

NORTH CAROLINA REGISTER

VOLUME 23 • ISSUE 10 • Pages 891 - 928

November 17, 2008

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PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 431-3000
Fax (919) 431-3104*

*Julian Mann, III, Director
Camille Winston, Deputy Director
Molly Masich, Codifier of Rules
Dana Vojtko, Publications Coordinator
Julie Edwards, Editorial Assistant
Felicia Williams, Editorial Assistant
Tammara Chalmers, RRC Administrative Assistant*

Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 431-3071
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 431-3075
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 431-3073
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 431-3077

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 431-3079
Tammara Chalmers, Admin Assistant tammara.chalmers@ncmail.net (919) 431-3083

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@nclm.org

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 th 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
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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: 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 NC Medical Care Commission intends to amend the rules cited as 10A NCAC 13J .0901, .1003, and .1107.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: December 18, 2008

Time: 2:00 p.m.

Location: Council Building Room 113, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: *The Home Care Licensure rules are being amended in response to the agency's receipt of a petition for rule-making. Coupled with the amendments to the definitions to terms used in the Subchapter, this proposed action will clarify and make more flexible the determination of when an in-home aide needs to be listed on the Nurse Aide Registry to be able to provide services to clients. In addition, the amendments are adding clarity to the competency verification of in-home aides not listed on the Nurse Aide Registry.*

Procedure by which a person can object to the agency on a proposed rule: *An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time.*

Comments may be submitted to: *Nadine Pfeiffer, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, NC 27699-2701, fax (919) 733-2757, email DHSR.RulesCoordinator@ncmail.net*

Comment period ends: January 16, 2009

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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13J – THE LICENSING OF HOME CARE AGENCIES

SECTION .0900 - GENERAL

10A NCAC 13J .0901 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Activities of Daily Living" (ADL) means mobility, eating, bathing, dressing, toileting, and continence.
- ~~(1)~~(2) "Agency" means a home care agency as defined in G.S. 131E-136(2).
- ~~(2)~~(3) "Agency director" means the person having administrative responsibility for the operation of the agency.
- ~~(3)~~(4) "Allied health personnel" means licensed practical nurses, physical therapy assistants, occupational therapy assistants or other health professionals as defined in occupational licensure laws that are subject to supervision by a health professional.
- ~~(4)~~(5) "Appropriate professional" means a licensed health care professional or a person with a baccalaureate degree in social work or an individual who meets the job specifications established for a social worker by the Office of State Personnel.
- ~~(5)~~(6) "Client" means an individual who receives home care services.
- ~~(6)~~(7) "Clinical respiratory services" means the provision of respiratory equipment and services that involve the assessment of a client's pulmonary status, monitoring of a client's response to therapy and reporting to the client's physician. Procedures, include but not limited to: oximetry, blood gases, delivery

- of medication via aerosolization, management of ventilatory support equipment, pulmonary function testing and infant monitoring.
- ~~(8)~~ "Extensive Assistance" means when a client is totally dependent or requires weight-bearing support while performing part of an activity, such as the guiding or maneuvering of limbs, and /or needs substantial or consistent "hands-on" assistance with mobility, eating, bathing, dressing, toileting, and continence and meets one of the following criteria:
- (a) At a minimum requires extensive assistance in more than two activities of daily living (ADLs), as defined in Item (1) of this Rule; or
- (b) Needs the in-home aide to perform at least one task at the nurse aide II level; or
- (c) At a minimum requires extensive assistance in more than one ADL and has a medical or cognitive impairment as defined in Item (21) of this Rule that requires extended time to perform needed in-home aide tasks.
- ~~(7)~~(9) "Department" means the North Carolina Department of Health and Human Services.
- ~~(8)~~(10) "Follow-up care" means services provided to a licensed hospital's discharged clients in their homes by a hospital's employees. All services except pulmonary care, pulmonary rehabilitation or ventilator services shall not exceed three visits in any two month period and shall not extend beyond a 12 month period following discharge.
- ~~(9)~~(11) "Geographic service area" means the geographic area in which a licensed agency provides home care services.
- ~~(10)~~(12) "Governing body" means the person or group of persons having full legal authority for the operation of the agency.
- ~~(11)~~(13) "Hands on care" means any home care service which involves touching the patient in order to implement the patient's plan of care.
- ~~(12)~~(14) "Home care services" as used in these Rules means those services defined in G.S. 131E-136(3).
- ~~(13)~~(15) "Home health agency" as used in this Chapter has the same meaning as that defined in G.S. 131E-136(4).
- ~~(14)~~(16) "Infusion nursing services" means those services related to the administration of pharmaceutical agents directly into a body organ or cavity. Routes of administration include but are not limited to sub-cutaneous infusion, or intravenous, intraspinal, epidural or intrathecal infusion. Administration shall be by or under the supervision of a registered nurse in accordance with their legal scope of practice.
- ~~(15)~~(17) "In-home aide" means an individual who provides hands-on care to home care clients.
- ~~(16)~~(18) "In-home care provider" means any individual who provides home care services as enumerated in G.S. 131E-136.
- ~~(17)~~(19) "In home aide services" are hands-on paraprofessional services which assist individuals, their family or both with essential home management tasks, personal care tasks, or supervision of the client's activities, or all of the above, to enable the individual, their family or both, to remain and function effectively at home as long as possible.
- ~~(18)~~(20) "Licensed practical nurse" means a person duly licensed as such, holding a current license as required by G.S. 90-171.30.
- ~~(21)~~ "Medical or cognitive impairment" for the purpose of this Rule is defined as a diagnosis and client assessment that documents at least one of the following:
- (a) Presence of continuous and/or substantial pain interfering with individual's activity or movement.
- (b) Dyspneic or noticeably short of breath with minimal exertion during the performance of ADLs and requires continuous use of oxygen.
- (c) Due to cognitive functioning, individual requires extensive assistance with performing ADLs. Individual is not alert and oriented or is unable to shift attention and recall directions more than half the time.
- ~~(19)~~(22) "Medical social services" means those professional services provided to individuals in their homes by a medical social worker, or by a medical social worker assistant under the supervision of a medical social worker, when provided by an agency in conjunction with other nursing or therapy services provided by the same agency.
- ~~(20)~~(23) "Medical social worker" means a person with a masters degree from a school of social work approved by the Council on Social Work Education who is eligible for certification by the North Carolina Social Work Certification Licensure Board as a Certified Master Social Worker.
- ~~(21)~~(24) "Medical social worker assistant" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least one year of social work experience.
- ~~(22)~~(25) "Nursing registry" means a person or organization that maintains a list of nurses or in-home aides or both that is made available to persons seeking nursing care or in-home aide

- services but does not collect a placement fee from the worker or client, coordinate the delivery of services and supervise or control the provision of services.
- ~~(23)~~(26) "Nursing services" means professional services provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.
- ~~(24)~~(27) "Occupational therapist" means a person duly licensed as such, holding a current license as required by G.S. 90-270.70.
- ~~(25)~~(28) "Occupational therapist assistant" means a person duly licensed as such, holding a current license as required by G.S. 90-270.70.
- ~~(26)~~(29) "Occupational therapy services" means professional services provided by a licensed occupational therapist or a licensed occupational therapist assistant under the supervision of a licensed occupational therapist.
- ~~(27)~~(30) "Paraprofessional" means an in-home care provider who does not hold a professional license or professional certification and through the nature of their duties assists a professional.
- ~~(28)~~(31) "On-call services" means unscheduled home care services made available to clients on a 24-hour basis.
- ~~(29)~~(32) "Personal care" includes tasks that range from assistance to an individual with basic personal hygiene, grooming, feeding and ambulation to medical monitoring and other health care related tasks.
- ~~(30)~~(33) "Physical therapist" means a person duly licensed as such, holding a current license as required by G.S. 90-270.29.
- ~~(31)~~(34) "Physical therapist assistant" means a person duly licensed as such holding a current license as required by G.S. 90-270.29.
- ~~(32)~~(35) "Physical therapy services" means professional services provided by a licensed physical therapist or a licensed physical therapist assistant under the supervision of a licensed physical therapist.
- ~~(33)~~(36) "Physician" means a person licensed as such, holding a current license as required by G.S. 90-15.
- ~~(34)~~(37) "Plan of care" means the written description of the authorized home care services and tasks to be provided to a client.
- ~~(35)~~(38) "Premises" means the location or licensed site from which the agency provides home care services or maintains client service records or advertises itself as a home care agency.
- ~~(36)~~(39) "Qualified" means suitable for employment as a consequence of having met the standards of education, experience, licensure or certification established in the applicable job description created and adopted by the agency.

- ~~(37)~~(40) "Registered nurse" means a person duly licensed as such, holding a current license as required by G.S. 90-171.30.
- ~~(38)~~(41) "Respiratory therapist" means a person who is credentialed by the National Board for Respiratory Care.
- ~~(39)~~(42) "Respiratory practitioner" means those persons who provide clinical respiratory services in a client's home.
- ~~(40)~~(43) "Scope of services" means those specific services provided by a licensed agency as listed on their home care license.
- ~~(41)~~(44) "Survey" means an inspection by the Division of Health Service Regulation in order to assess the compliance of agencies with the home care licensure rules.
- ~~(42)~~(45) "Social worker" means a person who meets the qualifications of the North Carolina Office of State Personnel for social workers.
- ~~(43)~~(46) "Speech and language pathologist" means a person duly licensed as such, holding a current license as required by G.S. 90-294.
- ~~(44)~~(47) "Speech therapy" means professional services provided by a licensed speech and language pathologist.
- ~~(45)~~(49) "Skilled Services" means all home care services enumerated in G.S. 131E-136(3) with the exception of in-home aide services.

Authority G.S. 131E-140.

SECTION .1000 - ADMINISTRATION

10A NCAC 13J .1003 PERSONNEL

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with Subchapter 19A of Title 15A, North Carolina Administrative Code. These policies and procedures shall include provisions for compliance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 or by calling Washington, D.C. (202) 512-1800. The cost is twenty-one dollars (\$21.00) and may be purchased with a credit card. Hands-on care employees must have a baseline skin test for TB. Individuals who test positive must demonstrate noninfectious status prior to assignment in a client's home. Individuals who have previously tested positive to the TB skin test shall obtain a baseline and subsequent annual verification that they are free of TB symptoms. This verification shall be obtained from the local health department, a private physician or health nurse employed by the agency. The Tuberculosis Control Branch of the North Carolina Department of Health and Human Services, Division of Public Health, 1902 Mail Service Center, Raleigh, NC 27699-1902 shall provide, free of charge, guidelines for conducting verification and Form DHHS 3405 (Record of Tuberculosis Screening). Employees identified by agency risk assessment, to

be at risk for exposure shall be subsequently tested at intervals prescribed by OSHA standards.

(b) The agency shall not hire any individual either directly or by contract who has a substantiated finding on the North Carolina Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).

(c) Written policies shall be established and implemented which include personnel record content, orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

(d) Job descriptions for every position shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

(e) Personnel records shall be established and maintained for each home care employee. When requested, the records shall be available on the agency premises for inspection by the Department. These records shall be maintained for at least one year after termination from agency employment. The records shall include the following:

- (1) an application or resume which lists education, training and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the employee;
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis screening for employees for whom the test is necessary as described in Paragraph (a) of this Rule;
- (5) documentation of Hepatitis B immunization or declination for hands-on care employees in accordance with the agency's exposure control plan;
- (6) airborne and bloodborne pathogen training for hands on care employees, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency policy and at least annually. These evaluations may be confidential pursuant to Rule .0905 of this Subchapter;
- (8) verification of employees' credentials as applicable; and
- (9) records of the verification of competencies by agency supervisory personnel of all skills required of home care services personnel to carry out client care tasks to which the employee is assigned. The method of verification shall be defined in agency policy.

(f) For in-home aides not listed on the nurse aide registry, personnel records shall include verification of core competencies by a registered nurse that includes the following core personal care skills for in-home aides hired after April 1, 2009:

- (a) Assisting with Mobility including ambulation, transfers and bed mobility.

(b) Assisting with Bath/Shower.

(c) Assisting with Toileting.

(d) Assisting with Dressing.

(e) Assisting with Eating.

(f) Assisting with continence needs.

(g) Agencies shall be in compliance with Paragraph (f) of this Rule no later than April 1, 2009.

Authority G.S. 131E-140.

SECTION .1100 – SCOPE OF SERVICES

10A NCAC 13J .1107 IN-HOME AIDE SERVICES

(a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care. Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, with the in-home aide service level rules contained in 10A NCAC 06A and 10A NCAC 06X which are hereby incorporated by reference with all subsequent amendments. All other agencies providing in-home aide services shall comply with the provisions in Paragraphs (b) and (c) of this Rule.

(b) If the client's plan of care requires the in-home aide to provide extensive assistance as defined in 10A NCAC 13J .0901(8) to a ~~client who is totally dependent in the activity or requires substantial hands on care and physical support including more than guided maneuvering of limbs or weight bearing assistance,~~ client, the in-home aide shall be listed on the Nurse Aide Registry pursuant to G.S. 131E-255. ~~However, if the client's plan of care requires the in-home aide to provide only limited assistance to the client which includes hands on care involving guided maneuvering of limbs with eating, toileting, bathing, dressing, personal hygiene, self monitoring of medications or other non weight bearing assistance, the in-home aide shall not be required to be listed on the Nurse Aide Registry. Agencies shall be in compliance with this Paragraph no later than April 1, 2008.~~ However, if the client's plan of care does not require extensive assistance as defined in 10A NCAC 13J .0901(8), the in-home aide shall not be required to be listed on the Nurse Aide Registry. Agencies shall be in compliance with this Paragraph no later than April 1, 2009.

(c) In-home aides shall follow instructions for client care written by the health care practitioner required for the services provided. In-home aide duties may include the following:

- (1) help with prescribed exercises which the client and in-home aides have been taught by a health care practitioner licensed pursuant to G.S. 90;
- (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair);
- (3) assist with ambulation;
- (4) assist client with self-administration of medications which are ordered by a physician or other person authorized by state law to prescribe;
- (5) perform incidental household services which are essential to the client's care at home; and

- (6) record and report changes in the client's condition, family situation or needs to an appropriate health care practitioner.

Authority G.S. 131E-140.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0112 and .0202.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: December 2, 2008

Time: 2:00 p.m.

Location: 434 Fayetteville St., Suite 2500, Raleigh, NC 27601

Reason for Proposed Action:

12 NCAC 07D .0112 – The Board believes that, upon proper findings, it is in the public health, safety, and welfare to summarily suspend the firearms permit of an individual who discharges a firearm while engaged in the private protective services profession.

12 NCAC 07D .0202 – The Board currently charges a \$250.00 fee for re-issuance of a new license if a licensee transfers from one company to another during the licensing period. The Board believes such a fee is unfair for the mere transfer from one company to another and wishes to allow such a transfer for a fee of \$100.00 if the licensee maintains the original expiration date.

Procedure by which a person can object to the agency on a proposed rule: The Board will accept comments in writing until the end of the public comment period. Comments should be addressed to Terry Wright, PPSB Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comments may be submitted to: Terry Wright, Director, 1631 Midtown Place, Raleigh, NC 27609

Comment period ends: January 16, 2009

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 07 – PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D – PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

12 NCAC 07D .0112 REPORTING REQUIREMENTS FOR THE DISCHARGE OF FIREARMS

(a) If a licensee or registrant discharges a firearm while engaged in the private protective services business, the licensee shall notify the Board either in person or by telephone no later than the first business day following the incident. The licensee shall also file a written report to the Board within five working days of the incident. In the report, the licensee shall state the name of the individual who discharged the firearm, the type of weapon discharged, the location of the incident, the law enforcement agency investigating the incident, the events leading to the discharge of the firearm, and any bodily injuries occurring from the incident. This Rule shall not be construed to apply to a weapon that is discharged during a training course that has been approved by the Board.

(b) Upon receipt of a report from a licensee that a licensee or registrant has discharged a firearm, the Director shall summarily suspend the firearms permit for 10 days, during which time a committee of the Board shall review the facts to determine if the discharge was justified. If the committee preliminarily finds the discharge was justified, the Director shall reinstate the permit. If the committee preliminarily finds the discharge was not justified, the committee shall have the power to take administrative action against the individual who discharged the weapon, including issuing an Order to summarily suspend the firearms registration permit according to the provisions of G.S. 150B-3. The Committee may extend the summary suspension if it is determined that additional time is necessary to complete the investigation.

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

SECTION .0200 - LICENSES: TRAINEE PERMITS

12 NCAC 07D .0202 FEES FOR LICENSES AND TRAINEE PERMITS

- (a) Application, license and trainee permit fees are as follows:
 - (1) one hundred and fifty dollars (\$150.00) non-refundable application fee;
 - (2) two hundred twenty-five dollars (\$225.00) annual fee for a new or renewal license; license, unless the applicant is requesting a

new license be issued because of a transfer to a new company, which shall require a one hundred dollar (\$100.00) fee for issuance of the new license with the original expiration date in the new company name;

- (3) two hundred twenty-five dollars (\$225.00) annual trainee permit fee;
(4) fifty dollars (\$50.00) new or renewal fee for each license in addition to the basic license;
(5) twenty five dollars (\$25.00) duplicate license fee;
(6) one hundred dollars (\$100.00) late renewal fee in addition to the renewal fee;
(7) one hundred dollars (\$100.00) temporary license fee;
(8) fifty dollars (\$50.00) branch office license fee; and
(9) fifty dollars (\$50.00) special limited guard and patrol licensee fee.

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

Authority G.S. 74C-9.

TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of the Secretary of State intends to adopt the rules cited as 18 NCAC 06B .0101 - .0102; 06C .0101 - .0108 and repeal the rule cited as 18 NCAC 06 .1103.

Proposed Effective Date: March 1, 2009

Public Hearing:

Date: December 3, 2008

Time: 10:00 a.m. – 11:00 a.m.

Location: Department of the Secretary of State, Old Revenue Building, 2 South Salisbury Street, Raleigh, NC 27601-2903, 1st Floor Conference Room

Reason for Proposed Action: The Securities Division ("Division") of the Department enforces the entirety of three separate but related laws set forth in Chapters 78A, 78C, 78D of the NC General Statutes, as well as duties set forth in G.S. 105-163.013. The proposed rules are necessary to the performance of the duties entrusted to the Department by the General Assembly as they set forth procedures which the Division will follow as it administers and enforces the law.

Procedure by which a person can object to the agency on a proposed rule: Written comments, including objections, may be sent to Ann Wall, Secretary of State's Office, 2 South Salisbury Street, Raleigh, NC 27601-2903 or P.O. Box 29622, Raleigh, NC 27626-0622, phone (919) 807-2230, fax (919) 807-2010, email rules@sosnc.com

Comments may be submitted to: Ann Wall, Secretary of State's Office, 2 South Salisbury Street, Raleigh, NC 27601-2903 or P.O. Box 29622, Raleigh, NC 27626-0622, phone (919) 807-2230, fax (919) 807-2010, email rules@sosnc.com

Comment period ends: January 16, 2009

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 06 – SECURITIES DIVISION

18 NCAC 06 .1103 ADMINISTRATION

"Administrator" as used in these Rules shall mean the Secretary of State. The Secretary of State administers the Act through the Deputy Securities Administrator. The Deputy Securities Administrator is the administrative head of the Securities Division and may act as administrator through delegated authority.

Authority G.S. 78A-45(a).

SUBCHAPTER 06B – GENERAL

18 NCAC 06B .0101 SCOPE

(a) The rules in this Chapter execute the authority granted to the Secretary of State pursuant to the following Chapters of the North Carolina General Statutes ("the Secretary's authority"):

- (1) Chapter 78A, the North Carolina Securities Act;
(2) Chapter 78C, the North Carolina Investment Advisers Act, including the Uniform Athlete Agents Act;
(3) Chapter 78D, the North Carolina Commodities Act; and
(4) Article 4, Part 5, of Chapter 105, Tax Credits for Qualified Business Investments.

(b) The Secretary's authority under these statutes is administered under the supervision of the Deputy Securities Administrator

through the Securities Division of the North Carolina Department of the Secretary of State.

Authority G.S. 78A-45(a); 78A-49(a); 78C-26(a); 78C-30(a); 78C-105; 78D-25; 78D-27; 105-163.013.

18 NCAC 06B .0102 ADMINISTRATION

(a) "Administrator" as used in this Chapter means the Secretary of State.

(b) The Deputy Securities Administrator shall carry out the duties assigned by statute and rule to the Administrator in G.S. Chapters 78A, 78C, 78D, Article 4, Part 5, of Chapter 105, Tax Credits for Qualified Business Investments.

(c) "Department" means the Department of the Secretary of State.

(d) "Division" means the Securities Division of the Department of the Secretary of State.

Authority G.S. 78A-45(a); 78A-49(a); 78C-26(a); 78C-30(a); 78C-105; 78D-25; 78D-27; 105-163.013.

SUBCHAPTER 06C – INVESTIGATIONS, ENFORCEMENT, AND HEARINGS

18 NCAC 06C .0101 LETTER OF INQUIRY

(a) The Division may issue a Letter of Inquiry to anyone engaging in activities which may subject them to the jurisdiction of the Administrator. The purpose of a Letter of Inquiry is to obtain information or documents necessary to the understanding of matters under investigation.

(b) Anyone who is subject to the jurisdiction of the Administrator and who receives a Letter of Inquiry shall respond to the Letter of Inquiry in writing with:

- (1) such information as is within his or her personal knowledge;
- (2) recorded information in any form, including business records, under the recipient's control; and
- (3) the identity of any other person whom the recipient believes has information relevant to the subject of a Letter of Inquiry who is subject to the jurisdiction of the Administrator.

Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40.

18 NCAC 06C .0102 INVESTIGATIVE SUBPOENAS

(a) When the Administrator issues subpoenas for testimony, written statements or documents during the course of an investigation, the recipient of a subpoena may object to the subpoena. Objections to compliance with a subpoena shall be filed in writing with the Administrator. Objections shall be filed no later than the time for compliance set in the subpoena. Written objections to a subpoena shall state the legal and factual basis for the objections.

(b) The recipient of a subpoena who files written objections to the subpoena shall comply with any portions of the subpoena which are not expressly included in the written objections.

(c) Upon receipt of written objections to an investigative subpoena, the Division may attempt to reach a written settlement of the objections with the recipient.

(d) This Rule does not restrict, or constitute a pre-condition to, the Administrator's right to seek enforcement of an investigative subpoena in court.

Authority G.S. 78A-46; 78C-27; 78C-87; 78D-21; 78D-25; 78D-26; 78D-27; 105-163.013; 150B-38(h); 150B-40.

18 NCAC 06C .0103 ADMINISTRATIVE HEARINGS

(a) The Division shall bring administrative proceedings pursuant to the statutes and rules it enforces in the name of the Division against one or more respondents.

(b) The Division shall commence proceedings before the Administrator in which a sanction or payment, other than a civil monetary penalty or reimbursement of investigation costs is sought, as provided in Chapters 78A, 78C, 78D, Article 4, Part 5, of Chapter 105 and Article 3A, Chapter 150B, of the General Statutes and the rules in this Chapter.

(c) Commencement of a proceeding under Article 3 of Chapter 150B of the General Statutes does not preclude commencement of a proceeding against the same respondent under Article 3A of Chapter 150B of the General Statutes.

Authority G.S. 78A-47; 78C-28; 78C-90; 78C-91; 78D-21; 78D-22; 78D-27; 78D-31; 105-163.013; 150B-38(h); 150B-40.

18 NCAC 06C .0104 SETTLEMENT

(a) The Division may negotiate settlements with a respondent or counsel for a respondent.

(b) The Division may negotiate and submit settlements for approval prior to the issuance of a Notice of Hearing or an Administrative Petition. When settlements are proposed after commencement of a contested case, settlements shall be presented as soon as practicable before a scheduled hearing date. The Division shall prepare the final written settlement proposal in all cases.

(c) The Administrator shall consider a final written settlement proposal only if the final written settlement proposal:

- (1) is signed by the respondent and counsel, if represented by counsel;
- (2) includes the respondent's waiver of all further procedural and substantive rights, including hearings, issuance of notice of hearing, service, judicial review and collateral attacks or other proceedings contesting the terms of a settlement;
- (3) contains the respondent's agreement that rejection of the final written settlement proposal shall not disqualify the Administrator from acting as the trier of fact or final agency decision maker; and
- (4) is within the authority of the Administrator.

(d) The Administrator may, with the written consent of respondent or counsel, consider a final written settlement proposal *ex parte*.

(e) Parties are not bound by matters contained in a settlement rejected by the Administrator.

(f) Rejection of a proposed settlement alone does not constitute grounds for continuance of a previously scheduled hearing but may be considered in deciding whether the hearing should be continued.

(g) A settlement approved and executed by the Administrator is the Final Order as to any respondent who has signed the settlement. The Final Order shall be served upon the respondents and their counsel and may be served on other persons subject to it.

Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40.

18 NCAC 06C .0105 ARTICLE 3A CONTESTED CASE PROCEDURES

(a) This Rule applies to proceedings under Article 3A of Chapter 150B of the General Statutes.

(b) The Administrator shall notify the respondents in a contested case proceeding under G.S. 150B, Article 3A, as to whether the hearing of the contested case will be:

- (1) referred to the Office of Administrative Hearings;
- (2) conducted by the Administrator; or
- (3) conducted by a hearing officer appointed by the Administrator.

(c) The Administrative Petition is a pleading submitted to the Administrator which:

- (1) is denominated as an Administrative Petition;
- (2) is captioned as a proceeding by the Division acting as petitioner brought under the authority of the Administrator against the person(s) named as respondents;
- (3) is signed by counsel for the Division;
- (4) sets forth the factual and legal basis for any request that the Administrator take action permitted by law or rule against any person subject to the jurisdiction of the Administrator; and,
- (5) is used in those proceedings in which the Administrator is not required first to issue a notice of hearing before taking an administrative action.

(d) Each named respondent shall be served with the Administrative Petition and a notice of rights and opportunity for a hearing. If the Administrator issues an Order in response to the Administrative Petition, the Order shall be served on each named respondent.

(e) A contested case may be commenced with the issuance of a notice of hearing, a pleading filed with the Administrator, which:

- (1) is denominated as a notice of hearing;
- (2) is captioned as a proceeding by the Division acting as petitioner brought under the authority

of the Administrator against the person(s) named as respondents;

- (3) is signed by counsel for the Division;
- (4) sets forth the factual and legal basis for any request that the Administrator take action permitted by law or rule against any person subject to the jurisdiction of the Administrator;
- (5) lists the sanctions that may be imposed as a result of the hearing; and
- (6) gives the day, date, time, and place of the hearing, as set by the Administrator.

(f) The notice of hearing shall be served upon the person(s) named as respondents.

(g) When a respondent served with an Administrative Petition and notice of rights and opportunity for a hearing requests a hearing:

- (1) the Administrative Petition shall serve as the notice of hearing with respect to the factual and legal basis for the charges brought and sanctions sought against a respondent; and
- (2) the Administrator, a hearing officer appointed by the Administrator, or an administrative law judge when the case is assigned to the OAH, shall issue a separate order, notifying respondent of the date, time and place of the hearing.

(h) There shall be no specific forms required for answers, motions or other pleadings in contested cases before the Administrator. Respondents and their counsel are encouraged to caption such documents in the style and manner shown on the notice of hearing in their case. All pleadings, other than oral motions during a hearing, shall:

- (1) be made on 8 ½ by 11 inch paper with legible writing or printing;
- (2) contain the caption or case number of the matter in which the pleading is made;
- (3) reasonably apprise the Administrator of the matters alleged or to which the pleading relates; and
- (4) if a motion, state the relief sought and the legal basis for the motion.

Authority G.S. 78A-46; 78A-47; 78C-27; 78C-28; 78C-90; 78C-91; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40.

18 NCAC 06C .0106 TEMPORARY ORDERS

(a) The Division may seek a temporary or summary order at any time.

- (1) If the Division seeks a temporary or summary order prior to the issuance of a notice of hearing, the Division shall file an *ex parte* Administrative Petition supported as required by this Rule.
- (2) If the Division seeks a temporary or summary order during a contested case proceeding, it shall file and serve an appropriate pleading in that proceeding, supported as required by this Rule.

(b) When seeking a temporary or summary order, the Division shall support the request with evidence including at least one sworn affidavit or its equivalent to support the order.

(c) The Administrator (or an appointed hearing officer, or an assigned administrative law judge) may issue a temporary cease and desist order or an order summarily suspending, revoking, denying, postponing or taking any other action against any license, registration or exemption, upon findings and conclusions that the evidentiary showing by the Division supports the request.

(d) Any temporary or summary order issued under this Rule shall:

- (1) be in writing and signed by the person who issues it;
- (2) make findings of fact supporting the factual basis for the temporary or summary action;
- (3) make conclusions of law supporting the temporary or summary action;
- (4) state the conduct prohibited or identify the registration, filing, license or other privilege suspended, denied, revoked, postponed or against which other action has been taken; and
- (5) be served upon the persons subject to the order together with any other documents that may be required by applicable statutes and rules.

(e) A temporary or summary order shall remain in effect until rescinded, modified or vacated by the Administrator, or until a final order is issued. Orders issued under this Rule are not final agency decisions.

Authority G.S. 78A-46; 78C-27; 78C-87; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-160.013; 150B-38(h); 150B-40.

18 NCAC 06C .0107 CONDUCT OF HEARING

(a) Scope. This Rule applies to all hearings under G.S. 150B, Article 3A, conducted by the Administrator or a hearing officer designated by the Administrator. Hearings referred to the Office of Administrative Hearings ("OAH") are governed by G.S. 150B, Article 3, and the rules adopted by OAH. This Rule also applies to all other hearings which the Administrator is required to conduct and which are not by law required to be heard by OAH.

(b) Discovery. All discovery sought pursuant to G.S. 150B-39 shall be completed no less than 30 days prior to the hearing scheduled, or as may be provided for by the Administrator or hearing officer designated by the Administrator.

(c) Continuances. A motion for the continuance of a scheduled hearing shall be:

- (1) made in writing;
- (2) filed with the Administrator at least 10 business days prior to the scheduled hearing; and
- (3) served upon the opposing party or counsel.

(d) Evidence. Evidence introduced at a hearing conducted under these Rules shall conform to G.S. 8C or to G.S. 150B-41. The Administrator or the hearing officer designated by the Administrator shall rule upon the objections of any party to the admission of evidence.

(e) Subpoenas.

(1) If a party to a contested case seeks to have witnesses or documents subpoenaed to the hearing, the party or counsel shall submit a written request for the issuance of subpoenas to the Administrator or designated hearing officer in sufficient time in advance of the hearing for preparation and issuance of the subpoenas by the Administrator or designated hearing officer.

(2) Service of a subpoena issued shall be the responsibility of the party requesting the subpoena. Service and return of service shall be made in the manner provided for in G.S. 1A-1, Rule 4.

(3) The Administrator or designated hearing officer shall issue a subpoena that complies with G.S. 1A-1, Rule 45.

(4) Any party or person served with a subpoena issued under this subsection who objects to the subpoena shall make and file the written objection required by G.S. 1A-1, Rule 45, with the Administrator or hearing officer assigned to the case.

(f) The conduct of the hearing shall conform to G.S. 150B-40.

Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38; 150B-40.

18 NCAC 06C .0108 FINAL ORDER

(a) Proceedings based on temporary orders – when a final order may issue. A final order may be issued when no hearing has been requested by a respondent within 30 business days after receipt of a Temporary Order in any proceeding:

- (1) initiated by serving a respondent with a temporary or summary order; and
- (2) in which the statute under which the proceeding was commenced provides that the temporary or summary order shall become permanent if the respondent fails to request a hearing.

(b) Proceedings based on temporary orders – requirements for final order. The Administrator shall issue a final order making the temporary cease and desist or summary order permanent:

- (1) based solely upon the evidence in the record;
- (2) including findings that the proceeding:
 - (A) was commenced;
 - (B) an order was issued;
 - (C) all necessary pleadings and notices were properly served; and
 - (D) the respondent failed to request a hearing within the time prescribed by law, file a responsive pleading or make any other submission.

(c) Article 3A proceedings before the administrator or a designated hearing officer. After a hearing by the Administrator or hearing officer designated by the Administrator the decision

of the Administrator or hearing officer shall be made in the form of a final order containing:

- (1) findings of fact;
- (2) conclusions of law;
- (3) a decree as to the action of the agency in the matters addressed in the hearing.

(d) Article 3A proceedings referred to OAH. When a contested case hearing subject to G.S. 150B, Article 3A, has been referred to and heard by the Office of Administrative Hearings ("OAH"), and the proposed agency decision has been filed with the Administrator by the OAH:

- (1) the Division shall serve the proposed agency decision upon the respondent with a notice of rights provided by G.S. 150B-40(e) including notice of the day, time and place where the parties may appear and make oral argument concerning the proposed final agency decision.
- (2) written exceptions, proposed findings of fact and written arguments shall be filed with the Administrator and served upon any opposing party or counsel at least 10 business days before the scheduled oral argument.
- (3) after reviewing any written submissions and hearing the oral argument of the parties, the Administrator shall issue a final order containing findings of fact, conclusions of law, and a decree as to the agency action in the matters addressed in the hearing.

(e) Article 3 proceedings heard by OAH. When a contested case has been heard by OAH under G.S. 150B, Article 3, and the proposed final decision has been returned to the Administrator by OAH, the Administrator shall by letter notify any respondent or counsel for any respondent of the date, not less than 30 days from the date of the letter, by which written exceptions or written arguments regarding the proposed final decision must be submitted to the Administrator.

(f) Service. A final order shall be served upon the respondents or their counsel, or other persons subject to the final order, at their last known address of record.

Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 8D-27; 78D-30; 150B-38(h); 150B-40.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Hearing Aid Dealers and Fitters intends to amend the rule cited as 21 NCAC 22B .0603.

Proposed Effective Date: March 1, 2009

Public Hearing:

Date: December 2, 2008

Time: 11:30 a.m.

Location: North Regional Public Library, 7009 Harps Mill Road, Raleigh, NC 27615

Reason for Proposed Action: Agency is a receipt support agency pursuant to G.S. 93D-3(15) which provides that the agency shall "[a]dopt annually a balanced budget prior to the beginning of its fiscal year, against which expenditures shall be reviewed throughout the fiscal year to ensure that expenditures during the year do not exceed receipts for that year plus amounts held by the Board in reserve. Except for monies from charges for photocopying and similar charges, the Board's receipts shall consist of and be limited to funds derived from fees expressly authorized by law."

Procedure by which a person can object to the agency on a proposed rule: Send written comments to the Board at 4030 Wake Forest Road, Suite 209, Raleigh, NC 27609 or appear at the public hearing on December 2, 2008, at the North Regional Public Library, 7009 Harps Mill Road, Raleigh, NC 27615.

Comments may be submitted to: Catherine Jorgensen, Administrator, 4030 Wake Forest Road, Suite 209, Raleigh, NC 27609, phone (919) 834-3661, fax (919) 834-3665, email info@nchalb.org

Comment period ends: January 16, 2009

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 22B - RULE MAKING PROCEDURES

SECTION .0600 - FEES

21 NCAC 22B .0603 FEE SCHEDULE

The Board hereby establishes the following fees:

PROPOSED RULES

- (1) For a continuing education make-up class provided by the Board, not to exceed two days (per person, per day). \$ 50.00
(2) For a license examination preparation course provided by the Board, not to exceed three days (per person, per day). \$ 50.00
(3) For approval of a continuing education program provider. \$ 40.00
(4) Verifying and recording attendance at a continuing education program (per program, per person) . \$ 15.00
(5) For a voluntary apprentice training workshop (per person, per day, not to exceed three days). \$ 50.00
(6) Examination fee. \$75.00 \$300.00
(7) Application for a license by examination. \$150.00 \$250.00
(8) Application for a license to fit and sell hearing aids in this state by a licensee of another state or territory. \$150.00
(9) Issuance of certificate of license after successfully passing examination. \$ 25.00
(10) Application for registration as an apprentice \$100.00
(11) Renewal of apprentice registration. \$150.00
(12) Annual license renewal. \$150.00 \$250.00
(a) Late fee to reinstate expired license within 60 days after license expiration (in addition to renewal fee). \$ 25.00
(b) Late fee to reinstate expired license more than 60 days after license expiration (in addition to renewal fee). \$ 50.00
(13) To reissue a suspended license more than 90 days after but not more than two years after license suspended. \$200.00

Location: NC Medical Board, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: The purpose of these new rules is to blend two nearly identical programs, the Impaired Physician Program and the Impaired Physician Assistant Program, renaming the single entity, the "Physicians Health Program." These rules also broaden the scope of the program to allow all licensees of the North Carolina Medical Board to participate. Since perfusionists and anesthesiology assistants are now licensed by the NCMB, these revisions will allow holders of those licenses also to participate in the PHP. The language of these rules also has been updated to make the rules consistent with current practice, laws, and language of substance abuse professionals.

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 January 16, 2009, to the Rules Coordinator, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org.

Comments may be submitted to: Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-0036, email rules@ncmedboard.org

Comment period ends: January 16, 2009

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)
[X] None

SUBCHAPTER 32K – NORTH CAROLINA PHYSICIANS HEALTH PROGRAM

SECTION .0100 - GENERAL INFORMATION

21 NCAC 32K .0101 DEFINITIONS

The following definitions apply to this Subchapter:

Authority G.S. 12-3.1; 93D-3; 93D-5; 93D-6; 93D-8; 93D-9; 93D-11; 93D-13.

CHAPTER 32 – MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to amend the rules cited as 21 NCAC 32K .0101, .0201 -.0207 and repeal the rules cited as 21 NCAC 32K .0102 - .0104; 32Q .0101 - .0104, .0201 - .0207.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: January 16, 2009

Time: 10:00 a.m.

- (1) ~~"Board" or "NCMB" means the Board of Medical Examiners of the State of North Carolina. North Carolina Medical Board.~~
- (2) ~~"Committee" means the North Carolina Medical Society's Physicians Health and Effectiveness Committee established to function as a supervisory and advisory body to the North Carolina Physicians Health and Effectiveness Program. "Compliance Committee" means the committee which meets to coordinate with the NCMB in its oversight of physicians and physician assistants in the PHP. It includes members of the PHP Board of Directors, members of the NCMB, and a Physician Assistant who is on the PHP Board of Directors.~~
- (3) ~~"Impairment" means mental illness, chemical dependency, physical illness, and aging problems. the inability to practice medicine or perform acts, tasks and functions as a physician assistant with skill and safety to patients by reasons of physical or mental illness or condition, including use of alcohol, drugs, chemicals or any other type of material.~~
- (4) ~~"Licensee" means a person licensed by the NCMB.~~
- ~~(4)(5)~~ "Medical Director" means the person employed by the Program to coordinate the activities of the Program.
- (6) ~~"Participant" means a licensee of the NCMB who is permitted to participate and may receive services from PHP, and has executed a monitoring contract with PHP.~~
- ~~(5)(7)~~ "Program" or "NCPHP" or "PHP" means the North Carolina Physicians Health and Effectiveness Program established for promoting a coordinated and effective peer review process.

Authority G.S. 90-21.22.

21 NCAC 32K .0102 AUTHORITY

~~G.S. 90-21.22, entitled "Peer Review Agreements," authorizes the Board to adopt rules allowing it to enter into agreements with the N.C. Medical Society and its local medical society components. The Board is further required to adopt rules with provisions concerning impaired physician programs. The rules in this Subchapter are adopted by the Board pursuant to this authority.~~

Authority G.S. 90-21.22.

21 NCAC 32K .0103 PEER REVIEW AGREEMENTS

~~Peer review activities shall include: investigation; review and evaluation of records, reports, complaints, litigation and other information about the practices and practice patterns of physicians licensed by the Board. Peer review activities shall also include programs for impaired physicians. Peer review agreements may cover some or all of these activities, as deemed~~

~~appropriate by the Board. The Board may enter into peer review agreements with the N.C. Medical Society or its local medical society components in conformance with these Rules.~~

Authority G.S. 90-21.22.

21 NCAC 32K .0104 DUE PROCESS

~~Any action taken pursuant to a peer review agreement must afford the subject physician all due process rights enumerated in G.S. 90-14.1 and all relevant due process rights contained in the Administrative Procedure Act, G.S. 150B.~~

Authority G.S. 90-21.22.

SECTION .0200 - GUIDELINES FOR PROGRAM ELEMENTS

21 NCAC 32K .0201 RECEIPT AND USE OF INFORMATION OF POTENTIAL IMPAIRMENT

- ~~(a) Information concerning suspected potential impairments may be received by the Program through reports from any source, by physicians, family members and others, and through self referral.~~
- ~~(b) The Board shall provide information as required under G.S. 90-14(b).~~
- ~~(c) Upon receipt of information of a suspected potential impairment, the Program shall initiate an investigation. conduct an assessment as soon as possible. This shall not create a physician-patient relationship. The Medical Director of the Program shall be personally involved in investigations whenever possible. A physician assistant selected by the Medical Director shall be present during an assessment of a physician assistant.~~
- ~~(d) The Program may conduct routine inquiries regarding suspected potential impairments.~~
- ~~(e) Physicians suspected of impairment Licensees with potential impairments may be required to submit to personal interviews before the Medical Director of the Program, the Committee chairperson, a Committee member or the full Committee. or a designee.~~

Authority G.S. 90-21.22.

21 NCAC 32K .0202 ASSESSMENT AND REFERRAL

~~When, following an investigation, impairment is confirmed, an intervention is conducted using specialized techniques designed to assist the physician in acknowledging responsibility for dealing with the impairment. The physician is referred to an appropriate treatment source. When an initial assessment reveals that further assessment, treatment or monitoring is indicated, PHP shall advise the licensee and referral source of the findings and recommendations. The Program shall develop a treatment plan designed to ensure that the recipient is safe to practice.~~

- ~~(1) Methods and objectives of interventions are decided on a case by case basis.~~
- ~~(2) Interventions are arranged and conducted as soon as possible. In cases referred by the Board, a representative of the Board may be present.~~

- (3) ~~Treatment sources are evaluated before receiving case referrals from the Program.~~
- (4) ~~Intervention outcomes, including treatment contracts that are elements of an intervention, are recorded by the Program.~~

Authority G.S. 90-21.22.

21 NCAC 32K .0203 MONITORING TREATMENT SOURCES

~~A treatment source~~ The program shall monitor treatment sources receiving referrals from the Program shall be monitored as to their ability to provide; provide

- (1) ~~adequate medical and non-medical staffing;~~ staffing.
- (2) ~~appropriate treatment;~~ treatment,
- (3) ~~affordable treatment;~~
- (4) ~~adequate facilities;~~ facilities, and
- (5) ~~appropriate post-treatment support.~~ support; and shall monitor the cost of treatment.

Authority G.S. 90-21.22.

21 NCAC 32K .0204 MONITORING REHABILITATION AND PERFORMANCE

If a licensee is referred to the Program by the Board, and if the Program finds that treatment or monitoring are appropriate, the Program shall ask the licensee to sign a monitoring contract in order to become an active participant in the Program. If the licensee chooses not to sign a monitoring contract, the Program may refer the licensee to the Board for potential disciplinary action.

If a licensee is self-referred to the Program, and if the Program finds that treatment or monitoring are appropriate, the Program shall ask the licensee to sign a monitoring contract in order to become a participant in the program.

~~(a) Monitoring requirements for each physician shall be designated by the Program. Physicians may be tested regularly or randomly, on Program demand. Participants shall be required to submit urine or other bodily fluids if requested by PHP.~~

~~(b) Treatment sources may be required to submit reports regarding a physician's rehabilitation and performance to the Program.~~

~~(c) Impaired physicians~~ Participants ~~may be required to submit to periodic personal interviews before with the Medical Director of the Program, the Committee chairperson, a Committee member, or the full Committee. or a designee.~~

~~(d) Appropriate case records are maintained by the Program.~~ Treatment providers shall be required to submit reports regarding a licensee's rehabilitation and performance to the Program. Such reports shall be in accordance with state and federal laws. The Program shall maintain case records for each participant or licensee.

Authority G.S. 90-21.22.

21 NCAC 32K .0205 MONITORING POST-TREATMENT SUPPORT

The Program may require post-treatment support. Post-treatment support may include family counseling, locum tenens, advocacy, after care support groups, self-help groups and other services and Programs programs deemed appropriate to improve recoveries. The Program shall monitor post-treatment support.

- (1) ~~Treatment sources' post treatment support shall be monitored by the Program on an ongoing basis.~~
- (2) ~~The Program's post treatment support will be monitored by the Medical Director of the Program and the Committee on an ongoing basis.~~

Authority G.S. 90-21.22.

21 NCAC 32K .0206 REPORTS OF INDIVIDUAL CASES TO THE BOARD

~~(a) Upon investigation and review of a physician licensed by the Board, the Program shall report immediately to the Board detailed information about any physician as required under G.S. 90-21.22(d).~~

~~(b) Bimonthly,~~ the ~~The Program shall quarterly submit a report to the Board on the status of all participants under monitoring contracts and all licensees being treated who have not signed monitoring contracts. The Program shall report immediately to the Board detailed information about any licensee as required under G.S. 90-21.22(d).~~ physicians then involved in the Program who have been previously reported by the Board. The Program shall monthly submit to the Board a report on the status of any physician previously reported to the Board then in active treatment until such time as mutually agreed to by the Board and the Program.

Authority G.S. 90-21.22.

21 NCAC 32K .0207 PERIODIC REPORTING OF STATISTICAL INFORMATION

Statistical Upon request by the Board, the Program shall provide statistical and demographic information concerning suspected potential impairments, impairments, self-referrals, post-treatment support and other significant demographic and substantive information collected through Program operations. shall be included in comprehensive statistical reports compiled and annually reported to the Board by the Program.

Authority G.S. 90-21.22.

SUBCHAPTER 32Q – IMPAIRED PHYSICIAN ASSISTANT PROGRAM

SECTION .0100 – GENERAL INFORMATION

21 NCAC 32Q .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the Board of Medical Examiners of the State of North Carolina.

- (2) ~~"Committee" means the North Carolina Academy of Physician Assistants Health Committee established to develop and supervise an impairment program for physicians assistants and to function as an advisory body to the North Carolina Physicians Health Program.~~
- (3) ~~"Impairment" means mental illness, chemical dependency, physical illness, or aging problems.~~
- (4) ~~"Program" means the North Carolina Physicians Health Program established for promoting a coordinated and effective peer review process.~~
- (5) ~~"Medical Director" means the person employed by the Program to coordinate the activities of the Program.~~
- (6) ~~"Physician Assistant" means an auxiliary, paramedical person who functions at the direction of or under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician, such as history taking, physical examination, diagnosis, and treatment.~~

Authority G.S. 90-21.22.

21 NCAC 32Q .0102 AUTHORITY

~~G.S. 90-21.22, entitled "Peer Review Agreements," authorizes the Board to adopt rules allowing it to enter into agreements with the North Carolina Academy of Physician Assistants. The Board is further required to adopt rules with provisions concerning impaired physician assistant programs. The rules in this Subchapter are adopted by the Board pursuant to this authority.~~

Authority G.S. 90-21.22.

21 NCAC 32Q .0103 PEER REVIEW AGREEMENTS

~~The Board may enter into peer review agreements with the North Carolina Academy of Physician Assistants. Peer review agreements may cover some or all of the peer review activities delineated in G.S. 90-21.22, as deemed appropriate by the Board.~~

Authority G.S. 90-21.22.

21 NCAC 32Q .0104 DUE PROCESS

~~Any action taken pursuant to a peer review agreement must afford the subject physician assistant all due process rights enumerated in G.S. 90-14.1 and all relevant due process rights contained in the North Carolina Administrative Procedure Act, G.S. 150B.~~

Authority G.S. 90-21.22.

SECTION .0200 – GUIDELINES FOR PROGRAM ELEMENTS

21 NCAC 32Q .0201 RECEIPT AND USE OF INFORMATION OF SUSPECTED IMPAIRMENT

- ~~(a) The Program may receive information concerning physician assistants with suspected impairments from any source, including reports made by but not limited to medical or paramedical professionals, family members, or self-referral.~~
- ~~(b) The Board shall provide information to the Program as required under G.S. 90-14(b).~~
- ~~(c) If the Program receives information of a physician assistant suspected of impairment, the Program shall conduct an investigation. The Medical Director of the Program shall coordinate all such investigations.~~
- ~~(d) The Program may conduct routine inquiries regarding physician assistants with suspected impairments.~~
- ~~(e) As part of its investigation, the Program may require a physician assistant suspected of impairment to submit to personal interviews before the Medical Director of the Program, the Committee chairperson, a Committee member, or the full Committee.~~

Authority G.S. 90-21.22.

21 NCAC 32Q .0202 INTERVENTION AND REFERRAL

- ~~(a) Following an investigation, if impairment is confirmed, the Program shall initiate intervention using specialized techniques designed to assist the impaired physician assistant in acknowledging responsibility for dealing with the impairment. Interventions shall be arranged and conducted as soon as possible after the Program confirms impairment.~~
- ~~(b) In cases referred by the Board, a representative of the Board may be present when interventional methods and objectives are discussed with the impaired physician assistant.~~
- ~~(c) Once intervention is initiated, the Program may refer the impaired physician assistant to an appropriate treatment source.~~
- ~~(d) The Program shall determine interventional methods and objectives on a case by case basis.~~
- ~~(e) The Program shall evaluate all treatment sources before referring any impaired physician assistant for treatment.~~
- ~~(f) The Program shall record all intervention outcomes, including treatment contracts, that are elements of an intervention.~~

Authority G.S. 90-21.22.

21 NCAC 32Q .0203 MONITORING TREATMENT

~~The Program shall monitor each treatment source to which it refers physician assistants as to the treatment source's ability to provide:~~

- ~~(1) adequate medical and non-medical staffing;~~
- ~~(2) appropriate treatment;~~
- ~~(3) affordable treatment;~~
- ~~(4) adequate facilities; and~~
- ~~(5) appropriate post-treatment support.~~

Authority G.S. 90-21.22.

21 NCAC 32Q .0204 MONITORING REHABILITATION AND PERFORMANCE

- (a) The Program shall monitor rehabilitation and performance requirements for each physician assistant who is the subject of intervention under this Subchapter.
(b) The Program may test the physician assistant's adherence to rehabilitation regularly, randomly, or on demand.
(c) The Program may require treatment sources to submit reports to the Program regarding a physician assistant's rehabilitation and performance.
(d) The Program may require an impaired physician assistant to submit to periodic personal interviews before the Medical Director of the Program, the Committee chairperson, a Committee member, or the full Committee.
(e) The Program shall maintain case records.

Authority G.S. 90-21.22.

21 NCAC 32Q .0205 MONITORING POST-TREATMENT SUPPORT

- (a) The Program may offer post treatment support to impaired physician assistants. This post treatment support may include, but is not limited to, family counseling, locum tenens, advocacy and other services and programs that the Program deems appropriate to improve recoveries.
(b) The Program shall monitor treatment sources' post treatment support on an ongoing basis.
(c) The Medical Director shall monitor the Program's post treatment support on an ongoing basis.

Authority G.S. 90-21.22.

21 NCAC 32Q .0206 REPORTS OF INDIVIDUAL CASES TO THE BOARD

- (a) After the Program has investigated and reviewed a physician assistant suspected of impairment, the Program shall determine whether G.S. 90-21.22(d) requires the Program to submit a report to the Board.
(b) Quarterly, the Program shall submit a report to the Board and the Committee on the status of all physician assistants then involved in the Program who have been previously reported by the Board. The Program shall submit to the Board periodic reports on the status of any physician assistants previously reported to the Board then in active treatment until such time as mutually agreed to by the Board and the Program.

Authority G.S. 90-21.22.

21 NCAC 32Q .0207 PERIODIC REPORTING OF STATISTICAL INFORMATION

Annually, the Program shall submit to the Board and the Committee a comprehensive statistical report, which shall include information concerning physician assistants with suspected impairments, impairments, self referrals, post treatment support and other significant demographic and substantive information collected through Program operations.

Authority G.S. 90-21.22.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to amend the rules cited as 23 NCAC 02D .0301, .0326-.0327; 02E .0101, .0205, and .0401.

Proposed Effective Date: May 1, 2009

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, Rule-making Coordinator, NC Community College System, 200 West Jones St., MSC 5001, Raleigh, NC 27699-5001 or by emailing the demand to martins@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.

Reason for Proposed Action: The State Board seeks to make all of the relevant language in the Administrative Code consistent with the General Assembly's approval of the Customized Training Program.

Procedure by which a person can object to the agency on a proposed rule: Written objections shall be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001 within the comment period and must be postmarked by 11:59 p.m. on the last day of the comment period.

Comments may be submitted to: Q. Shanté Martin, Rule-making Coordinator, 200 West Jones St., 5001 Mail Service Center, Raleigh, NC 27699-5001, phone (919) 807-6961 and email martins@nccommunitycolleges.edu

Comment period ends: January 16, 2009

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)
[X] None

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

23 NCAC 02D .0301 OPERATING BUDGET REQUESTS: DISTRIBUTION OF FUNDS

(a) Projections of full-time equivalent (FTE) students shall be based on the following:

- (1) Curriculum FTE projections shall be based on the academic year (fall and spring semesters).
(2) Continuing education FTE projections shall be based on the latest spring, summer, and fall FTE figures.
(3) Projections shall be made, program by program, as stated in Subparagraphs (a)(1) and (2) of this Rule.
(4) The State Board may adjust the projections based on additional factors brought to its attention.
(5) The State Board shall adopt an official projection of FTE.

(b) Appropriation Requests:

- (1) Continuation Budget Requests. The continuation budget request shall be based on the number of FTE and amount per FTE currently appropriated and increases in the continuation budget as directed by the Office of State Budget and Management.
(2) Expansion Budget Requests. The expansion budget request shall consist of at least the following items:
(A) an adjustment in the number of FTEs in existing programs based on the

difference between the official FTE projections of the State Board and the existing level of FTEs requested in the continuation budget;

- (B) an adjustment in expenditure per FTE;
(C) additional funding for new and special programs of instruction.

(c) State Board Reserve. A reserve shall be requested from the General Assembly and shall be retained by the State Board for the purpose of making later allocations for feasibility studies, pilot projects, innovative ideas, and start-up of new programs or as otherwise directed by the General Assembly.

(d) Formula distribution of funds for the current operation budget. Funds appropriated to the State Board for current operation shall be allocated to the system colleges as directed by the General Assembly.

(e) JTPA Administrative Allotment. Student class hours for class size projects funded by the Job Training Partnership Act (JTPA) shall not be included in the full-time equivalent (FTE) formula for earning budget/FTE. Administrative funds for operating these class size projects shall be allocated on the same basis as all other administrative formula funds.

Authority G.S. 115D-3; 115D-5; 115D-54; S.L. 1995, c. 625.

23 NCAC 02D .0326 BUDGET FTE FUNDING

(a) All student membership hours generated by the college for a given class shall be counted for budget FTE purposes provided 100 percent of the instructional cost is paid from college funds (funds budgeted through the college's budget including State Current, County Current, or College Funds). These provisions apply to all instructional contracts which generate budget FTE including Basic Skills classes. For purpose of this Rule, instructional cost includes the salary of the instructor(s) as well as fringe benefits, supplies, materials, and travel paid from college funds. College-sponsored instruction shall not supplant existing training which may take place without the college's involvement. Following are Rule applications:

- (1) A company or entity may reimburse the college for a given class up to 50 percent of the instructional cost. The student hours in membership generated in the class may be reported for budget FTE. If the college is reimbursed for more than 50 percent of the instructional cost for a given class, student hours in membership reported for the class shall be prorated in the same proportion as the college funding. If the college is reimbursed for 100 percent of the instructional cost, the class would be gratis [see Paragraph (b) of this Rule] and no budget FTE would be generated.
(2) In cases where a company or entity donates funds to a college with no expectation for instruction in return, these funds shall be treated as college funds and may be used to generate budget FTE.
(3) The community college shall not contract with a company or entity to provide training to its

current employees except as provided by provisions set forth in 23 NCAC 02E .0402.

Note: Contracted training does not have to be defined as work station occupational skills training in order for 23 NCAC 02E .0402(c) to apply for reimbursement purposes.

(b) Any class for which the instructor's services are provided at no cost or for which the instructional cost is paid totally and directly by an external agency is a "gratis" class. In this situation, the class is reported as self-supporting, and does not generate budget/FTE. If a portion of the class is gratis, student hours shall be prorated accordingly.

(c) Categorical state allotments to colleges, except literacy and Human Resources Development, such as Small Business, ~~Focused Industrial Training, Customized Training Programs,~~ Community Service, and Block Grants do not earn budget/FTE and are not subject to the provisions of this Rule.

Authority G.S. 115D-5; 115D-31; 115D-58.5; S.L. 2001, c. 424, s. 30.3(b),(e).

23 NCAC 02D .0327 REPORTING STUDENT MEMBERSHIP HOURS TO THE DEPARTMENT

(a) Curriculum and extension college class reports summarizing student membership hours shall be submitted to the Department during each student membership hour reporting period defined in this Paragraph.

- (1) The three student membership hour reporting periods are as follows:
 - (A) Period 1 - (Spring Period): January 1 - May 15;
 - (B) Period 2 - (Summer Period): May 16 - August 14;
 - (C) Period 3 - (Fall Period): August 15 - December 31.
- (2) College class reports for all regular budget curriculum and extension classes shall be submitted 21 calendar days after the conclusion of each student reporting period defined in Subparagraph (a)(1) of this Rule. Note the following schedule concerning application of the designated periods:
 - (A) all reports received by June 5 shall be designated Period 1;
 - (B) all reports received by September 4 shall be designated Period 2; and
 - (C) all reports received by January 21 shall be designated Period 3.

(b) For learning laboratories, skills laboratories, multi-entry, multi-exit and other non-regularly scheduled classes where actual student time in class is determined, student contact hours shall be calculated on the last day of each respective student membership hour reporting period for a given class and submitted to the Department according to Subparagraphs (a)(1) and (a)(2) of this Rule. Also, note Paragraphs (b) and (c) of Rule .0323 and Paragraphs (a) and (b) of Rule .0324 regarding calculation of student membership hours.

(c) College class reports for non-regular budget extension classes such as ~~new and expanding industry,~~ customized training for job growth, productivity enhancement, or technology

investment, HRD, JTPA, self-supporting, and recreational shall also be submitted to the ~~Department—System Office~~ in accordance with Subparagraphs (a)(1) and (a)(2) of this Rule.

Authority G.S. 115D-5; 115D-31; 115D-58.5; S.L. 1995, c. 625.

SUBCHAPTER 02E - EDUCATIONAL PROGRAMS

SECTION .0100 - PROGRAM CLASSIFICATION: DEGREES: DIPLOMAS AND CERTIFICATES

23 NCAC 02E .0101 PROGRAM CLASSIFICATION
The following criteria are used for classifying the programs offered in the North Carolina Community College System.

- (1) Curriculum Programs:
 - (a) A curriculum program is an organized sequence of courses leading to an associate degree, a diploma, or a certificate. All curriculum programs are designed to provide education, training, or retraining for the work force.
 - (i) Associate degree programs are planned programs of study culminating in an associate in applied science, associate in arts, associate in fine arts, associate in science, or associate in general education degree.
 - (A) The associate in applied science degree programs are designed to prepare individuals for employment. These programs involve the application of scientific principles in research, design, development, production, or service.
 - (B) The associate in arts, associate in science, and associate in fine arts degree programs are designed to prepare students for transfer at the junior level to institutions offering baccalaureate degrees.
 - (C) The associate in general education

- degree programs are designed for students who desire a general liberal arts education.
 - (ii) The diploma programs are designed to provide entry-level employment training. A diploma program may be a stand-alone curriculum program title, or a college may award a diploma under the college's associate in applied science degree curriculum program for a series of courses taken from the program of study and structured so that a student may complete additional non-duplicative coursework to receive an associate in applied science degree.
 - (iii) The certificate programs are designed to lead to employment or to provide skills upgrading or retraining for individuals already in the workforce. A certificate program may be a stand-alone curriculum program title, or a college may award a certificate under the college's associate degree or diploma curriculum program for a series of courses taken from the program of study.
 - (b) Developmental Education programs consist of courses and support services which include diagnostic assessment and placement, tutoring, advising, and writing assistance. These programs are designed to address academic preparedness, workforce retraining, development of general and discipline-specific learning strategies, and affective barriers to learning. Developmental courses do not earn credit toward a degree, diploma, or certificate.
- (2) Continuing Education Programs:
 - (a) Occupational Extension courses consist of single courses, each complete in itself, designed for the specific purposes of training an individual for full- or part-time employment, upgrading the skills of persons presently employed, and retraining others for new employment in occupational fields.
 - (b) Community Service:
 - (i) Community Service courses consist of single courses, each complete in itself, that focus on an individual's personal or leisure needs rather than occupational or professional employment.
 - (ii) The cultural and civic, and visiting artist component of this program meets community needs through lecture and concert series, art shows, the use of college facilities by community groups, providing speakers to community organizations, and providing visiting artist activities for college communities. Visiting artists may be provided an opportunity to work as artists in residence to enhance local arts resources and promote the various visual, performing and literary arts in communities throughout North Carolina.
 - (c) Self-Supporting Programs:
 - (i) A self-supporting course is not reported to the state for budget FTE since the cost of conducting the course is paid by students enrolled.
 - (ii) Recreational programs are self-supporting courses which the college may provide at the request of the community but for which the college receives no budgetary credit. Funds appropriated as operating expenses for allocation to the colleges shall not be used to support recreation courses. The financing of these courses by a college shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students for use in budget-funding formulas at the state level.
 - (d) Basic Skills Programs. The State Board and the community college system shall encourage persons to complete high school rather than seek

testing for the High School Diploma Equivalency.

- (i) High School Equivalency programs consist of classroom instruction, learning laboratory courses, or a combination of activities designed to qualify a student for an adult high school diploma. An Agreement of Affiliation with a local public school system is required for minors sixteen or seventeen years old. No agreement is required for adults eighteen years old and older.
- (ii) General Educational Development (GED) testing programs consist of classroom instruction, or learning laboratory courses, or a combination of both designed to qualify a student to demonstrate competency on the General Educational Development (GED) tests and to receive a High School Diploma equivalency from the State Board. The State Board is responsible for the administration of the General Educational Development testing program in cooperation with the Office on Educational Credit of the American Council on Education. The procedures regulating the GED Testing Program set forth in the GED Examiner's Manual published by the General Educational Development Testing Service of the American Council on Education are hereby incorporated by reference. A copy of this manual is available for inspection in the Office of the System President, Community College System Office, 200 W. Jones Street, Raleigh NC 27603-1379. A copy of this manual may be obtained at a cost of fifteen dollars (\$15.00) from the GED Testing Service of the American Council on

Education, One Dupont Circle NW, Suite 250, Washington, DC 20036-1163.

- (iii) The Adult Basic Education (ABE) program is designed for adults who are functioning at or below the eighth grade educational level. The major objectives of the program are to enable adults to acquire the basic educational skills necessary to be fully competent in our society, to improve their ability to benefit from occupational training and to have greater opportunities for more productive and profitable employment, and to meet their own objectives for enrolling in the program. Classes are offered and focus on fundamental skills such as reading, writing, speaking, computing, critical thinking, and problem solving.
- (iv) The English as a Second Language (ESL) program offers classes which accommodate the varied needs of the immigrant and refugee populations. Attention is given to both the cultural and linguistic needs as instruction is focused upon the formation of accurate, appropriate communication skills and upon the student's ability to function in the adult American community. Classes are offered at the beginning through the advanced levels of ESL. The curriculum is designed to develop the basic language skills of reading, writing, speaking, and listening. Instruction integrates the English language with topics that prepare students for everyday life, employment, and citizenship.
- (v) The Compensatory Education (CED) program is designed for adults with

mental retardation. The program is highly individualized and fosters a maximum level of independent living commensurate with personal ability. Instruction is offered in math, language, social science, health, community living, consumer education and vocational education.

(e) ~~Business and Industrial Customized Training Program.~~

(i) ~~The Focused Industrial Customized Training program addresses critical skills in existing industries. Based on assessments of need, these customized classes typically combine on-the-job training with classroom instruction to up grade or train incumbent employees of manufacturing industries.~~

(ii) ~~The New and Expanding Industry Training program offers customized, job-specific training to new or expanding companies creating new jobs in the state. company-specific training customized for job growth, technology investment, or productivity enhancement. Based on needs specified in G.S. 115D-5.1, Customized Training Programs shall address job-specific training and may support training needs assessment, instructional design, and instructional costs according to the Customized Training Program Guidelines approved by the State Board of Community Colleges.~~

~~(iii)(ii)~~ The Small Business Center program provides training, counseling and referral services especially designed in content and delivery modes for small businesses, both existing and prospective.

(f) The Human Resources Development (HRD) program provides skill assessment services, employability

skills training, and career development counseling to unemployed and underemployed adults. These courses shall address six core components as follows:

- (i) assessment of an individual's assets and limitations;
- (ii) development of a positive self-concept;
- (iii) development of employability skills;
- (iv) development of communication skills;
- (v) development of problem-solving skills; and
- (vi) awareness of the impact of information technology in the workplace.

(g) The Learning Laboratory programs consist of self-instruction using programmed texts, audio visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the lab.

Authority G.S. 115D-1; 115D-2; 115D-5; S.L. 1995, c. 625; S.L. 2001, c. 424, s. 30.3(b), (e).

SECTION .0200 - EDUCATIONAL PROGRAMS

23 NCAC 02E .0205 PROGRAM REVIEW

(a) Each college shall monitor the quality and viability of all its programs and services. Each curriculum program, each program area within continuing education, including Basic Skills, occupational extension, and community service, and each service area shall be reviewed at least every five years to determine program strengths and weaknesses and to identify areas for program improvement. The program review process shall be consistent with the requirements of the regional accrediting agency.

(b) The System Office shall collect data on the outcomes of the following performance measures:

- (1) Progress of basic skills students;
- (2) Passing rate for licensure and certification examinations;
- (3) Goal completion of program completers and noncompleters;
- (4) Employment status of graduates;
- (5) Performance of students who transfer to the university system;
- (6) Passing rates in developmental courses;
- (7) Success rates of developmental students in subsequent college-level courses;

- (8) The level of satisfaction of students who complete programs and those who do not complete programs;
- (9) Curriculum student retention and graduation;
- (10) Employer satisfaction with graduates;
- (11) Client satisfaction with ~~eustomized training~~; Customized Training Programs; and
- (12) Program enrollment.

Each college shall publish its data on all performance measures annually in its electronic catalog or on the internet and in its printed catalog each time the catalog is reprinted.

(c) The System Office shall report annually to the State Board of Community Colleges on each college's outcomes on these performance measures.

(d) The System Office shall monitor the colleges' performance on all measures to ensure that all measures are being used for the purpose of program improvement.

Note: Substance of former 23 NCAC 02C .0604 was incorporated into this Rule.

Authority G.S. 115D-5; 115D-31.3; 1999 S.L., c. 237, s. 9.2; 1993 S.L., c. 321, s. 109; S.L. 1995, c. 625.

SECTION .0400 - ECONOMIC DEVELOPMENT SERVICES

23 NCAC 02E .0401 CUSTOMIZED TRAINING PROGRAM

(a) Customized training programs for ~~new and expanding~~ companies experiencing job growth, productivity enhancement needs, or creating technology investment shall be provided training to support the economic development of the ~~state~~. State. ~~The training~~ Training programs for ~~new and expanding these~~ companies industries shall be administered by the local college, with ~~consultation~~ consultation, leadership, guidance, and assistance ~~approval~~ from the ~~Department's~~ System Office Economic Development staff.

(b) State funds are appropriated to the ~~Department~~ North Carolina Community College System Office in a separate line to support the ~~training for new and expanding industry~~. Customized Training Program. These funds shall be used only to support ~~only~~ companies experiencing job growth, productivity enhancement or technology investment, those training projects that create new jobs in new and expanding companies. They Projects shall be approved and funds allocated to and expended by the college in accordance with the System Office approved project plan and ~~budget~~. budget in accordance with State Board of Community College approved Guidelines.

Authority G.S. 115D-5.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01I .2002.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: January 21, 2009

Time: 10:00 a.m.

Location: Office of State Personnel Conference Room, Administration Building, 116 West Jones Street, 3rd Floor, Raleigh, NC

Reason for Proposed Action: In 2007, The General Assembly amended G.S. 126-1.1 to specifically apply to local government employees subject to the State Personnel Act. This rule change incorporates that statutory change into the Administrative Code for local government employees subject to the Personnel Act.

Procedure by which a person can object to the agency on a proposed rule: A person may object to this proposed rule by one of the following methods: (1) A written letter to Drake Maynard, Managing Partner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, (2) an email to drake.maynard@osp.nc.gov, or a telephone call to Drake Maynard at 919-807-4806.

Comments may be submitted to: Drake Maynard, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4806, email drake.maynard@osp.nc.gov

Comment period ends: January 21, 2009

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

TITLE 25 – OFFICE OF STATE PERSONNEL

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01I - SERVICE TO LOCAL GOVERNMENT

SECTION .2000 - APPOINTMENT AND SEPARATION

25 NCAC 01I .2002 TYPES OF APPOINTMENTS AND DURATION

(a) Probationary Appointment:

- (1) Individuals receiving original appointments to permanent positions must serve a probationary period. Persons being rehired after leaving employment in a subject position, and employees voluntarily accepting promotions, transfers or demotions in another county, social services department, mental health program, district health program or emergency management program shall be required to serve a probationary period by their new employer. This period is an essential extension of the selection process, and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards.
- (2) The length of the probationary period shall not be less than three nor more than nine months of either full-time or part-time employment. The length is dependant upon the complexity of the position and the rapidity of progress made by the particular individual in the position. ~~When the employee's performance meets the required standard of work, after at least three months and not more than nine months in the position, the employee shall be given permanent status unless in a trainee appointment.~~ If the desired level of performance is not achieved within nine months after initial appointment, the employee shall be separated from service unless in trainee status; an employee with a trainee appointment is expected to make a satisfactory progress, but is not permanent until he has completed the training period.

- (A) Persons voluntarily accepting promotions, transfers or demotions in another county social services department, mental health program, district health program or emergency management program who have already achieved career status shall still be required to serve a probationary period with the new employer.
- (B) In situations set out in Part (A) of this Subparagraph, when the employee's performance meets the required standard of work, after at least three months and not more than nine months in the position, the employee shall be returned to career status.
- (C) Persons voluntarily accepting promotions, transfers or demotions in

another county social services department, mental health program, district health program or emergency management program who have less than 24 months of continuous service in a position subject the G.S. Chapter 126 shall have that time credited by the new employer toward achievement of career status.

(D) Persons voluntarily accepting promotions, transfers or demotions in the same county to a position in a social services department, mental health program, district health program or emergency management program that is subject to G.S. Chapter 126 who have already achieved career status shall still be required to serve a probationary period with the new employer. When the employee's performance meets the required standard of work, after at least three months and not more than nine months in the position, the employee shall be returned to career status.

- (3) At any time during a probationary period an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons.
- (4) Employment in a temporary appointment may be toward the probationary period at the discretion of the appointing authority. Employment in an intermittent or emergency appointment shall not be credited toward the probationary period.

(b) Trainee Appointment:

- (1) A trainee appointment may be made to a position in any class for which the specification includes special provisions for a trainee progression leading to a regular appointment. An individual may not be appointed as a trainee if he/she possesses the acceptable training and experience for the class.
- (2) The specification for each class in which a trainee appointment is authorized will define the minimum qualifications for the trainee appointment and the minimum qualifications for a regular probationary appointment. It is, of course, expected that the individual will progress through supervised experience to a minimum level of satisfactory performance in the position during a period of time indicated by the difference between the amounts of experience required for the two types of

appointments. This limit does not include time spent on educational leave or additional time required to participate in a work-study program designed to meet educational requirements for the class. An employee may not remain on a trainee appointment beyond the time he meets the educational and experience requirements for the class. After the employee has successfully completed all educational and experience requirements he shall be given probationary or permanent status in the position or shall be separated. If the period of the trainee appointment equals or exceeds nine months, the employee must be given permanent status or be separated at the completion of the trainee period.

- (3) If an employee with permanent status in another class accepts a trainee appointment, the permanent status will be waived for the duration of the trainee appointment. The employee can regain permanent status either through successful completion of the trainee appointment, by reinstatement to the class in which he previously held status, or by transfer to a position in a class for which he/she would have been eligible based on previous permanent status.
- (4) A former employee who does not meet the minimum requirements of the class to which he is being appointed shall be given a trainee appointment. All requirements for the trainee appointment must be satisfied prior to attaining permanent status.

(c) Permanent Appointment. A permanent appointment is an appointment to a permanently established position when the incumbent is expected to be retained on a permanent basis. Permanent appointments follow the satisfactory completion of a probationary and/or trainee appointment, or may be made upon reinstatement of a qualified employee. Permanent appointments do not confer career status. Career status is achieved only when the conditions set out in G.S. 126-1.1 are met.

(d) Time-Limited Appointment. A time-limited appointment may be made to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less; or
- (2) to a permanent position that has an established duration of no more than two years. Such appointment shall not be made for less than six months. If at the end of the two year time-limited appointment, the work is expected to continue and the position becomes permanent, the employee should be given a permanent appointment. A time-limited appointment is distinguished from a temporary appointment by the greater length of time, and from the regular permanent appointment by its limited duration.

(e) Temporary Appointment. A temporary appointment may be made to a permanent or temporary position. The appointment shall be limited to a maximum duration of 12 months.

(f) Pre-Vocational Student Appointment. This appointment is to be used to enable students to gain practical knowledge of their particular occupational area of interest. A suitable plan for training under close supervision must be developed for the individual. In the case of a co-operative, work study, internship, or similar appointment, the time schedule for work must be determined. The basis of eligibility and selection for such an appointment shall be outlined in a formal plan developed by the participating agencies for each type and level of student involvement. Upon successful completion of their training, individuals may be considered for any vacant position for which qualified.

(g) Emergency Appointment:

- (1) An emergency appointment may be made when an emergency situation exists requiring the services of an employee before it is possible to identify a qualified applicant through the regular selection process. When it is determined that an emergency appointment is necessary, all other requirements for appointments will be waived.
- (2) An emergency appointment may be made for a period of up to 60 work days (consecutive or non-consecutive), or a total of 480 hours "in pay status". Any one individual may not receive successive emergency appointments with the same department or agency. At least three calendar months must elapse before that department or agency can give the same individual another emergency appointment.

(h) Appointment of Incumbents in Newly-Covered Programs:

- (1) Upon extension of State Personnel Act requirements to a program, position, or group of positions, the incumbent(s) may be appointed with permanent status in his classifications under any of the following circumstances:
 - (A) The employee is qualified for reinstatement on the basis of previous permanent status in a comparable position; or
 - (B) The employee has at least three months of satisfactory service in the program or agency, as certified by the appointing authority, and the appointing authority recommends that the employee be granted permanent status.
- (2) If the agency fails to grant permanent status within nine months from the initial coverage then the incumbent must be terminated. Employees given trainee appointments will be given permanent status consistent with other trainee appointments.
- (3) Incumbents who have less than three months of service with the agency shall be continued

with no status until they are granted permanent status or terminated as required in this Rule. Employees with more than three months but less than nine months services in the agency may be continued without status until nine months have elapsed. At the end of nine months, however, the incumbent must be granted permanent status or terminated.

(i) Work-Against Appointment. When qualified applicants are unavailable and there is no trainee provision for the classification of the vacancy, the appointing authority may appoint an employee below the level of the regular classification

in a work-against situation. A work-against appointment is for the purpose of allowing the employee to gain the qualifications needed for the full class through on-the-job experience. The appointee must meet the minimum training and experience standard of the class to which initially appointed. A work-against appointment may not be made when applicants are available who meet the training and experience requirements for the full class, and for the position in question.

Authority G.S. 126-4.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday October 16, 2008 10:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

November 20, 2008 December 18, 2008
January 22, 2009 February 19, 2009

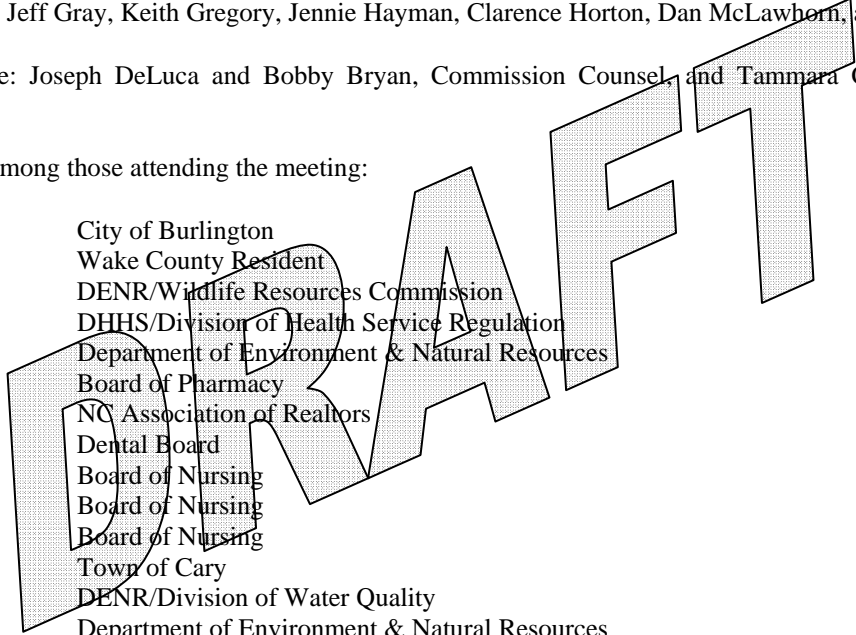
**RULES REVIEW COMMISSION
October 16, 2008
MINUTES**

The Rules Review Commission met on Thursday, October 16, 2008, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. This was the first meeting in the new building and the new meeting room. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Keith Gregory, Jennie Hayman, Clarence Horton, Dan McLawhorn, and David Twiddy.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel, and Tamara Chalmers, Administrative Assistant.

The following people were among those attending the meeting:

Robert M. Ward	City of Burlington
L.V. Taylor	Wake County Resident
Joan Troy	DENR/Wildlife Resources Commission
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Lancie Bailey	Department of Environment & Natural Resources
Eric David	Board of Pharmacy
Cady Thomas	NC Association of Realtors
Carolin Bakewell	Dental Board
Jean Stanley	Board of Nursing
Barbara Knopp	Board of Nursing
David Kalbacker	Board of Nursing
Charles Brown	Town of Cary
Jason Robinson	DENR/Division of Water Quality
Nancy Pate	Department of Environment & Natural Resources
Lisa Martin	NC Home Builders Association
Rich Gannon	DENR/Division of Water Quality
Charles Wilkins	Broughton Wilkins Sugg & Thompson
Jack Nichols	Allen & Pinnix
Kathryn Jones Cooper	DOJ/Attorney General's Office
Donald W. Laton	Department of Justice
David McLeod	Department of Agriculture & Consumer Services
Will Crumbley	Office of State Budget and Management
Ed McLenaghan	Office of State Budget and Management



Sandra Johnson
Suzanne Williams
Chris Hoke

Department of State Treasurer
NC Community College System
DHHS/Division of Public Health

APPROVAL OF MINUTES

The meeting was called to order at 9:03 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the September 18, 2008 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

02 NCAC 52J .0602 – Board of Agriculture. The Commission approved the rewritten rule submitted by the agency. The Commission has received requests from more than 10 persons clearly requesting legislative review of this rule and therefore is subject to a delayed effective date.

15A NCAC 02B .0262-.0273 – Environmental Management Commission. The review of these rules was displaced until the end of the meeting.

21 NCAC 36 .0318 – Board of Nursing. The Commission approved the rewritten rule submitted by the agency.

IPC 302.1: NC Building Code Council – Detrimental or Dangerous Materials – This rule was returned to the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules.

All rules were approved unanimously with the following exceptions:

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Crisp recused himself and did not participate in any discussion or vote concerning these rules because his daughter is a dental hygienist.

02 NCAC 38 .0601: Board of Agriculture – This rule was withdrawn by the agency.

10A NCAC 26C .0101-.0105: DHHS/Division of Mental Health – These rules were withdrawn by the agency.

10A NCAC 27G .0601- .0610: DHHS/Division of Mental Health – These rules were withdrawn by the agency

15A NCAC 18A .2606, .3606: Commission for Public Health – These rules were withdrawn by the agency.

15A NCAC 18D .0308: Water Treatment Facility Operators Certification Board - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (a), it is not clear what standards the Board will use in approving instruction. There is no authority cited to set the standards other than by rule.

21 NCAC 36 .0201: Board of Nursing - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (d) it is unclear what standards the board shall use to determine a number of factors. 1.) It is unclear what standards the board shall use to determine whether to require a license renewal applicant to “demonstrate evidence of behavior competent to practice nursing.” The standard used, “for just cause,” is so broad as to be meaningless and lacks the precision to satisfy the Administrative Procedure Act’s requirement that a rule be clear and unambiguous. 2.) It is unclear what would constitute the type or sufficiency of evidence “to demonstrate” the required competent behavior. This is a less serious problem than the preceding one. 3.) It is unclear what type of behavior is included in this standard. G.S. 90-171.29, “Qualifications of applicants for examination,” does not refer to “behavior” but rather refers to someone who is “mentally and physically competent to practice nursing.” There is no authority to set these standards outside rulemaking to the extent that any of these standards are set outside rulemaking.

21 NCAC 36 .0203: Board of Nursing - The Commission objected to this Rule based on ambiguity. In (b)(3) line 22 it is unclear what constitutes “recent.” It is also unclear under what circumstances the board might deem it necessary to require the recent photo. There is no authority to set those standards outside rulemaking.

The meeting recessed for a short break at 9:31 a.m. to verify the status of the digital recording system. The meeting reconvened at 9:43 a.m.

FOLLOW-UP MATTERS (cont.)

15A NCAC 02B .0262-.0273 – Environmental Management Commission - The Commission approved three of these rules, .0262, .0263 and .0267, contingent on the agency's making certain technical changes in the rules.

In Rule .0262(7), on page 5 line 35 of the rule, the agency needs to delete "Types of."

In Rule .0263(10)(a) the agency needs to insert language indicating that it is a vested right "established by [or 'based on'] statutory or common law as interpreted by the courts" or similar language. The agency should also delete the language in 10(a)(i) and (ii) starting with the introductory sentence beginning on line 5.

In Rule .0267(8)(c), page 10 line 3, the agency needs to insert at the beginning of (c) "as set out in (7)" or similar language to indicate that the prohibition against new conveyances was already expressed in the rule and is not a substantive change.

The RRC will review the technical changes at its meeting November 20. Mr. DeLuca stated that since the Commission did approve those rules contingent on the agency's making the technical changes, the scope of that review should be limited to whether or not the required changes were made.

The Commission engaged in extensive discussion of Rules .0265(5)(b) and .0266 concerning the statutory authority to regulate existing development. The RRC had not previously engaged in any lengthy debate over this issue of these rules. The RRC had earlier indicated that it wanted to see how the agency would choose to satisfy the objections to other Jordan nutrient strategy rules and whether that would have any effect on how it might act on these two rules affecting both new and existing development. The Commission had also alerted the EMC that the issue concerning the authority to impose requirements over existing development remained one for the RRC to consider.

During the discussion and debate over these rules Rich Gannon and Kathryn Jones Cooper spoke in favor of these rules, and Lisa Martin spoke in opposition.

There was discussion concerning the reference in Rule .0265(3)(a)(iv), page 2 lines 27-31, to "guidance" provided by the referenced manual. Mr. Rich Gannon from the agency staff answered questions from the Commission. Commissioner Gray requested that the agency make the following technical change: Change the sentence beginning on line 27 with "The treatment volume..." to "The treatment volume shall be drawn down pursuant to standards specific to each practice... of the *Stormwater Best Management Practices Manual* published by the Division, or other standards at least technically equivalent to the standards described in the manual." Mr. Gannon indicated that should be an acceptable change.

The Commission was unable to take any action on these two rules because there were identical 4 – 4 votes on four different motions: two to object to those rules based on lack of authority (and also in .0266 ambiguity as to the what is being required of local governments and the criteria they are to use in making determinations as to how they are to achieve load reductions in their jurisdictions) and two to approve those rules. As a result of this impasse the Commission was unable to take any further action on those two rules at this meeting.

In the case of the two votes to object to the rules, Commissioner Gray made the motion to object, and it was seconded by Commissioner Crisp. They both voted in favor of the motion along with Commissioners Gregory and Twiddy. Voting in opposition to the motions were Commissioner Chair Hayman along with Commissioners Funderburk, Horton, and McLawhorn.

In the case of the two votes to approve the rules, Commissioner Funderburk made the motion to approve, and it was seconded by Commissioner Horton. They both voted in favor of the motions, along with Commissioner Chair Hayman and Commissioner McLawhorn. Voting in opposition to the motions were Commissioners Crisp, Gray, Gregory, and Twiddy.

During the discussion and votes the Chair recessed the meeting for a short break at 11:30 a.m. to replace the digital recorder's memory. She reconvened the meeting at 11:47 a.m.

The Commission will continue its review of the two remaining rules (and determining that the technical changes were made) at its meeting next month.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioners were reminded of the orientation meeting November 19, 2008 at 2:00 p.m.

The Commissioners agreed to start all future meetings at 9:00 a.m.

The meeting adjourned at 12:14 p.m.

The next scheduled meeting of the Commission is a business and orientation meeting on Wednesday, November 19, 2008, at 2:00 p.m. The regular review meeting of the Commission is Thursday, November 20, 2008 at 9:00 a.m.

Respectfully Submitted,
Tammara Chalmers
Administrative Assistant

**LIST OF APPROVED PERMANENT RULES
October 16, 2008 Meeting**

AGRICULTURE, BOARD OF

Prohibited Uses 02 NCAC 52J .0602

AGRICULTURE, COMMISSIONER OF

Surfaces; Exhibit Areas 02 NCAC 52K .0406

Hand Washing Stations 02 NCAC 52K .0501

Health Certificate; Vaccinations 02 NCAC 52K .0601

HEALTH SERVICE REGULATION, DIVISION OF

Performance Standards 10A NCAC 14C .1903

Definitions 10A NCAC 14C .2101

Information Required of Applicant 10A NCAC 14C .2102

Performance Standards 10A NCAC 14C .2103

Facility 10A NCAC 14C .2106

Definitions 10A NCAC 14C .2701

Information Required of Applicant 10A NCAC 14C .2702

Performance Standards 10A NCAC 14C .2703

Information Required of Applicant 10A NCAC 14C .3702

Information Required of Applicant 10A NCAC 14C .4002

Performance Standards 10A NCAC 14C .4003

Facility 10A NCAC 14C .4006

PUBLIC HEALTH, COMMISSION FOR

Vaccine for Providers Other than Local Health Departments 10A NCAC 41A .0502

ENVIRONMENTAL MANAGEMENT COMMISSION

Jordan Water Supply Nutrient Strategy: Agriculture 15A NCAC 02B .0264

Jordan Water Supply Nutrient Strategy: Mitigation of Exis... 15A NCAC 02B .0268

Riparian Buffer Mitigation Fees to the NC Ecosystem Enhan... 15A NCAC 02B .0269

Jordan Water Supply Nutrient Strategy: Wastewater Dischar... 15A NCAC 02B .0270

<u>Jordan Water Supply Nutrient Strategy: Stormwater Require...</u>	15A NCAC 02B .0271
<u>Jordan Water Supply Nutrient Strategy: Fertilizer Management</u>	15A NCAC 02B .0272
<u>Jordan Water Supply Nutrient Strategy: Options for Offse...</u>	15A NCAC 02B .0273

WILDLIFE RESOURCES COMMISSION

<u>Open Seasons</u>	15A NCAC 10B .0302
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WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

<u>Expiration and Revocation of Certificate</u>	15A NCAC 18D .0307
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DENTAL EXAMINERS, BOARD OF

<u>Reexamination</u>	21 NCAC 16B .0310
<u>Continuing Education Required</u>	21 NCAC 16I .0102
<u>Approved Courses and Sponsors</u>	21 NCAC 16I .0103
<u>Reporting Continuing Education</u>	21 NCAC 16I .0104
<u>Continuing Education Required</u>	21 NCAC 16R .0103
<u>Approved Courses and Sponsors</u>	21 NCAC 16R .0104
<u>Variances and Exemptions from and Credit for Continuing E...</u>	21 NCAC 16R .0106
<u>Transfer of Records Upon Request</u>	21 NCAC 16T .0102

MASSAGE AND BODYWORK THERAPY, BOARD OF

<u>Student Compensation Prohibited</u>	21 NCAC 30 .0626
<u>Continuing Education Requirements</u>	21 NCAC 30 .0701

MEDICAL BOARD

<u>Nurse Practitioner Registration</u>	21 NCAC 32M .0103
<u>Process for Approval to Practice</u>	21 NCAC 32M .0104
<u>Annual Renewal</u>	21 NCAC 32M .0106
<u>Prescribing Authority</u>	21 NCAC 32M .0109
<u>Fees</u>	21 NCAC 32M .0115

NURSING, BOARD OF

<u>Selection and Qualifications of Nurse Members</u>	21 NCAC 36 .0109
<u>Determination of Vacancy</u>	21 NCAC 36 .0112
<u>Definitions</u>	21 NCAC 36 .0120
<u>Inactive and Retired Status</u>	21 NCAC 36 .0202
<u>Continuing Competence</u>	21 NCAC 36 .0232
<u>Faculty</u>	21 NCAC 36 .0318
<u>Coordination with Division of Health Service Regulation (...)</u>	21 NCAC 36 .0402
<u>Listing and Renewal</u>	21 NCAC 36 .0404
<u>Approval of Nurse Aide Education Programs</u>	21 NCAC 36 .0405
<u>Authority and Definitions</u>	21 NCAC 36 .0501
<u>Certificate of Registration</u>	21 NCAC 36 .0504
<u>General and Administrative Provisions</u>	21 NCAC 36 .0505
<u>Forms</u>	21 NCAC 36 .0506

RULES REVIEW COMMISSION

<u>Prerequisites for Organization</u>	21	NCAC 36	.0602
<u>Certificate of Registration</u>	21	NCAC 36	.0603
<u>Fees</u>	21	NCAC 36	.0605
<u>Nurse Practitioner Registration</u>	21	NCAC 36	.0803
<u>Process for Approval to Practice</u>	21	NCAC 36	.0804
<u>Annual Renewal</u>	21	NCAC 36	.0806
<u>Prescribing Authority</u>	21	NCAC 36	.0809
<u>Fees</u>	21	NCAC 36	.0813

PHARMACY, BOARD OF

<u>Ballots: Casting and Counting</u>	21	NCAC 46	.2107
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BUILDING CODE COUNCIL

<u>NC Plumbing Code</u>			2009 Plumbing Code
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CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. 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	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	Shannon Joseph

<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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A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

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Joel M. Walker v. Division of Water Quality Well Contractors Certification Commission	08 EHR 0985	Joseph	06/11/08	
Eddie Verdis Hood v. N.C. Department of Environment and Natural Resources	08 EHR 1073	Overby	07/30/08	
Research Triangle Institute v. Division of Waste Management, Hazardous Waste Section, DENR	08 EHR 1100	Overby	07/11/08	
Tracie Locklear, Ammie Brewer-James, Native Designs Hair & Tanning Salon v. DENR, Health Radiation Protection	08 EHR 1143	Gray	7/17/08	
Donna C Garrett v. Cherokee County Health Dept., Environmental Health Division	08 EHR 1246	Brooks	09/09/08	
Roray Kent Mishak, Town of China Grove v. NCDENR, Public Water Supply Section	08 EHR 1573	Brooks	09/08/08	

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Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 1130	Overby	03/12/08
Nettie C Minshew v. North Carolina State Health Plan	07 INS 1319	Gray	09/08/08
Alesha D Carter v. State Health Plan	07 INS 1858	Lassiter	05/19/08

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Kevin Edral Douglas v. Wake County District Attorney, DMV	07 MIS 1976	Webster	05/12/08
Jeannie L Day v. City of Asheville Control, Brenda Sears Officer White	08 MIS 0895	Brooks	08/18/08
Promise Land Ministries Inc., Joel K. Wilson v. Mitchell County Tax Assessor and Board of Equalization	08 MIS 1447	May	09/17/08

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Marsha A Early v. Durham County Department of Social Services	01 OSP 0279	Lassiter	04/02/08
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Cheryl Best v. Columbus County Department of Social Services	06 OSP 2206	Lassiter	09/10/08	
Scott Burgess v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	07 OSP 0052	Gray	07/16/08	
Divina P. Shields v. North Carolina State University	07 OSP 0317	Lassiter	07/11/08	
Jacqueline B. Maynard v. UNC	07 OSP 0575	Webster	04/08/08	
Warren R. Follum v. NCSU	07 OSP 0577	Webster	03/21/08	
Sharon P. House v. UNC	07 OSP 0630	Webster	04/08/08	
Pam Moses v. Macon County Health Department	07 OSP 0945	Overby	06/30/08	
Cassandra F. Barner v. Halifax County Department of Social Serv.	07 OSP 1186	Joseph	05/16/08	23:05 NCR 528
Michael Shelton Woody v. DENR, Division of Forest Resources	07 OSP 1255	Brooks	05/13/08	
Kellee M. Buck v. Dare County Department of Social Services	07 OSP 1385	Overby	05/27/08	
Dennis E. Hrynkow v. Dept. of Insurance	07 OSP 1400	Joseph	04/03/08	
Stacey M. Gasque v. N.C. Department of Corrections	07 OSP 1479	Overby	06/09/08	
James Dobaly v. North Carolina Department of Health and Human Services	07 OSP 1873	Lassiter	07/02/08	
Adley K. Prager v. Dept. of Crime Control and Public Safety and Butner Public Safety	07 OSP 2011	Webster	05/29/08	
Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution	07 OSP 2012	Joseph	04/07/08	
Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz	07 OSP 2047	Joseph	04/07/08	
Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public Safety and The Dept. of Crime Control & Public Safety (NC Highway Patrol)	07 OSP 2222	Morrison	06/05/08	23:01 NCR 147
Norman K. Goering v. Crime Control and Public Safety, Highway Patrol	07 OSP 2256	Joseph	07/29/08	23:05 NCR 547
Kimberly James v. UNC-Charlotte	08 OSP 0146	Webster	05/08/08	
Nancy Hester v. Guilford County AOC Pretrial Services	08 OSP 0224	Overby	06/19/08	
Ray Stanford Williams Jr. v. NC Department of Cultural Resources	08 OSP 0529	Morrison	08/19/08	
Laura L. Holliman v. Caledonia Correctional Inst.	08 OSP 0591	Gray	07/08/08	
Ashley K. Severson v. Greene County	08 OSP 0611	Joseph	07/29/08	
Sharon V Blackmon v. Office of Administrative Hearings	08 OSP 0624	Gray	09/19/08	
Richard D. Lincoln v. DOT	08 OSP 0801	Gray	05/27/08	
Robert M. Hewitt v. Morrison Correctional Institute	08 OSP 0971	Gray	06/26/08	
Kenyatta Burrus v. Craven County Clerk of Superior Court	08 OSP 1089	Overby	06/12/08	
Dexter J. Hill v. Department of Agriculture and Consumer Services	08 OSP 1167	Overby	07/08/08	
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Dianna Humphrey v. Caswell Center	08 OSP 1327	Lassiter	07/02/08	
Charles Godwin v. NC Department of Crime Control and Public Safety	08 OSP 1463	Lassiter	07/28/08	
Vincent Morton v. Cherry Hospital	08 OSP 1497	Webster	09/16/08	
Kyla Solomon v. Office of Citizen Services	08 OSP 1547	Lassiter	07/22/08	
Richard Manson v. NC A&T State University	08 OSP 1561	Brooks	09/25/08	
Richard T Ward v. NC DOT Ferry Division	08 OSP 1617	Lassiter	08/27/08	
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<u>DEPARTMENT OF REVENUE</u>				
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Deandra A. Scott v. Department of Revenue	08 REV 1180	Overby	07/01/08	
Goretty Williams v. Department of Revenue	08 REV 1227	Overby	07/08/08	
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Hope Taylor (formerly Taylor-Guevara) v. North Carolina Department of The Secretary of State	07 SOS 2280	Joseph	05/21/08	
Robert C Garrard Jr. v. NC Department of Secretary of State	08 SOS 0523	Brooks	09/12/08	
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Jimmy L. Holder v. UNC Hospitals	08 UNC 0589	May	07/29/08	
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Eva Kali Green v. UNC Hospitals	08 UNC 0841	May	09/22/08	
Kaprina Wells v. UNC Hospitals	08 UNC 0860	Gray	07/28/08	
Rolie Adrienne Webb "Andi" v. UNC Hospitals	08 UNC 0881	Gray	06/11/08	

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Marcus M. McCullers v. UNC Hospitals	08 UNC 0928	Gray	07/30/08
Satarah K. Latiker v. UNC Hospitals	08 UNC 0952	May	08/21/08
Mary C. Gessell v. UNC Hospitals	08 UNC 0981	Joseph	09/18/08
Richard and Amy Whitt v. UNC Hospitals	08 UNC 1048	May	08/15/08
John G Sell v. UNC Hospitals	08 UNC 1334	Joseph	08/26/08

WELL CONTRACTORS CERTIFICATION COMMISSION

Charles P. Pool v. Well Contractors Certification Commission	08 WCC 0514	Gray	07/15/08
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WILDLIFE RESOURCES COMMISSION

Lisa Roddy v. Wildlife Resources Commission	08 WRC 0970	Brooks	06/24/08
Rickey Dale Logan	08 WRC 1229	Lassiter	07/28/08