social Services (DSS) for participating students and their families which are designed to support the student's successful postsecondary education experience. Such services include: processing and accepting applications for the program;
  - (a) certifying each eligible student and the amount of the Eligible Student's Scholarship and communicating this information to the North Carolina State Education Assistance Authority to authorize release of funds;



- (b) compiling accurate databases of resources in the students' academic communities that can help students succeed in school;
  - (c) providing or arranging for counseling regarding academic issues as well as other concerns that may affect the performance of the student;
  - (d) communicating with and advising students on academic issues;
  - (e) providing consistent, regular contact with students throughout their postsecondary experience;
  - (f) being immediately available to students experiencing crisis;
  - (g) providing or arranging for emergency housing up to two weeks for students who have no safe place to live when school is out of session;
  - (h) if allowed by the student, being available to consult with student's families and staff of local Departments of Social Services regarding student's postsecondary experiences;
  - (i) monitoring grades and the individual's course of study, and evaluating progress toward goal achievement;
  - (j) maintaining records for each individual student regarding their academic progress and assistance provided; and
  - (k) providing quarterly program reports of case management services to the contract administrator at the Division of Social Services.
- (4) "Cost of Attendance" Costs of attendance are defined by the Higher Education Act of 1965(20 U.S.C. 108711), which includes tuition, fees, room, board, supplies, transportation, and personal expenses. This amount is established by each institution. This grant is limited to cost of attendance less other grants or scholarships from federal, state, or other sources.
- (5) "Education Training Voucher" (ETV) means the Federal scholarship program funded by the John Chafee Foster Care Independence Act 42 U.S.C. 677, which benefits young adults who were in the custody of the Department of Social Services at or after age 17 or were adopted from public foster care after the age of 16.
- (6) "Eligible Student" means a student who:
- (a) is between the ages of eighteen and twenty five years (has not achieved 26<sup>th</sup> birthday);
  - (b) is pursuing an undergraduate degree, diploma, or certificate at an approved institution on at least a half-time basis;
  - (c) was in the custody of a North Carolina local Department of Social Services on his or her 18<sup>th</sup> birthday, or was adopted from the North Carolina foster care system on or after his or her twelfth birthday;
  - (d) is making satisfactory progress toward completion of the course of undergraduate study as defined in Rule .0201 of this Chapter.
- (7) "Fiscal Year" means each annual period which begins on July 1 in any calendar year and ends on June 30 the following calendar year.
- (8) "Higher Education Act" means Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070, et seq.
- (9) "Matriculated Status" means the student is recognized by the approved institution as a student in a defined program of study leading to an associate's degree, baccalaureate degree, diploma or certificate.
- (10) "Pell Grant" means the needs based scholarship program administered by the federal government to benefit low income baccalaureate and postgraduate students.
- (11) "Program" means the Postsecondary Educational Support Scholarship program (PESS) established by Section 10.34(a) of Session Law 2007-323.
- (12) "Residence Manual" means the most current edition of A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes as adopted by the Board of Governors of the University of North Carolina.
- (13) "Scholarship" means an award for education awarded to an eligible student under the program.

Authority S.L. 2007-323.

**SECTION .0200 - ELIGIBILITY**

**10A NCAC 72 .0201 GENERAL RULE**

Subject to availability of funds a student may receive a Scholarship for an academic year if the approved institution at which the student is enrolled, or admitted for enrollment, determines that the student:

- (1) Meets all of the eligibility requirements established in this Chapter;
- (2) Is a North Carolina resident for tuition purposes under G.S. 116-143.1 and the Residence Manual;

- (3) Has complied with the registration requirements of the Military Selective Service Act (50 U.S.C. A. 451 et seq.) or is exempt from registration requirements;
- (4) Is not in default, or does not owe a refund, under any federal or state loan or grant program.

Authority S.L. 207-323.

**10A NCAC 72 .0202 SATISFACTORY PROGRESS REQUIREMENT**

An eligible student may receive a scholarship for the eligible student's subsequent academic years provided that, for each subsequent academic year, the eligible student meets the standards by which the approved institution measures a student's satisfactory academic progress toward completion of a program of study for the purposes of determining eligibility for federal financial aid under the Higher Education Act. Any eligible student who is placed on academic probation may continue to receive a PESS scholarship for one additional semester if the approved institution allows the student to continue in matriculated status. If the student fails to make satisfactory academic progress in the semester or term subsequent to the term in which he received academic probation, PESS assistance shall be discontinued for at least one full academic year.

Authority S.L. 207-323.

**10A NCAC 72 .0203 LIMITATION OF ELIGIBILITY**

An eligible student may not receive a PESS scholarship for more than a total of eight semesters or the equivalent thereof.

Authority S.L. 207-323.

**SECTION .0300 - APPLICATION**

**10A NCAC 72 .0301 SCHOLARSHIP APPLICATION PROCEDURES**

(a) Method of Applying for Scholarships. Students shall apply directly for PESS through the agency which contracts with the Division of Social Services to provide case management services for the PESS recipients.

(b) Determination of eligible students. Eligibility for the PESS program shall be verified by employees of the custodial county Department of Social Services or the State Division of Social Services.

(c) Scholarships within an Academic Year. An Eligible Student may receive a scholarship for one or more semesters or quarters, provided that the eligible student's total financial aid from the Education Training Voucher and Pell Grant and the PESS scholarship does not exceed the total cost of attendance.

(d) Denial of Scholarship Applications. The Case Management contractor shall notify any student whose application is denied regarding the reasons for the denial.

Authority S.L. 207-323.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0339.*

**Proposed Effective Date:** June 1, 2008

**Public Hearing:**

**Date:** March 3, 2008

**Time:** 2:00 p.m.

**Location:** NC Wildlife Resources Commission, Room 428, 4<sup>th</sup> Floor, 1751 Varsity Drive, Raleigh, NC 27606

**Reason for Proposed Action:** Respond to petition from McDowell County to establish a No Wake Zone at Bear Creek Marina in Lake James.

**Procedure by which a person can object to the agency on a proposed rule:** Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For this rule, the contact person is Joan Troy.

**Comments may be submitted to:** Joan Troy, 1717 Mail Service Center, Raleigh, NC 27699-1717, email Joan.troy@ncwildlife.org

**Comment period ends:** April 15, 2008

**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 10 - WILDLIFE RESOURCES AND WATER SAFETY**

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies to the following waters located on Lake James in McDowell County:

- (1) that area adjacent to the shoreline of the McDowell Wildlife Club property;
(2) that area adjacent to the shoreline of the Marion Moose Club property;
(3) that area known as Morgan Cove;
(4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
(5) that area within 50 yards of the shoreline at Burnett's Landing;
(6) the cove area adjacent to the State Park swimming area;
(7) the cove area adjacent to the State Park picnic area and dock;
(8) that area within 50 yards of camping areas in the Lake James State Park as designated by the appropriate markers;
(9) that area within 50 yards of the boat launching ramp at the Marion Lake Club;
(10) that area within 50 yards in either direction from the marina docks in Plantation Point Cove;
(11) that designated area of Goodman's Landing Cove within 50 yards of the swimming area and boat docks of Goodman's Campground;
(12) that area beginning at the rock shoals located at Deerfield Campground downstream for a distance of approximately 200 yards as delineated by appropriate markers;
(13) that area as delineated by appropriate markers along the shoreline of the development known as Lakeview Pointe;
(14) that area as delineated by appropriate markers at the Waterglyn Subdivision Cove;
(15) that area as delineated by appropriate markers along the shoreline of the Lakeview Shoes Subdivision;
(16) that area as delineated by appropriate markers at the North Fork of the Catawba River where it enters Lake James; and
(17) that area as delineated by appropriate markers within 50 yards of the Bear Creek Marina.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or waterskis shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of McDowell County is designated a suitable

agency for placement and maintenance of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors intends to adopt the rule cited as 21 NCAC 12 .0211 and amend the rules cited as 21 NCAC 12 .0204 - .0205, .0819, .0830, .0901.

Proposed Effective Date: June 1, 2008

Public Hearing:

Date: March 12, 2008

Time: 9:00 a.m.

Location: North Carolina Licensing Board for General Contractors, 3739 National Drive, Suite 225, Raleigh, NC 27619

Reason for Proposed Action:

21 NCAC 12 .0204 - To change the terminology used in paragraph (f) to make it consistent with AICPA and GAAP standards.

21 NCAC 12 .0205 - To change the rule to make it consistent with an amendment to G.S. 87-10.

21 NCAC 12 .0211 - To clarify when a license is required for multiunit building projects.

21 NCAC 12 .0819 - To delete an incorrect rule citation referenced in the rule.

21 NCAC 12 .0830 - To correct a rule citation referenced in the rule.

21 NCAC 12 .0901 - To limit the definition of "owner or former owner" to make it consistent with G.S. 87-1.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections regarding the proposed amendments to Mark Selph, North Carolina Licensing Board for General Contractors, P.O. Box 17187, Raleigh, NC 27619.

Comments may be submitted to: Mark D. Selph, North Carolina Licensing Board for General Contractors, Post Office Box 17187, Raleigh, NC 27619

Comment period ends: April 15, 2008

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 - LICENSING REQUIREMENTS

21 NCAC 12 .0204 ELIGIBILITY

- (a) Limited License. The applicant for a limited license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
  - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000.00);
  - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant; and
  - (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation.
- (b) Intermediate License. The applicant for an intermediate license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
  - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (~~(\$75,000.00)~~, (\$75,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and

- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (c) Unlimited License. The applicant for an unlimited license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
  - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (~~(\$150,000.00)~~, (\$150,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
  - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has

been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Financial statements submitted by applicants to the Board shall be required to conform to United States "generally accepted accounting principles" (GAAP). The Board may accept non-GAAP financial statements when the reporting method the Board desires is not in compliance with GAAP. The terminologies, Working-working capital, balance sheet with current and fixed assets, current and long term liabilities, and other financial terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" (GAAP) as promulgated by the Financial Accounting Standards Board, Board (FASB), the American Institute of Certified Public Accountants, and, if applicable, through pronouncements of the Governmental Accounting Standards Board, or their predecessor organizations. An The terminologies audited financial statement, statements, an unqualified opinion, and other financial reporting terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (GAAS), as promulgated by the American Institute of Certified Public Accountants through pronouncements of the Auditing Standards Board.

Authority G.S. 87-1; 87-10.

**21 NCAC 12 .0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER**

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualifications by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting, the Board shall consider the application. The regular meetings of the Board are in January, April, July and October of each year.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for no more than two licenses. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than two years prior to the filing of the application found to be in complete order. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee which has been disciplined by the Board.

(c) The holder of a general contractors license shall notify the Board immediately in writing as to the termination date in the event the qualifying individual or individuals cease to be

connected with the licensee. After such notice is filed with the Board, or the Board determines that the qualifying individual or individuals are no longer connected with the licensee, the license shall remain in full force and effect for a period of ~~30~~ 90 days from the termination date, and then be cancelled, as provided by G.S. 87-10. Holders of a general contractors license are entitled to reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost exceeds the monetary threshold set forth in G.S. 87-1 after the license has been cancelled, until another qualifying individual has passed a required examination.

Authority G.S. 87-1; 87-10.

**21 NCAC 12 .0211 MULTIUNIT BUILDINGS**

For the purposes of determining whether or not the cost of the undertaking is thirty thousand dollars (\$30,000) or more under G.S. 87-1, and whether or not the value of any single project falls within the license limitations established by G.S. 87-10(a), if a project consists of the construction or alteration of one or more buildings comprised of two or more units within each building, including apartments, condominiums, and townhomes, then all such buildings shall be considered in determining the cost of the undertaking under G.S. 87-1 and the value of the project under G.S. 87-10(a).

Authority G.S. 87-1; 87-10.

**SECTION .0800 - CONTESTED CASES**

**21 NCAC 12 .0819 GRANTING OR DENYING HEARING REQUEST**

(a) The Board will decide whether to grant a request for a hearing.

(b) The denial of request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b), ~~G.S. 150B-38(b) and explained in Rule .0302 of this Section.~~

**21 NCAC 12 .0830 PROPOSALS FOR DECISIONS**

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, ~~26 NCAC 3 .0026-26~~ NCAC 03.0127. Any party may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be received within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter, must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must

be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions should bear the notation:

EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled board meeting following receipt of the written exceptions.

Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40.

SECTION .0900 – HOMEOWNERS RECOVERY FUND

21 NCAC 12 .0901 DEFINITIONS

The following definitions shall apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" includes contracting for the construction or alteration of a single-family residential dwelling unit.
(2) "Dishonest conduct" shall not include a mere breach of a contract.
(3) "Incompetent conduct" is conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
(4) "Owner or former owner" includes a person who contracted with a general contractor for the construction or purchase of a single-family residential dwelling unit. "Owner or former owner" shall not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, officer, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term shall not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit which has been the subject of an award from the Homeowners Recovery Fund resulting from the same dishonest or incompetent conduct. "Owner or former

owner" shall not include the owner of real property who constructed, altered, or contracted for construction or alteration of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit.

(5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.

(6) "Separately owned residence" means a building whose construction is governed by Volume VII of the North Carolina State Building Code.

Authority G.S. 87-15.6.

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CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to amend the rule cited as 21 NCAC 32B .0306.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: April 15, 2008

Time: 10:00 a.m.

Location: North Carolina Medical Board, Board Room, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: To remove requirement that physicians submit a letter of reference from someone who has known the physical ten years or more, since this was an onerous requirement for some applicants, and is not very helpful to the Medical Board.

Procedure by which a person can object to the agency on a proposed rule: A person may submit objections to the proposed amendment, in writing by April 15, 2008, to R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609.

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

Comment period ends: April 15, 2008

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 32B – LICENSE TO PRACTICE  
MEDICINE**

**SECTION .0300 – LICENSE BY ENDORSEMENT**

**21 NCAC 32B .0306 LETTERS OF  
RECOMMENDATION**

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

Authority G.S. 90-8.1; 90-9.1(c).

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**CHAPTER 54 - NORTH CAROLINA PSYCHOLOGY  
BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to amend the rule cited as 21 NCAC 54 .1702.*

**Proposed Effective Date:** July 1, 2008

**Public Hearing:**

**Date:** March 20, 2008

**Time:** 10:00 a.m.

**Location:** NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC

**Reason for Proposed Action:** *To clarify the requirements for making application for licensure for an individual who is applying on the basis of a foreign degree.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections to this Rule may be submitted in*

*writing to Martha Storie, Executive Director, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, email mstorie@charter.net, fax to Martha Storie at (828) 265-8611, or at the public hearing.*

**Comments may be submitted to:** *Martha N. Storie, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, phone (828) 262-2258, fax (828) 265-8611, email mstorie@charter.net*

**Comment period ends:** April 15, 2008

**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 .1700 - APPLICATION FOR LICENSURE**

**21 NCAC 54 .1702 FOREIGN DEGREE  
APPLICATION POLICY**

(a) Applicants applying for licensure on the basis of a foreign degree shall provide documentation which documentation, in addition to the information required in 21 NCAC 54 .1701, which establishes the following:

- (1) ~~establishes~~ the existence of the degree granting institution;
- (2) ~~establishes~~ the authenticity of the degree, transcripts, and any supporting documents;
- (3) ~~establishes~~ the equivalence of the degree in terms of level of training, content of curriculum, and course credits; and
- (4) ~~establishes~~ the equivalence of any supervised experience obtained in the foreign country.

Documentation shall be in the form of a course-by-course evaluation of credentials submitted directly to the Board from an evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc.

(b) ~~Only~~ Except as described in Paragraph (c) of this Rule, only official transcripts and documents shall be submitted in support of the application and shall be received directly from the institution(s) or individual(s) involved. In those rare instances

where official documents cannot be provided by the institution, the original possessed by the applicant may be acceptable after having been reviewed and copied by a Board member or designee.

(c) In those rare instances where an official document cannot be provided directly by the institution or individual involved, an original document possessed by the applicant may be reviewed and copied by a Board member or designee.

(d) Official transcripts or supporting documents ~~Any document~~ which ~~are~~ is in a language other than English shall be accompanied by an ~~acceptable~~ a translation with notarized verification of the translation's accuracy and completeness. This translation shall be completed by an ~~individual~~ individual, other than the ~~applicant~~ applicant, who is ~~acceptable to~~ approved by the Board and demonstrates no conflict of interest. Such individuals may include college or university language faculty, a translation service, or an American consul.

(d) ~~Documentation relevant to Paragraph (a) of this Rule may include, but is not limited to, validation of degree equivalence by college or university faculty in the United States, reports from a credentials' evaluation service, or materials available from the Foreign Graduate Committee of the Association of State and Provincial Psychology Boards. In addition, the applicant may be required to interview with the Board.~~

(e) An applicant's references shall include individuals from member jurisdictions of the Association of State and Provincial Psychology Boards, including a doctoral level psychologist familiar with the applicant's professional practice of psychology.

Authority G.S. 90-270.9; 90-270.11(c).

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CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to amend the rule cited as 21 NCAC 58A .0109.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: April 16, 2008

Time: 10:00 a.m.

Location: NC Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action: To clarify that brokers must disclose bonuses and other forms of compensation and to require that under certain circumstances the disclosure must be made in writing to principals.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects or has comment about the proposed rule changes may submit written comments to the rule-making coordinator Sandra L. Good at the address listed below.

Comments may be submitted to: Sandra L. Good, P.O. Box 17100, Raleigh, NC 27619-7100, phone (919) 875-3700

Comment period ends: April 16, 2008

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 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0109 BROKERAGE FEES AND COMPENSATION

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, incentive, bonus, rebate, or other valuable consideration of more than nominal value for services which the licensee provides, recommends, procures, or arranges relating to a real estate transaction for any party, without full and timely disclosure to such party. Full disclosure shall include a description of the commission, incentive, bonus, rebate, or other consideration including its value and the identity of the person or party by whom it will or may be paid. A disclosure under this rule is timely when it is made in sufficient time to aid a reasonable person's decision-making. provided, however, that nothing-When the party is the licensee's principal, the licensee shall also confirm the disclosure in writing before the party makes or accepts an offer to purchase, lease, rent, or option, or before the party enters into any other contract relating to a real estate transaction. Nothing in this Rule shall be construed to require a licensee to disclose to a person not his principal the compensation the licensee expects to receive from his principal in a real estate sales or lease transaction or from the licensee's



employing broker. Nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to ~~such Act~~ said Act or to fail to make any disclosure required by said Act or rules.

(c) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of brokers, and similar matters.

(d) Except as provided in (e) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(e) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;

- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and

- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

*Authority G.S. 93A-3(c).*

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

**TITLE 10A– DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Rule-making Agency:** NC DHHS, Division of Health Service Regulation

**Rule Citation:** 10A NCAC 14C .1903, .2101 - .2103, .2106, .2701 - .2703, .3702, .4002 - .4003, .4006

**Effective Date:** February 1, 2008

**Date Approved by the Rules Review Commission:** January 17, 2008

**Reason for Action:** Several subject matters are addressed in the State Medical Facilities Plan (SMFP). Each year, changes to existing Certificate of Need rules are required to ensure consistency with the SMFP. The effective date of the 2008 SMFP is January 1, 2008. Change to existing Certificate of Need rules are required to ensure consistency with the State Medical Facilities Plan that became effective January 1, 2008.

**CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION**

**SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS**

**SECTION .1900 – CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT**

**10A NCAC 14C .1903 PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:

- (1) an applicant's existing linear accelerators located in the proposed service area performed at least 6,750 ESTV treatments per machine or served at least 250 patients per machine in the twelve months prior to the date the application was submitted;
- (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or 6,750 ESTV treatments during the third year of operation of the new equipment; and
- (3) an applicant's existing linear accelerators located in the proposed service area shall be projected to be utilized at an annual rate of 6,750 ESTV treatments or 250 patients per machine during the third year of operation of the new equipment.

(b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.

(c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:

- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
- (2) the maximum number and type of procedures that the proposed equipment is capable of performing.

(d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

*History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment Eff. January 1, 1999; Temporary Amendment effective January 1, 1999 expired October 12, 1999; Temporary Amended Eff. January 1, 2000; Temporary Amendment Eff. February 1, 2006; Amended Eff. November 1, 2006. Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. March 15, 2002; January 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2008.*

**SECTION .2100 – CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS**

**10A NCAC 14C .2101 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- (2) "Operating room" means a room as defined in G.S. 131E-176(18c), which includes an inpatient operating room, an outpatient or ambulatory surgical operating room, or a shared operating room.

- (3) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1c).
- (4) "Dedicated cesarean section operating room" means an operating room as defined in the applicable State Medical Facilities Plan.
- ~~(4)~~(5) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation and which were licensed and certified prior to the beginning of the review period.
- ~~(5)~~(6) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed.
- ~~(6)~~(7) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- ~~(7)~~(8) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of surgical procedures which require local, regional or general anesthesia and a period of post-operative observation of less than 24 hours.
- (9) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- ~~(8)~~(10) "Service area" means the Operating Room Service Area as defined in the applicable State Medical Facilities Plan.
- ~~(9)~~(11) "Shared operating room" means an operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
- ~~(10)~~(12) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- ~~(11)~~(13) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
- ~~(12)~~(14) "Surgical case" means an individual who receives one or more surgical procedures in an

operating room during a single operative encounter.

*History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2002; July 1, 2001; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Rule Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008.*

**10A NCAC 14C .2102 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
- (2) otolaryngology;
- (3) plastic surgery;
- (4) general surgery;
- (5) ophthalmology;
- (6) orthopedic;
- (7) oral surgery; and
- (8) other specialty area identified by the applicant.

(b) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating ~~rooms,~~ rooms except relocations of existing operating rooms between existing licensed facilities within the same service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide the following ~~information regarding the services to be offered in the facility following completion of the project:~~ information:

- (1) the number and type of ~~existing and proposed operating rooms;~~ rooms in each licensed facility which the applicant or a related entity owns a controlling interest in and is located in the service area, (separately identifying the

- number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of ~~existing and proposed shared operating rooms;~~ rooms to be located in each licensed facility which the applicant or a related entity owns a controlling interest in and is located in the service area after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the ~~current and projected~~ number of inpatient surgical procedures, identified by CPT code or ICD-9-CM procedure code, cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases to be performed in the most recent 12 month period for which data is available, in the operating ~~rooms;~~ rooms in each licensed facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- ~~(4) the fixed and movable equipment to be located in each operating room;~~
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each licensed facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- ~~(5)(6)~~ (6) the hours of operation of the proposed new operating rooms;
- ~~(6)(7)~~ (7) if the applicant is an existing facility, the average ~~charge~~ reimbursement received per procedure for the 20 surgical procedures most commonly performed in the facility during the preceding 12 months and a list of all services and items included in each ~~charge;~~ the reimbursement;
- ~~(7)(8)~~ (8) the projected average ~~charge~~ reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility and a list of all services and items included in each ~~charge;~~ the reimbursement; and

- ~~(8)(9)~~ (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

(c) An applicant proposing to relocate existing operating rooms between existing licensed facilities within the same service area shall provide the following information:

- (1) the number and type of existing and approved operating rooms in each licensed facility in which the number of operating rooms will increase or decrease (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of operating rooms to be located in each affected licensed facility after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each licensed facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each licensed facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- (6) the hours of operation of the facility to be expanded;
- (7) the average reimbursement received per procedure for the 20 surgical procedures most commonly performed in each affected licensed facility during the preceding 12 months and a list of all services and items included in the reimbursement;
- (8) the projected average reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility to be expanded and a list of all services and items included in the reimbursement; and

- (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

*History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2008.*

**10A NCAC 14C .2103 PERFORMANCE STANDARDS**

(a) In projecting utilization, the ~~existing, approved and proposed~~ operating rooms shall be considered to be available for use five days per week and 52 weeks a year.

(b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless:

- (1) ~~the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open heart and dedicated C-Section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project; or reasonably demonstrates the need for the number of proposed operating rooms in the facility, which is the subject of this review, in the third operating year of the project based on the following formula: {(Number of facility's projected inpatient cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of facility's projected outpatient cases times 1.5 hours)} divided by 1872 hours} minus the facility's total number of existing, approved and proposed operating rooms, excluding one operating room for Level I, II or III trauma centers, one operating room for facilities with designated burn intensive care units, and all~~

dedicated open heart and C-section operating rooms. The number of rooms needed is the positive difference rounded to the next highest number for fractions of 0.50 or greater; or the applicant demonstrates conformance of the proposed project to Policy AC-3 in the State Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects."

- (2)

(c) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms) except relocations of existing operating rooms between existing licensed facilities within the same service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant reasonably demonstrates the need for the number of proposed operating rooms in addition to the rooms in its licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the following formula: {(Number of projected inpatient cases for all its facilities, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of projected outpatient cases for all its facilities times 1.5 hours)} divided by 1872 hours} minus the total number of existing, approved and proposed operating rooms, excluding one operating room for Level I, II or III trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of its licensed facilities in the service area. A need is demonstrated if the difference is a positive number greater than or equal to 0.50.

~~(e)(d) A proposal An applicant that has one or more existing or approved dedicated C-section operating rooms and is proposing to develop an additional operating room to be used as a dedicated C-section operating room in the same facility shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open heart and dedicated C section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room and 3.2 surgical cases per day for each shared operating room demonstrate that an average of at least 365 C-sections per room were performed in the facility's existing dedicated C-section operating rooms in the previous 12 months and are projected to be performed in the facility's existing, approved and proposed dedicated C-section rooms during the third year of operation following completion of the project.~~

~~(d)(e) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.8 surgical cases per day~~

~~for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy room, and 3.2 surgical cases per day for each shared operating room. utilized an average of at least 1,872 hours per operating room per year, excluding dedicated open heart and C-Section operating rooms. The hours utilized per operating room shall be calculated as follows: [(Number of projected inpatient cases, excluding open heart and C-sections performed in dedicated rooms, times 3.0 hours) plus (Number of projected outpatient cases times 1.5 hours)] divided by the number of operating rooms, excluding dedicated open heart and C-Section operating rooms.~~

~~(e)(f)~~ An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall ~~provide documentation to show that each existing and approved ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty areas as proposed in the application is reasonably projected to be operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy room, and 3.2 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project. reasonably demonstrate the need for the conversion in the third operating year of the project based on the following formula: [(Total number of projected outpatient cases for all ambulatory surgery programs in the service area times 1.5 hours) divided by 1872 hours] minus the total number of existing, approved and proposed outpatient or ambulatory surgical operating rooms and shared operating rooms in the service area. The need for the conversion is demonstrated if the difference is a positive number greater than or equal to one, after the number is rounded to the next highest number for fractions of 0.50 or greater.~~

~~(f)(g)~~ The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

*History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;*  
*Amended Eff. March 1, 1993;*  
*Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Amended Eff. January 4, 1994;*  
*Temporary Amendment Eff. January 1, 2002; July 1, 2001;*  
*Amended Eff. August 1, 2002;*  
*Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;*  
*Amended Eff. April 1, 2003;*  
*Temporary Amendment Eff. January 1, 2005;*  
*Amended Eff. November 1, 2005;*  
*Temporary Rule Eff. February 1, 2006;*  
*Amended Eff. November 1, 2006;*  
*Temporary Amendment Eff. February 1, 2008.*

**10A NCAC 14C .2106 FACILITY**

(a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.

(b) An applicant proposing a licensed ambulatory surgical facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.

(c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.

~~(d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three specialty areas shall be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three specialty areas.~~

~~(e)(d)~~ The applicant shall provide a floor plan of the proposed facility identifying the following areas:

- (1) receiving/registering area;
- (2) waiting area;
- (3) pre-operative area;
- (4) operating room by type;
- (5) recovery area; and
- (6) observation area.

~~(f)(e)~~ An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:

- (1) physicians;
- (2) ancillary services;
- (3) support services;
- (4) medical equipment;
- (5) surgical equipment;
- (6) receiving/registering area;
- (7) clinical support areas;
- (8) medical records;
- (9) waiting area;
- (10) pre-operative area;
- (11) operating rooms by type;
- (12) recovery area; and
- (13) observation area.

*History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;*

*Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Amended Eff. January 4, 1994;*

*Temporary Amendment Eff. July 1, 2001;*

*Temporary Amendment Eff. January 1, 2002;*

*Amended Eff. August 1, 2002;*

*Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;*

*Amended Eff. April 1, 2003;*

*Temporary Amendment Eff. February 1, 2008.*

**SECTION .2700 - CRITERIA AND STANDARDS FOR  
MAGNETIC RESONANCE IMAGING SCANNER**

**10A NCAC 14C .2701 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.
- (4) "Dedicated breast MRI scanner" means an MRI scanner that is configured to perform only breast MRI procedures and is not capable of performing other types of non-breast MRI procedures.
- (5) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (6) "Extremity MRI scanner" means an MRI scanner that is utilized for the imaging of extremities and is of open design with a field of view no greater than 25 centimeters.

- (7) "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
- (8) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (9) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).
- (10) "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and VI (Eastern Mobile MRI Region), or the western part of the State which includes the counties in Health Service Areas I, II, and III (Western Mobile MRI Region). The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
- (11) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.
- (12) "MRI procedure" means a single discrete MRI study of one patient.
- (13) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
- (14) "MRI study" means one or more scans relative to a single diagnosis or symptom.
- (15) "Multi-position MRI scanner" means an MRI scanner as defined in the State Medical Facilities Plan, pursuant to a special need determination for a demonstration project.
- ~~(15)~~(16) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- ~~(16)~~(17) "Temporary MRI scanner" means an MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.

~~(17)~~(18) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.

~~(18)~~(19) "Weighted breast MRI procedures" means MRI procedures which are performed on a dedicated breast MRI scanner and are adjusted to account for the length of time to complete the procedure, based on the following weights: one diagnostic breast MRI procedure is valued at 1.0 weighted MRI procedure (based on an average of 60 minutes per procedure), one MRI-guided breast needle localization MRI procedure is valued at 1.1 weighted MRI procedure (based on an average of 66 minutes per procedure), and one MRI-guided breast biopsy procedure is valued at 1.6 weighted MRI procedures (based on an average of 96 minutes per procedure).

*History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004; April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Amendment Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008.*

**10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to acquire an MRI scanner, including a mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) Except for proposals to acquire mobile MRI scanners that serve two or more host facilities, both the applicant and the person billing the patients for the MRI service shall be named as co-applicants in the application form.

(c) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide the following information:

- (1) documentation that the proposed fixed MRI scanner, excluding fixed extremity and breast MRI scanners, shall be available and staffed for use at least 66 hours per week;
- (2) documentation that the proposed mobile MRI scanner shall be available and staffed for use at least 40 hours per week;
- (3) documentation that the proposed fixed extremity or dedicated breast MRI scanner shall be available and staffed for use at least 40 hours per week;
- (4) the average charge to the patient, regardless of who bills the patient, for each of the 20 most frequent MRI procedures to be performed for each of the first three years of operation after completion of the project and a description of items included in the charge; if the professional fee is included in the charge, provide the dollar amount for the professional fee;
- (5) if the proposed MRI service will be provided pursuant to a service agreement, the dollar amount of the service contract fee billed by the applicant to the contracting party for each of the first three years of operation;
- (6) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner and their estimate of the number of patients proposed to be referred per year, which is based on the physicians' historical number of referrals;
- (7) for each location in the MRI service area at which the applicant or a related entity will provide MRI services, utilizing existing, approved, or proposed fixed MRI scanners, the number of fixed MRI scanners operated or to be operated at each location;
- ~~(7)~~(8) for each location in the MRI service area at which the applicant or a related entity will provide MRI services, utilizing existing, approved, or proposed fixed MRI scanners, projections of the annual number of unweighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;



- (8)(9) for each location in the MRI service area at which the applicant or a related entity will provide services, utilizing existing, approved, or proposed fixed MRI scanners, projections of the annual number of weighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;
- (9)(10) a detailed description of the methodology and assumptions used to project the number of unweighted MRI procedures to be performed at each location, including the number of contrast versus non-contrast procedures, sedation versus non-sedation procedures, and inpatient versus outpatient procedures;
- (10)(11) a detailed description of the methodology and assumptions used to project the number of weighted MRI procedures to be performed at each location;
- (11)(12) for each ~~existing fixed or existing, approved or proposed mobile MRI scanner~~ owned by the applicant or a related entity and operated in North Carolina in the month the application is submitted, the vendor, tesla strength, serial number or vehicle identification number, CON project identification number, ~~physical location for fixed MRI scanners, and host sites for mobile MRI scanners, sites;~~
- (12)(13) ~~for each approved fixed or mobile MRI scanner to be owned by the applicant or a related entity and approved to be operated in North Carolina, the proposed vendor, proposed tesla strength, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners; for each host site in the mobile MRI region in which the applicant or a related entity will provide the proposed mobile MRI services, utilizing existing, approved, or proposed mobile MRI scanners, projections of the annual number of unweighted and weighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;~~
- (13)(14) if proposing to acquire a mobile MRI scanner, an explanation of the basis for selection of the proposed host sites if the host sites are not located in MRI service areas that lack a fixed MRI scanner; and
- (14)(15) identity of the accreditation authority the applicant proposes to use.
- (d) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.
- (e) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall demonstrate that:
- (1) it has an existing and ongoing working relationship with a breast-imaging radiologist or radiology practice group that has experience interpreting breast images provided by mammography, ultrasound, and MRI scanner equipment, and that is trained to interpret images produced by a MRI scanner configured exclusively for mammographic studies;
  - (2) for the last 12 months it has performed the following services, without interruption in the provision of these services: breast MRI procedures on a fixed MRI scanner with a breast coil, mammograms, breast ultrasound procedures, breast needle core biopsies, breast cyst aspirations, and pre-surgical breast needle localizations;
  - (3) its existing mammography equipment, breast ultrasound equipment, and the proposed dedicated breast MRI scanner is in compliance with the federal Mammography Quality Standards Act;
  - (4) it is part of an existing healthcare system that provides comprehensive cancer care, including radiation oncology, medical oncology, surgical oncology and an established breast cancer treatment program that is based in the geographic area proposed to be served by the applicant; and,
  - (5) it has an existing relationship with an established collaborative team for the treatment of breast cancer that includes, radiologists, pathologists, radiation oncologists, hematologists/oncologists, surgeons, obstetricians/gynecologists, and primary care providers.
- (f) An applicant proposing to acquire an extremity MRI scanner, pursuant to a need determination in the State Medical Facilities Plan for a demonstration project, shall:
- (1) provide a detailed description of the scope of the research studies that shall be conducted to demonstrate the convenience, cost effectiveness and improved access resulting from utilization of extremity MRI scanning;
  - (2) provide projections of estimated cost savings from utilization of an extremity MRI scanner based on comparison of "total dollars received per procedure" performed on the proposed scanner in comparison to "total dollars received per procedure" performed on whole body scanners;
  - (3) provide projections of estimated cost savings to the patient from utilization of an extremity MRI scanner;
  - (4) commit to prepare an annual report at the end of each of the first three operating years, to be submitted to the Medical Facilities Planning

Section and the Certificate of Need Section, that shall include:

- (A) a detailed description of the research studies completed;
  - (B) a description of the results of the studies;
  - (C) the cost per procedure to the patient and billing entity;
  - (D) the cost savings to the patient attributed to utilization of an extremity MRI scanner;
  - (E) an analysis of "total dollars received per procedure" performed on the extremity MRI scanner in comparison to "total dollars received per procedure" performed on whole body scanners; and
  - (F) the annual volume of unweighted and weighted MRI procedures performed, by CPT code;
- (5) identify the operating hours of the proposed scanner;
  - (6) provide a description of the capabilities of the proposed scanner;
  - (7) provide documentation of the capacity of the proposed scanner based on the number of days to be operated each week, the number of days to be operated each year, the number of hours to be operated each day, and the average number of unweighted MRI procedures the scanner is capable of performing each hour;
  - (8) identify the types of MRI procedures by CPT code that are appropriate to be performed on an extremity MRI scanner as opposed to a whole body MRI scanner;
  - (9) provide copies of the operational and safety requirements set by the manufacturer; and
  - (10) describe the criteria and methodology to be implemented for utilization review to ensure the medical necessity of the procedures performed.

(g) An applicant proposing to acquire an multi-position MRI scanner, pursuant to a need determination in the State Medical Facilities Plan for a demonstration project, shall:

- (1) commit to prepare an annual report at the end of each of the first three operating years, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, that shall include:
  - (A) the number of exams by CPT code performed on the multi-position MRI scanner in an upright or nonstandard position;
  - (B) the total number of examinations by CPT code performed on the multi-position MRI scanner in any position;
  - (C) the number of doctors by specialty that referred patients for an MRI scan in an upright or nonstandard position;

(D) documentation to demonstrate compliance with the Basic Principles policy included in the State Medical Facilities Plan;

(E) a detailed description of the unique information that was acquired only by use of the multi-position capability of the multi-position MRI scanner; and

(F) the number of insured, underinsured, and uninsured patients served by type of payment category;

(2) provide the specific criteria that will be used to determine which patients will be examined in other than routine supine or prone imaging positions;

(3) project the number of exams by CPT code performed on the multi-position MRI scanner in an upright or nonstandard position;

(4) project the total number of examinations by CPT code performed on the multi-position MRI scanner in any position;

(5) demonstrate that access to the multi-position MRI scanner will be made available to all spine surgeons in the proposed service area, regardless of ownership in the applicant's facility;

(6) demonstrate that at least 50 percent of the patients to be served on the multi-position MRI scanner will be spine patients who are examined in an upright or nonstandard position; and

(7) provide documentation of the capacity of the proposed fixed multi-position MRI scanner based on the number of days to be operated each week, the number of days to be operated each year, the number of hours to be operated each day, and the average number of unweighted MRI procedures the scanner is capable of performing each hour.

*History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2003; January 1, 2002; Amended Eff. August 1, 2004; April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Amendment Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008.*

**10A NCAC 14C .2703 PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:

- (1) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns a controlling interest in and operates in

the mobile MRI region in which the proposed equipment will be located, except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.]; with the exception that in the event an existing mobile MRI scanner has been in operation less than 12 months at the time the application is filed, the applicant shall demonstrate that this mobile MRI scanner performed an average of at least 277 weighted MRI procedures per month for the period in which it has been in operation;

- (2) demonstrate annual utilization in the third year of operation is reasonably projected to be at least 3328 weighted MRI procedures on each of the existing, approved and proposed mobile MRI scanners owned by the applicant or a related entity to be operated in the mobile MRI region in which the proposed equipment will be located. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a fixed magnetic resonance imaging (MRI) scanner, except for fixed MRI scanners described in Paragraphs (c) and (d) of this Rule, shall:

- (1) demonstrate that the existing fixed MRI scanners which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area performed an average of 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data;
- (2) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns a controlling interest in and operates in the proposed MRI service area except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (3) demonstrate that the average annual utilization of the existing, approved and proposed fixed MRI scanners which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area are reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:

- (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located,
  - (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located,
  - (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located,
  - (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
  - (E) 4,805 weighted MRI procedures in MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;
- (4) if the proposed MRI scanner will be located at a different site from any of the existing or approved MRI scanners owned by the applicant or a related entity, demonstrate that the annual utilization of the proposed fixed MRI scanner is reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:
- (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located,
  - (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located,
  - (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located,
  - (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
  - (E) 4,805 weighted MRI procedures in MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;
- (5) demonstrate that annual utilization of each existing, approved and proposed mobile MRI scanner which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area is reasonably expected to perform 3,328 weighted MRI procedures in the third year of operation following completion of the proposed project. [Note: This is not the average number of

- weighted MRI procedures to be performed on all of the applicant's mobile MRI scanners.];
- (6) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (c) An applicant proposing to acquire a fixed dedicated breast magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for an adjustment to the need determination shall:
- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 1,664 weighted MRI procedures which is .80 times 1 procedure per hour times 40 hours per week times 52 weeks per year; and
  - (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (d) An applicant proposing to acquire a fixed extremity MRI scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for an adjustment to the need determination shall:
- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 80 percent of the capacity defined by the applicant in response to 10A NCAC 14C ~~.2702(f)(6);~~ .2702(f)(7); and
  - (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (e) An applicant proposing to acquire a fixed multi-position MRI scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for a demonstration project shall:
- (1) demonstrate annual utilization of the proposed multi-position MRI scanner in the third year of operation is reasonably projected to be at least 80 percent of the capacity defined by the applicant in response to 10A NCAC 14C ~~.2702(f)(6);~~ .2702(g)(7); and
  - (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

*History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001;*

*Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment Eff. January 1, 2002 amends and replaces the permanent rule effective, August 1, 2002; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004; April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Amendment Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008.*

**SECTION .3700 - CRITERIA AND STANDARDS FOR  
POSITRON EMISSION TOMOGRAPHY SCANNER**

**10A NCAC 14C .3702 INFORMATION REQUIRED OF APPLICANT**

- (a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall use the Acute Care Facility/Medical Equipment application form.
- (b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:
- (1) The projected number of procedures to be performed and the projected number of patients to be served for each of the first three years following completion of the proposed project. Projections shall be listed by clinical area (e.g., oncology, cardiology), and all methodologies and assumptions used in making the projections shall be provided.
  - (2) ~~Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the 12 months immediately prior to the date on which the application is filed: of arrangements made between the applicant and other providers to assure patients of the facility will have access to all of the following services:~~
    - (A) nuclear medicine imaging services;
    - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
    - (C) magnetic resonance imaging scans;
    - (D) computerized tomography scans;
    - (E) cardiac angiography;
    - (F) cardiac ultrasound; and
    - (G) ~~neuroangiography-~~ neuroangiography;
    - (H) radiation oncology;
    - (I) medical oncology; and
    - (J) surgical oncology.
  - (3) Documentation that the facility will:
    - (A) establish the clinical PET unit, and any accompanying equipment used in the manufacture of positron-emitting

radioisotopes, as a regional resource that will have no administrative, clinical or charge requirements that would impede physician referrals of patients for whom PET testing would be appropriate; and

- (B) provide scheduled hours of operation for the PET scanner of a minimum of ~~12~~ 60 hours per day, ~~six days a week~~, except for mobile scanners.

(c) An applicant proposing to acquire a mobile PET scanner shall provide copies of letters of intent from and proposed contracts with all of the proposed host facilities at which the mobile PET scanner will be operated.

(d) An applicant proposing to acquire a mobile PET scanner shall demonstrate that each host facility offers or contracts with a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

(e) An applicant shall document that all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations.

(f) An applicant shall document that each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, manufacturer's specifications, and licensing requirements. The following shall be addressed:

- (1) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
- (2) quality control measures and assurance of PET tomography and associated instrumentation;
- (3) radiation protection and shielding;
- (4) radioactive emission to the environment; and
- (5) radioactive waste disposal.

*History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Eff. January 4, 1994;*

*Temporary Amendment Eff. January 1, 2002;*

*Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002;*

*Amended Eff. April 1, 2003;*

*Temporary Amendment Eff. February 1, 2006;*

*Amended Eff. November 1, 2006;*

*Temporary Amendment Eff. February 1, 2008.*

**SECTION .4000 - CRITERIA AND STANDARDS FOR  
HOSPICE INPATIENT FACILITIES AND HOSPICE  
RESIDENTIAL CARE FACILITIES**

**10A NCAC 14C .4002 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the

application form for Hospice Inpatient and Hospice Residential Care Services.

(b) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall provide the following information:

- (1) the projected annual number of hospice patients, admissions, deaths, and other discharges, ~~by~~ for each level of care (i.e., respite care, hospice residential care and hospice inpatient care), to be served in the facility by quarter for in each of the first 24 months three years following completion of the project and the methodology and assumptions used to make the projections;
- (2) the projected annual number of hospice patients, admissions, deaths, and other discharges for each level of care to be served by the applicant's licensed hospice agency in each of the first three years following completion of the project and the methodology and assumptions used to make the projections;
- ~~(2)(3)~~ (3) the projected annual number of patient care days, by for each level of care (i.e., respite care, hospice residential care and hospice inpatient care), by quarter, to be provided in each of the first ~~two~~ three years of operation following completion of the project and the methodology and assumptions used to make the ~~projections shall be stated;~~ projections;
- ~~(4)~~ (4) the projected average length of stay (ALOS) based on admissions to the applicant's facility, for each level of care, (i.e., respite care, hospice residential care and hospice inpatient care) and the methodology and assumptions used to make the projections;
- ~~(5)~~ (5) the projected readmission rate, for each level of care, (i.e., respite care, hospice residential care and hospice inpatient care) and the methodology and assumptions used to make the projections;
- ~~(3)(6)~~ (6) the projected average annual cost per patient care day, by level of care (i.e., respite care, hospice residential care and hospice inpatient care) for each of the first ~~two~~ three operating years following completion of the project and the methodology and assumptions used to project the average annual cost; ~~and~~
- ~~(4)(7)~~ (7) documentation of attempts made to establish working relationships with sources of referrals to the hospice facility including copies of proposed agreements for the provision of inpatient care and residential care;
- ~~(8)~~ (8) documentation of the projected number of referrals to be made by each referral source;

~~(e) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:~~

- ~~(4)(9)~~ (9) copies of the proposed contractual agreements, if the applicant is not a licensed hospice, with

a licensed hospice or a licensed home care agency with a hospice designation on its license, for the provision of hospice services;

- ~~(2)~~(10) documentation of the projected number of patients to be referred for each payor mix-type from the referring hospices, if the applicant is not a licensed hospice or if the applicant proposes to admit patients on a contractual basis; and
- ~~(3)~~(11) a copy of the admission policies, including the criteria that shall be used to select persons for admission; and admission to the hospice inpatient and residential care beds.
- ~~(4)~~ documentation that a home-like setting shall be provided in the facility.

History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. February 1, 2006; Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008.

**10A NCAC 14C .4003 PERFORMANCE STANDARDS**

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:

- (1) the average occupancy rate of the licensed hospice ~~beds~~ beds, for each level of care, in the facility is projected to be at least 50 percent for the last six months of the first operating year following completion of the project;
- (2) the average occupancy rate for the licensed hospice ~~beds~~ beds, for each level of care, in the facility is projected to be at least 65 percent for the second operating year following completion of the project; and
- (3) if the application is submitted to address the need for a ~~hospice residential care facility, beds,~~ each existing hospice residential care facility which is located in the hospice service area and which has licensed hospice beds of the type proposed by the applicant attained operated at an occupancy rate of at least 65 percent for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.

(b) An applicant proposing to add hospice inpatient facility beds to an existing hospice inpatient facility ~~or hospice residential care facility~~ shall document that the average occupancy of the licensed hospice inpatient ~~and hospice residential care~~ facility beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.

(c) An applicant proposing to add residential care beds to an existing hospice residential care facility shall document that the average occupancy of the licensed hospice residential care beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.

History Note: Authority G.S. 131E-177(1);

Temporary Adoption Eff. February 1, 2006; Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008.

**10A NCAC 14C .4006 FACILITY**

An applicant proposing to develop new hospice inpatient facility beds or new hospice residential care facility beds shall document:

- (1) that a home-like setting shall be provided in the facility;
- (2) that the services will be provided in conformity with applicable state and local laws and regulations pertaining to zoning, physical environment, water supply, waste disposal and other relevant health and safety requirements; and
- (3) for new facilities, the location of the site on which the services are to be operated. If the site is neither owned by nor under option to the applicant, the applicant must provide a written commitment to pursue acquiring the site if and when the approval is granted, must specify a secondary site on which the services could be operated if acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.

History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. February 1, 2008.

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD**

**Rule-making Agency:** North Carolina Medical Board

**Rule Citation:** 21 NCAC 32W .0101 - .0115

**Effective Date:** January 28, 2008

**Date Approved by the Rules Review Commission:** January 17, 2008

**Reason for Action:** The North Carolina General Assembly enacted a law providing for the licensure and practice of anesthesiologist assistants in North Carolina. Pursuant to G.S. 90-18.5, anesthesiologist assistants cannot begin practice until such time as the North Carolina Medical Board enacts rules governing their practice. The temporary rules are needed in order to allow anesthesiologist assistants to obtain licensure and practice on an expeditious basis. The public interest is served by allowing anesthesiologist assistants to begin practice as soon as possible. Presently, anesthesiologist assistants cannot begin practice until rules are in place, and moreover, the Board has already received applications for licenses; however, these

applicants cannot be issued licenses until the rules are adopted and in place.

**SUBCHAPTER 32W - ANESTHESIOLOGIST ASSISTANT REGULATIONS**

**21 NCAC 32W .0101 DEFINITIONS**

The following definitions apply to this Subchapter:

- (1) "Anesthesiologist" means a physician who has successfully completed an anesthesiology training program approved by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association or who is credentialed to practice anesthesiology by a Hospital or an Ambulatory Surgical Facility.
- (2) "Anesthesiologist Assistant" means a person licensed by and registered with the Board pursuant to Rule .0102 of this Subchapter to provide anesthesia services under the supervision of a Supervising Anesthesiologist.
- (3) "Anesthesiologist Assistant License" means the authority for the Anesthesiologist Assistant to provide anesthesia services under North Carolina law.
- (4) "Board" means the North Carolina Medical Board.
- (5) "Certifying Examination" means the Certifying Examination for Anesthesiologist Assistants administered by the National Commission for Certification of Anesthesiologist Assistants or its successor organization.
- (6) "Primary Supervising Anesthesiologist" means the Supervising Anesthesiologist who accepts primary responsibility for the Anesthesiologist Assistant's professional activities, including developing and implementing the Anesthesiologist Assistant's Supervision Agreement and assuring the Board that the Anesthesiologist Assistant is qualified by education and training to perform all anesthesia services delegated to the Anesthesiologist Assistant.
- (7) "Renewal" means paying the annual renewal fee and providing the information requested by the Board as outlined in Rule .0104 of this Subchapter.
- (8) "Supervising Anesthesiologist" means an anesthesiologist who is responsible for supervising the Anesthesiologist Assistant in providing anesthesia services. A Supervising Anesthesiologist must be licensed by the Board, actively engaged in clinical practice as an anesthesiologist, and immediately available onsite to provide assistance to the Anesthesiologist Assistant.
- (9) "Supervision" means overseeing the activities of, and accepting responsibility for, the

anesthesia services rendered by an Anesthesiologist Assistant.

- (10) "Supervision Agreement" means a written agreement between the Primary Supervising Anesthesiologist(s) and an Anesthesiologist Assistant that describes the anesthesia services delegated to the Anesthesiologist Assistant consistent with the Anesthesiologist Assistant's qualifications, training, skill, and competence, and the rules in this Subchapter.

*History Note: Authority G.S. 90-11(a1); 90-18(c)(20); 90-18.5;  
Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0102 QUALIFICATIONS FOR LICENSE**

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before practicing as an Anesthesiologist Assistant. The Board may grant an Anesthesiologist Assistant license to an applicant who has met all the following criteria:

- (1) submits a completed license application on forms provided by the Board;
- (2) pays the license fee established by Rule .0113 in this Subchapter;
- (3) submits to the Board proof of completion of a training program for Anesthesiologist Assistants accredited by the Commission on Accreditation of Allied Health Education Programs or its preceding or successor organization;
- (4) submits to the Board proof of current certification by the National Commission for Certification of Anesthesiologist Assistants (NCCAA) or its successor organization, including passage of the Certifying Examination for Anesthesiologist Assistants administered by the NCCAA within 12 months after completing training;
- (5) certifies that he or she is mentally and physically able to safely practice as an Anesthesiologist Assistant;
- (6) has no license, certificate, or registration as an Anesthesiologist Assistant currently under discipline, revocation, suspension, or probation;
- (7) has good moral character; and
- (8) submits to the Board any other information the Board deems necessary to determine if the applicant meets the requirements of the rules in this Subchapter.

(b) The Board may deny any application for licensure for any enumerated reason contained in G.S. 90-14 or for any violation of the rules of this Subchapter.

(c) An applicant may be required to appear, in person, for an interview with the Board, or its representatives upon completion of all credentials.

*History Note:* Authority G.S. 90-11(a1); 90-18(c)(20); 90-18.5;

*Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0103 INACTIVE LICENSE STATUS**

(a) By notifying the Board in writing, any Anesthesiologist Assistant may elect to place his or her license on inactive status. An Anesthesiologist Assistant with an inactive license shall not practice as an Anesthesiologist Assistant. Any Anesthesiologist Assistant who engages in practice while his or her license is on inactive status shall be considered to be practicing without a license.

(b) An Anesthesiologist Assistant who has been inactive for less than six months may request reactivation of his or her license. He or she shall pay the current annual fee as defined in Rule .0113 of this Subchapter, provide documentation to the Board verifying current certification by the National Commission for Certification of Anesthesiologist Assistants and shall complete the Board's registration form.

(c) An Anesthesiologist Assistant who has been inactive for more than six months shall submit an application for a license and pay the application fee as defined in Rule .0113 of this Subchapter. The Board may deny any such application for any enumerated reason contained in G.S. 90-14 or for any violation of the rules of this Subchapter.

*History Note:* Authority G.S. 90-18(c)(20); 9-18.5;

*Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0104 ANNUAL RENEWAL**

(a) Each person who holds a license as an Anesthesiologist Assistant in this state shall renew his or her Anesthesiologist Assistant License each year no later than 30 days after his or her birthday by:

- (1) completing the Board's registration form;
- (2) verifying that he or she is currently certified by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization; and
- (3) submitting the annual renewal fee under Rule .0113 of this Subchapter.

(b) The license of any Anesthesiologist Assistant who does not renew for a period of 30 days after certified notice of the failure to the licensee's last known address of record shall automatically become inactive.

*History Note:* Authority G.S. 90-15; 90-18(c)(20); 90-18.5;

*Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0105 CONTINUING MEDICAL EDUCATION**

(a) In order to maintain Anesthesiologist Assistant licensure, each Anesthesiologist Assistant shall complete at least 40 hours of continuing medical education (CME) as required by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization, for every two year period. CME documentation must be available for inspection by the Board or an agent of the Board upon request.

(b) Each licensed Anesthesiologist Assistant shall comply with all recertification requirements of the NCCAA, or its successor organization, including registration of CME credit and successful completion of the Examination for Continued Demonstration of Qualifications of Anesthesiologist Assistants administered by the NCCAA.

*History Note:* Authority G.S. 90-18(c)(20); 90-18.5;

*Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0106 STUDENT ANESTHESIOLOGIST ASSISTANTS**

Student Anesthesiologist Assistants may provide anesthesia services under the supervision of a Supervising Anesthesiologist, provided a qualified anesthesia provider is present at all times while the patient is under anesthesia care.

*History Note:* Authority G.S. 90-18.5;

*Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0107 EXEMPTION FROM LICENSE**

Nothing in this Subchapter shall be construed to require licensure for:

- (1) a Student Anesthesiologist Assistant enrolled in an Anesthesiologist Assistant training program accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization; or
- (2) agents or employees of physicians who perform delegated tasks in the office of a physician consistent with G.S. 90-18(c)(13) and who are not rendering services as Anesthesiologist Assistants or identifying themselves as Anesthesiologist Assistants.

*History Note:* Authority G.S. 90-18.5;

*Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0108 SCOPE OF PRACTICE**

(a) Anesthesiologist Assistants may provide anesthesia services only under the supervision of a Supervising Anesthesiologist and consistent with the Anesthesiologist Assistant's Supervision Agreement as defined by Rule .0101(9) of this Subchapter and the rules of this Subchapter. No Anesthesiologist Assistant shall practice where a Supervising Anesthesiologist is not immediately available onsite to provide assistance to the Anesthesiologist Assistant.

(b) Anesthesiologist Assistants may perform those duties and responsibilities that are delegated by their Supervising Anesthesiologist(s). The duties and responsibilities delegated to an Anesthesiologist Assistant shall be consistent with the Anesthesiologist Assistant's Supervision Agreement and the rules of this Subchapter.

*History Note:* Authority G.S. 90-18(c)(20); 90-18.5;

*Temporary Adoption Eff. January 28, 2008.*



**21 NCAC 32W .0109 SUPERVISION OF ANESTHESIOLOGIST ASSISTANTS**

(a) The Primary Supervising Anesthesiologist shall ensure that the Anesthesiologist Assistant's scope of practice is identified; that delegation of anesthesia services is appropriate to the level of competence of the Anesthesiologist Assistant; that the relationship of, and access to, each Supervising Anesthesiologist is defined; and that a process for evaluation of the Anesthesiologist Assistant's performance is established.

(b) The Supervision Agreement defined in Rule .0101(9) of this Subchapter must be signed by the Primary Supervising Anesthesiologist(s) and Anesthesiologist Assistant and shall be made available upon request by the Board or its agents. A list of all Supervising Anesthesiologists, signed and dated by each Supervising Anesthesiologist, the Primary Supervising Anesthesiologist, and the Anesthesiologist Assistant, must be retained as part of the Supervision Agreement and shall be made available upon request by the Board or its representatives.

(c) A Supervising Anesthesiologist, who need not be the Primary Supervising Anesthesiologist, shall supervise the Anesthesiologist Assistant and ensure that all anesthesia services delegated to the Anesthesiologist Assistant are consistent with the Anesthesiologist Assistant's Supervision Agreement.

(d) A Supervising Anesthesiologist may supervise no more than two Anesthesiologist Assistants or Student Anesthesiologist Assistants at one time. The limitation on the number of Anesthesiologist Assistants or Student Anesthesiologist Assistants that an anesthesiologist may supervise does not affect the number of other qualified anesthesia providers an anesthesiologist may concurrently supervise.

(e) Entries by an Anesthesiologist Assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution.

*History Note: Authority G.S. 90-18(c)(20); 90-18.5; Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0110 LIMITATIONS ON PRACTICE**  
An Anesthesiologist Assistant shall not:

- (1) perform a task which has not been listed and delegated in the Supervision Agreement;
- (2) prescribe drugs, medications, or devices of any kind; however, this Rule does not preclude the Anesthesiologist Assistant from implementing or administering a treatment or pharmaceutical regimen prescribed by the Supervising Anesthesiologist.

*History Note: Authority G.S. 90-18.5; Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0111 TITLE AND PRACTICE PROTECTION**

(a) Any person who is licensed to provide anesthesia services as an Anesthesiologist Assistant under this Subchapter may use the title "Anesthesiologist Assistant," "AA," "Anesthesiologist Assistant-Certified," or "AA-C." An Anesthesiologist Assistant who is doctorally prepared shall not use the title "Doctor," or the

appellation "Dr.," on a name badge or other form of identification when practicing in a clinical setting.

(b) Any person not licensed under this Subchapter is in violation of G.S. 90-18.5 and is subject to penalties if he or she:

- (1) falsely identifies himself or herself as an Anesthesiologist Assistant;
- (2) uses any combination or abbreviation of the title "Anesthesiologist Assistant" to indicate or imply that he or she is an Anesthesiologist Assistant; or
- (3) holds himself or herself out to be an Anesthesiologist Assistant or to be so licensed, or in any other way acts as an Anesthesiologist Assistant, without first obtaining a license.

*History Note: Authority G.S. 90-18(c)(20); 90-18.5; 90-640; Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0112 IDENTIFICATION REQUIREMENTS**

An Anesthesiologist Assistant licensed under this Subchapter shall keep proof of current licensure and registration available for inspection at the primary place of practice and shall, when engaged in professional activities, wear a name tag identifying the licensee as an "Anesthesiologist Assistant," which may be abbreviated as "AA," or as an "Anesthesiologist Assistant – Certified," which may be abbreviated as "AA-C."

*History Note: Authority G.S. 90-18.5; 90-640; Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0113 FEES**

The Board requires the following fees:

- (1) Anesthesiologist Assistant License Application Fee—one hundred fifty dollars (\$150.00).
- (2) Annual Renewal Fee—one hundred fifty dollars (\$150.00), except that an Anesthesiologist Assistant who registers not later than 30 days after his or her birthday shall pay an annual registration fee of one hundred twenty-five dollars (\$125.00).

*History Note: Authority G.S. 90-15; 90-18.5; Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0114 VIOLATIONS**

The Board pursuant to G.S. 90-14 may place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, mandate free medical services, require satisfactory completion of treatment programs or remedial or educational training, fine, deny, annul, suspend, or revoke the license, or other authority to function as a anesthesiologist assistant in this State. The following acts constitute violations:

- (1) Failure to function in accordance with the rules of this Subchapter or with any provision of G.S. 90-14 shall constitute unprofessional or dishonorable conduct;

- (2) Representing oneself as a physician constitutes dishonorable or unethical conduct.
- (3) Allowing one's certification with the National Commission for Certification of Anesthesiologist Assistants (NCCAA) or its successor organization to lapse at any time.

*History Note: Authority G.S. 90-18.5;  
Temporary Adoption Eff. January 28, 2008.*

**21 NCAC 32W .0115 PRACTICE DURING A DISASTER**

An Anesthesiologist Assistant licensed in this State or in any other state may practice as an Anesthesiologist Assistant under the supervision of an Anesthesiologist 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-6). A team of Anesthesiologist(s) and Anesthesiologist Assistant(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements as otherwise required in Rules .0109 of this Subchapter. The Board may waive other regulatory requirements regarding licensure and practice to facilitate an Anesthesiologist Assistant practicing during a disaster consistent with G.S. 90-12.2.

*History Note: Authority G.S. 90-12.2; 166A-6;  
Temporary Adoption Eff. January 28, 2008.*

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**CONTESTED CASE DECISIONS**

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*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**

Beecher R. Gray	
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	Shannon Joseph

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<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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**GOVERNOR'S OFFICE**

Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC# 0063592) v. Council of State	07 GOV 0238	Morrison	08/09/07	22:04 NCR	280
James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State	07 GOV 0264	Morrison	08/09/07	22:04 NCR	280

**DEPARTMENT OF INSURANCE**

Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan	06 INS 1016	Overby	05/07/07		
Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1236	Overby	04/11/07		
Randall A. Meder v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1413	Overby	07/16/07	22:04 NCR	264
Barbara Smith Pearce v. State Health Plan	07 INS 0008	Overby	07/12/07	22:04 NCR	273
Phillip J. Adler and Benjamin F. Adler v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 0037	Overby	10/19/07	22:11 NCR	1158
Robert Francis Payne v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 1365	Elkins	12/11/07		

**MISCELLANEOUS**

Sylvia Oliver v. Superior Court Judges, Clerk of Court Judges	07 MIS 1603	Lassiter	10/18/07
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**OFFICE OF ADMINISTRATIVE HEARINGS**

Senora Kemp v. OAH	07 OAH 0776	Lassiter	09/06/07
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**OFFICE OF STATE PERSONNEL**

Monty Steven Poarch v. Crime Control and Public Safety, State Highway Patrol	03 OSP 2004	Lassiter	09/17/07
Willie G. Shaw v. Division of Forest Resources	05 OSP 0414	Overby	04/13/07
Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07
Franklin Leaven v. DHHS, DDH	06 OSP 1132	Lassiter	10/17/07
Patrice Bernard v. NC A&T State University	06 OSP 1550	Elkins	06/05/07
Angelia Davis v. UNC-Charlotte	06 OSP 1908	Gray	03/08/07
Toni Edwards v. UNC Greensboro Police Department	06 OSP 2219	Gray	10/04/07
Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention	06 OSP 2346	Gray	04/20/07
Larry L. Deyton v. Mitchell County Commission Board	06 OSP 2415	Gray	04/19/07
Rose M. Baltezure v. City of Brevard	07 OSP 0009	Gray	04/03/07
Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07
Pei Wang v. UNC-Chapel Hill	07 OSP 0273	Lassiter	04/19/07
Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County Manager	07 OSP 0294	Lassiter	04/20/07
Shannon Harris Tadlock v. Wilson County, Department of Public Health	07 OSP 0491	Lassiter	05/07/07
Patricia G. Flanigan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07
Tobias M. Guillaume v. FSU Police & Public Safety	07 OSP 0565	Overby	05/10/07
Archie Andrew Copeland v. Dept. of Juvenile Justice & Delinquency Prevention	07 OSP 0976	Lassiter	08/29/07
Patricia Bethea Williams v. NC A&T State University	07 OSP 1053	Overby	08/28/07
Amy M. Peck v. NC A&T State University Police Department	07 OSP 1346	Lassiter	11/29/07
Kathleen E. Kicinski v. NC A&T State University	07 OSP 1347	Lassiter	11/29/07
Kevin Edral Douglas v. NCSU	07 OSP 1465	Joseph	12/03/07
Terence G. Westry v. NC A&T State University	07 OSP 1497	Webster	12/17/07
Angela N. Mewborn v. Office of State Auditor	07 OSP 1668	Lassiter	12/07/07
Darrin Ball v. Wildlife Resources Commission	07 OSP 1678	Elkins	12/11/07
Mahatam S. Jailall v. DPI	07 OSP 1978	Overby	12/21/07

**SECRETARY OF STATE**

Mary C. Brandon v. Department of the Secretary of State	06 SOS 1839	Elkins	04/02/07
Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall	07 SOS 0224	Overby	04/27/07
Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07
Angela Dozier v. SOS	07 SOS 0912	Gray	08/30/07
Timeka Rene' Jones v. SOS	07 SOS 1309	Lassiter	12/12/07

**UNC HOSPITALS**

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**CONTESTED CASE DECISIONS**

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Layton Leach v. UNC Hospital	05 UNC 0449	Bryan	09/07/07
Mary Lawson v. UNC Hospital	05 UNC 0467	Bryan	09/28/07
Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
Mark A. Parrish v. UNC Hospitals	06 UNC 2406	Elkins	06/15/07
Carolyn Parker v. UNC Hospitals	07 UNC 0924	Lassiter	09/06/07
Debra B. Davis v. UNC Hospitals	07 UNC 1169	Brooks	10/01/07