

NORTH CAROLINA REGISTER

VOLUME 24 • ISSUE 02 • Pages 37 - 69

July 15, 2009

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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.

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Office of State Budget and Management
116 West Jones Street (919) 807-4700
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Governor's Review

Eddie Speas eddie.speas@nc.gov
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116 West Jones Street
Raleigh, North Carolina 27603

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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

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215 North Dawson Street
Raleigh, North Carolina 27603

contact: Erin L. Wynia ewynia@nclm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2009 – December 2009

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
23:13	01/02/09	12/08/08	01/17/09	03/03/09	03/20/09	05/01/09	05/2010	09/29/09
23:14	01/15/09	12/19/08	01/30/09	03/16/09	03/20/09	05/01/09	05/2010	10/12/09
23:15	02/02/09	01/09/09	02/17/09	04/03/09	04/20/09	06/01/09	05/2010	10/30/09
23:16	02/16/09	01/26/09	03/03/09	04/17/09	04/20/09	06/01/09	05/2010	11/13/09
23:17	03/02/09	02/09/09	03/17/09	05/01/09	05/20/09	07/01/09	05/2010	11/27/09
23:18	03/16/09	02/23/09	03/31/09	05/15/09	05/20/09	07/01/09	05/2010	12/11/09
23:19	04/01/09	03/11/09	04/16/09	06/01/09	06/22/09	08/01/09	05/2010	12/27/09
23:20	04/15/09	03/24/09	04/30/09	06/15/09	06/22/09	08/01/09	05/2010	01/10/10
23:21	05/01/09	04/09/09	05/16/09	06/30/09	07/20/09	09/01/09	05/2010	01/26/10
23:22	05/15/09	04/24/09	05/30/09	07/14/09	07/20/09	09/01/09	05/2010	02/09/10
23:23	06/01/09	05/08/09	06/16/09	07/31/09	08/20/09	10/01/09	05/2010	02/26/10
23:24	06/15/09	05/22/09	06/30/09	08/14/09	08/20/09	10/01/09	05/2010	03/12/10
24:01	07/01/09	06/10/09	07/16/09	08/31/09	09/21/09	11/01/09	05/2010	03/28/10
24:02	07/15/09	06/23/09	07/30/09	09/14/09	09/21/09	11/01/09	05/2010	04/11/10
24:03	08/03/09	07/13/09	08/18/09	10/02/09	10/20/09	12/01/09	05/2010	04/30/10
24:04	08/17/09	07/27/09	09/01/09	10/16/09	10/20/09	12/01/09	05/2010	05/14/10
24:05	09/01/09	08/11/09	09/16/09	11/02/09	11/20/09	01/01/10	05/2010	05/29/10
24:06	09/15/09	08/24/09	09/30/09	11/16/09	11/20/09	01/01/10	05/2010	06/12/10
24:07	10/01/09	09/10/09	10/16/09	11/30/09	12/21/09	02/01/10	05/2010	06/28/10
24:08	10/15/09	09/24/09	10/30/09	12/14/09	12/21/09	02/01/10	05/2010	07/12/10
24:09	11/02/09	10/12/09	11/17/09	01/02/10	01/20/10	03/01/10	05/2010	07/30/10
24:10	11/16/09	10/23/09	12/01/09	01/15/10	01/20/10	03/01/10	05/2010	08/13/10
24:11	12/01/09	11/05/09	12/16/09	02/01/10	02/22/10	04/01/10	05/2010	08/28/10
24:12	12/15/09	11/20/09	12/30/09	02/15/10	02/22/10	04/01/10	05/2010	09/11/10

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.

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 15 PROMULGATION AND IMPLEMENTATION OF THE NORTH CAROLINA EMERGENCY OPERATIONS PLAN

WHEREAS, the North Carolina Emergency Management Act, N.C.G.S. §166A-5(1)(a)(6), authorizes the Governor to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State in planning for and responding to emergencies; and

WHEREAS, the North Carolina Emergency Management Act, N.C.G.S. §166A-5(1)(a)(6), requires the officers and personnel of all such departments, offices, and agencies to cooperate with and extend such services and facilities upon request; and

WHEREAS, the functions of the State emergency management program include preparation and maintenance of State plans for disasters; and

WHEREAS, to facilitate a coordinated, effective relief and recovery effort among State and local government entities and agencies, this order is executed.

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

Section 1. All State and local government entities are directed to cooperate in the implementation of the provisions of the North Carolina Emergency Operations Plan dated April 2009.

Section 2. I hereby delegate to the Secretary of the North Carolina Department of Crime Control and Public Safety, or the Secretary's designee, all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purposes of promulgating and implementing the said Emergency Operations Plan.

Section 3. The Secretary of the North Carolina Department of Crime Control and Public Safety shall make necessary changes to the North Carolina Emergency Operations Plan with appropriate coordination and shall similarly promulgate additional annexes and appendices as required.

Section 4. The Secretary of the North Carolina Department of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. This executive order supersedes Executive Order No. 39 (January 9, 2003). This order is effective immediately and shall remain in effect until rescinded or superseded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this eleventh day of June in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.





Beverly Eaves Perdue
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



U.S. Department of Justice
Civil Rights Division

CC:RPL:SHH:maf
DJ 166-012-3
2009-1229

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

May 29, 2009

Richard J. Rose, Esq.
Poyner Spruill
P.O. Box 353
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to eighteen annexations (Ordinance Nos. O-2007-36 through O-2007-53) and their designation to wards of the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 1, 2009.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Coates".

Christopher Coates
Chief, Voting Section

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**
City of Laurinburg

Pursuant to N.C.G.S. § 130A-310.34, the City of Laurinburg has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Laurinburg, Scotland County, North Carolina. The Property, known as the former Scotland Memorial Hospital, consists of 4.31 acres and comprises a city block bordered to the north by McLean Street, to the south by West Covington Street, to the east by King Street, and to the west by Malcolm Street. Environmental contamination exists on the Property in the soil and groundwater. The City of Laurinburg has committed itself to limit redevelopment of the Property to a community college-related job-training facility, open space and/or a greenway and/or a park. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the City of Laurinburg, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

During the 30-day public comment period, the full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the office of the City Clerk, P.O. Box 249, Laurinburg, N.C. 28353 (physical address: Barrett Building, 305 West Church Street, Laurinburg, N.C) by contacting Dee Hammond at that address, at (910) 276-8324 or at dhammond@laurinburg.org; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if the City of Laurinburg, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on July 16, 2009. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

SUBCHAPTER 17D – ASSISTIVE EQUIPMENT DISTRIBUTION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Services for the Deaf and Hard of Hearing intends to amend the rule cited as 10A NCAC 17D .0210 with changes from the proposed text noticed in the Register, Volume 23, Issue 21, pages 2052-2055.

Proposed Effective Date: November 1, 2009

Reason for Proposed Action: *The proposed changes simplify and clarify the definition of family for purposes of determining household size and whose income to count. The revised language will be easier for both consumers and staff to understand.*

Procedure by which a person can object to the agency on a proposed rule: *A person can object to the proposed rule changes by contacting the agency's rule-making coordinator, Jan Withers, by telephone, email, or postal mail.*

Written comments may be submitted to: *Jan Withers, 2301 Mail Service Center, Raleigh, NC 27699-2301, phone (919)874-2212 (v/tty), fax (919)855-6872, email jan.withers@ncmail.net*

Comment period ends: September 14, 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 919-431-3000.

Fiscal Impact

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

CHAPTER 17 – DEAF AND HARD OF HEARING

SECTION .0200 – TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

10A NCAC 17D .0210 FINANCIAL ELIGIBILITY

(a) An applicant ~~for an equipment set shall meet the Division's financial needs test. test to be eligible to receive an equipment set.~~

(b) Applicants for an equipment set who are recipients of ~~public funds such as AFDC, Work First, SSDI, SSI, CSHS (Children's Special Health Services), Medicaid, Health Choice for Children, Section 8 Housing Choice Vouchers,~~ or the Food Stamp Program shall automatically meet the financial needs test upon submission of ~~official documentation from the publicly funded program.~~ a document issued by the State of North Carolina or political subdivision of the State or an agency of the United States or any other document that the Division determines provides equivalent reliability that shows participation in one of the programs.

(c) ~~Financial eligibility~~ Family income limits for applicants not included under (b) of this Rule ~~shall be determined by applying the federal poverty level for family size and income of the applicant in effect on the date of application.~~ are described in Rule .0206(b)(4) of this Section.

(d) An applicant's family shall include the user and the following persons living in the same household as the user if the user is 18 years of age or older or if the user is less than 18 years of age and is married:

- (1) the user's spouse;
- (2) the user's ~~children~~ children, including step-children, under 18 years of age;
- (3) other individuals related to the user by ~~blood, marriage, or adoption~~ blood or marriage who are under 18 years of age if the other individuals have no income and do not have a parent or spouse ~~who has income~~ living in the same household; and
- (4) the user's children or step-children of any age who are living at home or temporarily living away from the household while attending school if they are being claimed as dependents by the user for federal tax purposes.

(e) An applicant's family shall include the user and the following persons living in the same household as the user if the user is less than 18 years of age and is not married:

- (1) the user's parents, ~~not including~~ step-parents;
- (2) siblings, ~~or half-siblings~~ half-siblings, and step-siblings of the user, ~~but not step-siblings,~~

PROPOSED RULES

if the siblings are ~~unmarried~~ and less than 18 years of age;

- (3) ~~siblings or half-siblings of the user, but not step-siblings, if the siblings are 18 years of age or older and have no income; and~~
(3) siblings, half-siblings, and step-siblings of the user who are living at home or temporarily living away from the household while attending school, if they are being claimed as dependents by the user's parents for federal tax purposes and the parents are living in the same household as the user; and
(4) ~~other individuals related to the user by blood, marriage, or adoption~~ blood or marriage who are under 18 years of age if the other individuals have no income and do not have a parent or spouse who has income living in the same household.

(f) ~~In (e)(2) and (3) of this Rule, siblings who are temporarily living away from the household while attending school may be are considered as living in the same household if they are being claimed as dependents by their parents for tax purposes and the parents are in the same household as the user.~~

(g)(f) ~~Gross monthly~~ Monthly income of the family members shall be considered in the financial needs test. ~~If the applicant is married, the applicant must include his/her spouse's income. If the applicant is a minor, the applicant must include his/her parents' income. Examples of gross income include such items as~~ Income includes the following:

- (1) gross salaries and wages;
- (2) adjusted gross earnings from self-employment, except for income that children may earn from babysitting, lawn mowing, or other miscellaneous ~~tasks;~~ tasks. Adjusted gross income is calculated by subtracting the operational expenses from the gross receipts of the business in the time period described in Paragraph (i) of this Rule. Any salary or disbursements made to the individual from his business are disregarded in calculating adjusted gross earnings from self-employment;
- ~~(3) public assistance money;~~
- ~~(4)(3) unemployment compensation;~~
- ~~(5)(4) Social Security benefits;~~
- ~~(6)(5) Veteran's Administration benefits;~~
- ~~(7)(6) retirement and pension payments;~~
- ~~(8) supplemental security income benefits.~~
- (7) worker's compensation payments;
- (8) alimony;
- (9) child support;
- (10) tobacco buyout payments;
- (11) On-the-job training (OJT);
- (12) AmeriCorps stipends;
- (13) Armed Forces pay;
- (14) work release payments;
- (15) rental income;
- (16) annuities; and
- (17) Cherokee Tribal Per Capita Income paid to adult family members.

~~(h)(g)~~ The following shall be excluded in the computation of ~~gross~~ monthly income:

- ~~(1) combined, available cash in the bank not to exceed six times the gross monthly income for the family size; and~~
- ~~(2) tax value of property held.~~
- (1) benefits from any program listed in Paragraph (b) of this Rule;
- (2) Adoption or Foster Care payments;
- (3) income from sale of personal assets;
- (4) loans;
- (5) tax refunds; and
- (6) Earned Income Tax Credits.

~~(i)(h)~~ The time period to be used as the basis for computing ~~gross~~ monthly income ~~shall be~~ is the month preceding the date of application. For income that is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.

Authority G.S. 62-157; 143B-216.33; 143B-216.34.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rule cited as 10A NCAC 70G .0504.

Proposed Effective Date: November 1, 2009

Public Hearing:

Date: September 2, 2009

Time: 10:00 a.m.

Location: Albemarle Building, Conference Room 832 (8th Floor) 325 Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *Changes in foster home licensing rules became effective September 1, 2007. Changes in rules governing child-placing agencies, residential child-care and residential maternity care became effective October 1, 2008. Since the enactment of these rules we have discovered errors and omissions in some of the rules. 70G .0504 needs to be consistent with 70I .0504(h).*

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

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

Comment period ends: September 14, 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 919-431-3000.

Fiscal Impact:

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

CHAPTER 70 – CHILDREN'S SERVICES

**SUBCHAPTER 70G – CHILD PLACING AGENCIES:
FOSTER CARE**

SECTION .0500 - MINIMUM LICENSING STANDARDS

10A NCAC 70G .0504 OUT-OF-HOME FAMILY SERVICES AGREEMENT FOR CHILDREN RECEIVING FAMILY FOSTER CARE SERVICES

(a) The agency shall develop a written out-of-home family services agreement within 30 days of admission of a child in a family foster home. The out-of-home family services agreement shall be developed in cooperation with the child, parents, guardian or legal custodian and foster parents when possible. The out-of-home family services agreement shall be based upon an assessment of the needs of the child, parents or guardian. The out-of-home family services agreement shall include goals stated in specific, realistic, and measurable terms and plans that are action oriented, including specific responsibilities of staff, parents or guardian, other family members, legal custodian, foster parents and the child.

(b) The out-of-home family services agreement shall be reviewed by the agency within 60 days of placement, the second out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months. Parents, guardian, legal custodian, foster parents, the child, as well as any individual or agency designated as providing services, shall participate in the reviews to determine the child's and parents' or guardian's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the out-of-home family services agreement.

(c) If the legal custodian is a county department of social services, the child-placing agency, the department of social services, parents or guardian, foster parents, other service providers and child shall develop a single out-of-home family services agreement. A copy of the child's out-of-home family services agreement shall be provided to the parents, guardian, the executive director of the child-placing agency or his or her

designee and the foster parents by the county department of social services serving as the legal custodian. The child's out-of-home family services agreement shall be provided to other agencies and individuals listed as providing services to the child and his or her parents or guardian. An age appropriate version of the out-of-home family services agreement shall be written and provided to each child by the legal custodian. The child-placing agency and foster parents shall attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out of Home Family Services Agreement (DSS 5240 or DSS 5241) and the Transitional Living Plan (CARS Plan Review) may serve as the out of home family services agreement for the child-placing agency if the documents reflect input and participation by the child-placing agency and foster parents.

(d) The child-placing agency and foster parents shall attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) may serve as the out-of-home family services agreement for the child-placing agency if the documents reflect input and participation by the child-placing agency and foster parents.

Authority G.S. 131D-10.5; 143B-153.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16B .0501; 16C .0501; 16Q .0101, .0301, .0401, .0402, .0501.

Proposed Effective Date: November 1, 2009

Public Hearing:

Date: August 6, 2009

Time: 7 p.m.

Location: N.C. Dental Board Office, 507 Airport Blvd., Morrisville, NC 27560

Reason for Proposed Action:

These Rules were previously published in the Register, Volume: 23 Issue 18. They are being republished because the previously scheduled public hearing was not held.

21 NCAC 16B .0501 – This Rule is proposed for amendment to clarify that applicants for dental licensure by credentials must have held an active, unrestricted dental license issued by another U.S. state or territory for the five years immediately preceding the application date.

21 NCAC 16C .0501 – This Rule is proposed for amendment to clarify that applicants for licensure as a hygienist by credentials must have held an active, unrestricted dental license issued by

another U.S. state or territory for the five years immediately preceding the application date.

21 NCAC 16Q .0101 – This Rule is proposed for amendment to define anxiolysis to include provision of a single dose of a minor psychosedative the night before a procedure, followed by a single dose of a minor psychosedative on the day of treatment, before treatment begins and that nitrous oxide may also be administered on the day of treatment.

21 NCAC 16Q .0301 – This Rule is proposed for amendment to clarify the three routes for qualification to administer moderate conscious sedation or moderate pediatric conscious sedation. Pursuant to 21 NCAC 16Q .0301(c)(1), an applicant must complete a Board approved 60 hour didactic course in addition to PALS or its age specific equivalent or satisfactorily manage a minimum of 10 patients, under supervision using IV. Pursuant to 21 NCAC 16Q .0301(c)(3) as proposed, the applicant must complete a U.S. pediatric internship or residency approved by CODA. Paragraph (d) of this Rule is proposed for amendment to provide that a dentist who holds a moderate conscious sedation permit may qualify to administer moderate pediatric conscious sedation by completing a pediatric dental degree or pediatric residency approved by CODA. Paragraph (e) of this Rule is proposed for amendment to require applicants for permits to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes to demonstrate competency in the areas listed in 21 NCAC 16Q .0401(d)(2)-(4). Paragraph (i) of this Rule is proposed for reorganization. No substantive changes to the Rule are contemplated.

21 NCAC 16Q .0401 – Paragraph (f) of this Rule is proposed for adoption to provide that a dentist who seeks a permit to administer minimal conscious sedation must comply with the facility requirements set out in 21 NCAC 16Q .0302.

21 NCAC 16Q .0402 – This Rule is proposed for amendment to delete an outdated definition of anxiolysis and refer to the definition of anxiolysis included in 21 NCAC 16Q .0101(3).

21 NCAC 16Q .0501 – Paragraph (c) of this Rule is proposed for amendment to require applicants for renewal of a general anesthesia permit to document current completion of BLS, rather than annual completion of BLS. Paragraph (d) of this Rule is proposed for amendment to provide that applicants for renewal of a moderate conscious sedation permit or moderate pediatric conscious sedation permit need not document current ACLS training. The amendment would also make it clear that moderate pediatric conscious sedation permit holders must have current PALS training to renew their permits.

Procedure by which a person can object to the agency on a proposed rule: Written objections may be sent to Bobby D. White, Chief Operations Officer, N.C. Dental Board, 507 Airport Boulevard, Ste. 105, Morrisville, NC 27560.

Comments may be submitted to: Bobby D. White, 507 Airport Boulevard, Ste. 105, Morrisville, NC 27560

Comment period ends: September 14, 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 919-431-3000.

Fiscal Impact:

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

SUBCHAPTER 16B - LICENSURE DENTISTS

SECTION .0500 – LICENSURE BY CREDENTIALS

21 NCAC 16B .0501 DENTAL LICENSURE BY CREDENTIALS

(a) An applicant for a dental license by credentials shall submit to the Board:

- (1) a completed, notarized application form provided by the Board;
- (2) the licensure by credentials fee;
- (3) an affidavit from the applicant stating for the five years immediately preceding application:
 - (A) the dates that and locations where the applicant has practiced dentistry;
 - (B) that the applicant has provided at least 5000 hours of clinical care directly to patients, not including post graduate training, residency programs or an internship;
 - (C) that the applicant has continuously held an active, unrestricted dental license issued by another U.S. state or any U.S. territory;
- (4) if applicable, a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (5) if applicable, a statement disclosing and explaining periods, within the last 10 years, of observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program;

- (6) a copy of a current course completion certification card in cardiopulmonary resuscitation; and
- (7) a statement disclosing whether or not the applicant holds or has ever held a registration with the federal Drug Enforcement Administration (DEA) and whether such registration has ever been surrendered, surrendered for cause, or revoked.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental license by credentials shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened envelope sealed by the entity involved:

- (1) official transcripts from the applicant's dental school verifying that the applicant has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) if the applicant is or has ever been employed as a dentist by or under contract with a federal agency, a letter certifying the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
- (3) certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;
- (4) a report from the National Practitioner Databank;
- (5) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant must submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
- (6) a score certification letter from a dental professional regulatory board or regional testing agency of a passing score on a clinical licensure examination substantially equivalent to the clinical licensure examination required in North Carolina and such examination shall be administered by the dental professional regulatory board or its designated agent other than an educational institution.

(A) Such certification shall state that the examination included procedures performed on human subjects as part of the assessment of restorative clinical competencies and shall have included evaluations in at least four of the following subject areas:

- (i) periodontics, clinical abilities testing;
- (ii) endodontics, clinical abilities testing;
- (iii) amalgam preparation and restoration;
- (iv) anterior composite preparation and restoration;
- (v) posterior ceramic or composite preparation and restoration;
- (vi) cast gold, clinical abilities testing;
- (vii) prosthetics, written or clinical abilities testing;
- (viii) oral diagnosis, written or clinical abilities testing; or
- (ix) oral surgery, written or clinical abilities testing.

(B) In addition to the foregoing requirements, to be eligible for consideration for equivalency, a licensure examination after January 1, 1998 shall include:

- (i) anonymity between candidates and examination raters;
- (ii) standardization and calibration of raters; and
- (iii) a mechanism for post exam analysis;

(7) the applicant's passing score on the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations; and

(8) the applicant's passing score on the licensure examination in general dentistry conducted by a regional testing agency or independent state licensure examination substantially equivalent to the clinical licensure examination required in North Carolina as set out in Subparagraph (b)(6) of this Rule.

(c) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant.

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

(e) An applicant for dental licensure by credentials must successfully complete written examinations as set out in G.S. 90-36 and, if deemed necessary based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.

- (f) Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.
- (g) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

Authority G.S. 90-28; 90-36.

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS

SECTION .0500 – LICENSURE BY CREDENTIALS

21 NCAC 16C .0501 DENTAL HYGIENE LICENSURE BY CREDENTIALS

(a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- (1) a completed, notarized application form provided by the Board;
- (2) the licensure by credentials fee;
- (3) an affidavit from the applicant stating:
 - (A) the dates that and locations where the applicant has practiced dental hygiene;
 - (B) that the applicant has provided at least 2000 hours of clinical care directly to patients, during the two years immediately preceding application;
 - (C) that the applicant has continuously held an active, unrestricted dental hygiene license issued by another U.S. state or any U.S. territory;
- (4) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (5) if applicable, a statement disclosing and explaining periods, within the last 10 years, of observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dental hygiene or other impaired professionals program; and
- (6) a copy of a current course completion certification card in cardiopulmonary resuscitation.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened envelope sealed by the entity involved:

- (1) official transcripts certifying that the applicant has graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association;

- (2) if the applicant is or has ever been employed as a dentist or dental hygienist by or under contract with a federal agency, a certification letter of the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
 - (3) certificate of the applicant's licensure status from the regulatory authority or other occupational or professional regulatory authority and information regarding all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other occupational or professional license;
 - (4) a report from the National Practitioner Databank, if reporting is required or allowed by federal law;
 - (5) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant must submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
 - (6) the applicant's passing score on the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; and
 - (7) the applicant's passing score on the licensure examination conducted by a regional testing agency or independent state licensure examination that is substantially equivalent to the clinical licensure examination required in North Carolina.
- (c) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant.
- (d) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.
- (e) An applicant for dental hygiene licensure by credentials must successfully complete written examinations and, if deemed necessary based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.
- (f) Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.
- (g) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

Authority G.S. 90-223; 90-224.1.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0100 – DEFINITIONS

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purpose of these Rules relative to the administration of minimal conscious sedation, moderate conscious sedation, moderate conscious sedation limited to oral routes or nitrous oxide inhalation, moderate pediatric conscious sedation or general anesthesia by or under the direction of a dentist, the following definitions shall apply:

- (1) "Analgesia" – the diminution or elimination of pain.
- (2) "Anti-anxiety sedative" – a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.
- (3) "Anxiolysis" – pharmacological reduction of anxiety through the administration of a single dose of a minor psychoedative ~~psychoedative, possibly in combination with nitrous oxide~~, to children or adults on the night before the appointment, followed by an additional single dose of a minor psychoedative prior to commencement of treatment on the day of the appointment which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance. Nitrous oxide may be administered on the day of treatment in addition to the minor psychoedative without constituting multiple dosing for purpose of these Rules.
- (4) "Behavior control" – the use of pharmacological techniques to control behavior to a level that dental treatment can be performed effectively and efficiently.
- (5) "Behavioral management" – the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.
- (6) "Competent" – displaying special skill or knowledge derived from training and experience.
- (7) "Conscious sedation" - an induced state of a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used shall carry a margin of safety

- (8) "Deep sedation" – an induced state of a depressed level of consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.
- (9) "Direct supervision" – the dentist responsible for the sedation/anesthesia procedure shall be physically present in the facility and shall be continuously aware of the patient's physical status and well being.
- (10) "Facility" – the location where a permit holder practices dentistry and provides anesthesia/sedation services.
- (11) "Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care.
- (12) "General anesthesia" -- the intended controlled state of a depressed level of consciousness that is produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.
- (13) "Immediately available" – on-site in the facility and available for immediate use.
- (14) "Local anesthesia" – the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.
- (15) "May" – indicates freedom or liberty to follow a reasonable alternative.
- (16) "Minimal conscious sedation" – conscious sedation characterized by a minimally depressed level of consciousness, in which patient retains the ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command, provided to patients 13 years or older, by oral or rectal routes of administration of a single pharmacological agent, in one or more doses, not to exceed the manufacturer's maximum recommended dose, at the time of treatment, possibly in combination with nitrous oxide. Minimal conscious sedation is provided for behavioral management.
- (17) "Minor psychoedative/Minor tranquilizer" – pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patent airway continuously and without assistance and carry a margin of safety wide

- enough to render unintended loss of consciousness unlikely.
- (18) "Moderate conscious sedation" – conscious sedation characterized by a drug induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation, provided to patients 13 years or older, by oral, nasal, rectal or parenteral routes of administration of multiple pharmacological agents, in multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Moderate conscious sedation is provided for behavior control.
- (19) "Moderate conscious sedation limited to oral routes and nitrous oxide inhalation" – conscious sedation characterized by a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation, provided to patients 13 years or older, by oral routes of administration and nitrous oxide inhalation, of single or multiple pharmacological agents, in single or multiple doses, within a 24 hour period. Moderate conscious sedation limited to oral routes and nitrous oxide inhalation is provided for behavior control.
- (20) "Moderate pediatric conscious sedation" -- conscious sedation characterized by a drug induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation, provided to patients under 13 years of age, by oral, nasal, rectal or parenteral routes of administration of single or multiple pharmacological agents, in single or multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Moderate pediatric conscious sedation is provided for behavior control.
- (21) "Must" or "shall" – indicates an imperative need or duty or both; an essential or indispensable item; mandatory.
- (22) "Parenteral" --the administration of pharmacological agents intravenously, intraosseously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally.
- (23) "Protective reflexes" – includes the ability to swallow and cough.
- (24) "Supplemental dosing" – the oral administration of a pharmacological agent that results in an enhanced level of conscious sedation when added to the primary sedative agent administered for the purpose of oral moderate conscious sedation, and which, when

- added to the primary agent, does not exceed the maximum safe dose of either agent, separately or synergistically.
- (25) "Vested adult" – a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a minor following the administration of general anesthesia or conscious sedation.

Authority G.S. 90-28; 90-30.1.

SECTION .0300 - PARENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE CONSCIOUS SEDATION, MODERATE PEDIATRIC CONSCIOUS SEDATION AND MODERATE CONSCIOUS SEDATION LIMITED TO ORAL ROUTES OF ADMINISTRATION AND NITROUS OXIDE

- (a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist (CRNA) to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes of administration and nitrous oxide to dental patients on an outpatient basis, the dentist shall obtain a permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the facility of the permit holder.
- (b) For a dentist to employ a certified registered nurse anesthetist to administer moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide or moderate pediatric conscious sedation, the dentist must demonstrate through the permitting process that he/she is capable of performing all duties and procedures to be delegated to the CRNA. The dentist must not delegate said CRNA to perform procedures outside of the scope of the technique and purpose of moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes and nitrous oxide as defined in Rule .0101 of this Subchapter.
- (c) A dentist applying for a permit to administer moderate conscious sedation or moderate pediatric conscious sedation must meet at least one of the following criteria:
 - (1) Satisfactory completion of a Board approved course that provides a minimum of 60 hours of didactic training, including PALS, in addition to PALS or age-specific equivalent, and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
 - (2) Satisfactory completion of a pre-doctoral dental or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule; or

- (3) Satisfactory completion of ~~an a U.S. pediatric internship or U.S. pediatric residency approved by the Commission on Dental Accreditation, which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule; or~~
- (d) A dentist may modify his/her moderate conscious sedation permit to include the privilege of moderate pediatric conscious sedation by completing a ~~Board approved~~ pediatric dental degree or pediatric dental residency program approved by the Commission on Dental Accreditation or obtaining the equivalent hours of continuing education program in pediatric dental anesthesia. If said qualifications are satisfied, it shall be so designated on the dentist's moderate conscious sedation permit and will be subject to the renewal requirements stated in .0501(d) of this Subchapter.
- (e) To be eligible for a moderate conscious sedation permit, moderate conscious sedation limited oral routes and nitrous oxide inhalation or moderate pediatric conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, and is staffed with supervised auxiliary personnel for each procedure performed. The dentist shall ensure that auxiliary personnel document annual, successful completion of basic life support (BLS) training and are capable of assisting with procedures, problems and emergencies incident thereto.
- (f) Prior to issuance of a moderate conscious sedation permit, moderate conscious pediatric sedation permit or moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation permit, the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one. The dentist will demonstrate competency in the areas set out in Rule .0401(d)(2) – (4) of this Subchapter.
- (g) The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.
- (h) A dentist who holds a moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide inhalation or moderate pediatric conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly and unintentionally.
- (i) A dentist may obtain a moderate conscious sedation permit limited to oral routes of administration and nitrous oxide inhalation, including the ability to add supplemental dosing to the techniques set out in Rule .0101(23) of this Subchapter upon compliance with the following requirements:

- (1) successfully complete 24 hours of Board approved didactic training and manage at least 10 adult case experiences, including at least three live clinical dental experiences. The live clinical cases shall not be handled by groups with more than five participants. The remaining cases may include simulations, video presentations or both, but must include one experience in returning/rescuing a patient from deep to moderate sedation; or
- ~~(2) document, with patient names and dates of completion, at least 100 cases of oral moderate conscious sedation procedures successfully completed within one year preceding the effective date of these Rules; and~~
- ~~(3) fulfill all the requirements listed in .0401 for minimal conscious sedation, moderate sedation, or~~
- (2) document, with patient names and dates of completion, at least 100 cases of oral moderate conscious sedation procedures successfully completed between July 3, 2007 and July 3, 2008 and fulfill all the requirements listed in Rule .0401 of this Subchapter for minimal conscious sedation.
- (j) A dentist who is qualified to administer general anesthesia, moderate conscious sedation or moderate pediatric conscious sedation and holds a general anesthesia, moderate conscious sedation permit or a moderate pediatric conscious sedation permit may administer minimal conscious sedation without obtaining a separate minimal conscious sedation permit.
- (k) Any dentist who holds an active parenteral conscious sedation permit as of the effective date of these amendments shall be deemed to hold an active moderate conscious sedation permit. Such permits shall be subject to the renewal requirements set out in .0501 of this Subchapter.

Authority G.S. 90-28; 90-30.1.

SECTION .0400 - ENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0401 MINIMAL CONSCIOUS SEDATION CREDENTIALS, EVALUATION AND PERMIT

- (a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist to administer minimal conscious sedation, the dentist shall obtain a Board-issued permit for minimal conscious sedation, moderate pediatric conscious sedation, moderate conscious sedation or general anesthesia. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain a minimal conscious sedation permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Only a dentist who holds a general anesthesia license may administer deep sedation or general anesthesia.

(c) Application:

- (1) A minimal conscious sedation permit may be obtained by completing an application form provided by Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.
- (2) The application form must be filled out completely and appropriate fees paid.
- (3) An applicant for a minimal conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these Rules "good standing" means that the applicant is not subject to a disciplinary investigation and his or her license has not been revoked or suspended and is not subject to a probation or stayed suspension order.

(d) Evaluation:

- (1) Prior to issuance of a minimal conscious sedation permit the applicant shall undergo a facility inspection. The Board shall direct an evaluator qualified to administer minimal sedation to perform this inspection. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall perform the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.
- (2) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency in the following areas:
 - (A) Monitoring of blood pressure, pulse, pulse oximetry and respiration;
 - (B) Drug dosage and administration (by verbal demonstration);
 - (C) Treatment of untoward reactions including respiratory or cardiac depression (by verbal demonstration);
 - (D) Sterilization;
 - (E) Use of CPR certified personnel;
 - (F) Monitoring of patient during recovery (by verbal demonstration); and
 - (G) Sufficiency of patient recovery time (by verbal demonstration).
- (3) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:
 - (A) Laryngospasm;
 - (B) Bronchospasm;
 - (C) Emesis and aspiration;

- (D) Respiratory depression and arrest;
- (E) Angina pectoris;
- (F) Myocardial infarction;
- (G) Hypertension/Hypotension;
- (H) Syncope;
- (I) Allergic reactions;
- (J) Convulsions;
- (K) Bradycardia;
- (L) Insulin shock; and
- (M) Cardiac arrest.

(4) The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.

(e) Educational/Professional Requirements:

- (1) The dentist applying for a minimal conscious sedation permit shall meet one of the following criteria:
 - (A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of minimal conscious sedation in a minimum of five cases;
 - (B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage minimal conscious sedation;
 - (C) successful completion of an 18-hour minimal conscious sedation course which must be approved by the Board based on whether it affords comprehensive training necessary to administer and manage minimal conscious sedation;
 - (D) successful completion of an ADA accredited postgraduate program in pediatric dentistry; or
 - (E) is a North Carolina licensed dentist in good standing who has been using minimal conscious sedation in a competent manner for at least one year immediately preceding October 1, 2007 and his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (d) of this Rule. Competency shall be determined by presentation of successful administration of minimal conscious

sedation in a minimum of five clinical cases.

- (2) All applicants for a minimal sedation permit must document successful completion of a Basic Life Saving (BLS) course within the 12 months prior to the date of application.

(f) A dentist administering minimal conscious sedation must ensure that the facility meets the requirements set out in Rule .0302(a) of this Subchapter.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0402 MINIMAL CONSCIOUS SEDATION PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

(a) Minimal conscious sedation is indicated for use only as defined in Rule .0101(15) of this Subchapter (relating to Definitions). Minimal conscious sedation is not indicated for use to achieve deep sedation.

(b) A minimal conscious sedation permit is not required for minor psychosedatives used for anxiolysis, as defined in Rule .0101(3) of this Subchapter. ~~anxiolysis prescribed for administration outside of the dental office when pre procedure instructions are likely to be followed.~~ Medication administered for the purpose of minimal conscious sedation shall not exceed the maximum doses recommended by the drug manufacturer, sedation textbooks, or juried sedation journals. Except for nitrous inhalation, drugs in combination are not permitted for minimal conscious sedation. During longer periods of minimal conscious sedation, in which the amount of time of the procedures exceeds the effective duration of the sedative effect of the drug used, the incremental doses of the sedative shall not exceed total safe dosage levels based on the effective half-life of the drug used.

(c) Each dentist shall:

- (1) adhere to the clinical requirements as detailed in Paragraph (e) of this Rule;
- (2) maintain under continuous direct supervision any auxiliary personnel, who shall be capable of assisting in procedures, problems, and emergencies incident to the use of minimal conscious sedation or secondary to an unexpected medical complication;
- (3) utilize sufficient auxiliary personnel for each procedure performed who shall document ~~current~~annual successful completion of basic life support training; and
- (4) not allow a minimal conscious sedation procedure to be performed in his or her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the Board for the procedure being performed. This provision addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.

(d) Each dentist shall meet the following requirements:

- (1) Patient Evaluation. Patients who are administered minimal conscious sedation must

be evaluated for medical health risks prior to the start of any sedative procedure. A patient receiving minimal conscious sedation must be healthy or medically stable (ASA I, or ASA II as defined by the American Society of Anesthesiologists). An evaluation is a review of the patient's current medical history and medication use. However, for individuals who are not medically stable or who have a significant health disability Physical Status III (ASA III, as defined by the American Society of Anesthesiologists) a consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.

- (2) Pre-procedure preparation, informed consent:
 - (A) The patient or guardian must be advised of the procedure associated with the delivery of the minimal conscious sedation.
 - (B) Equipment must be evaluated and maintained for proper operation.
 - (C) Baseline vital signs shall be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.
 - (D) Dentists administering minimal conscious sedation shall use sedative agents that he/she is competent to administer and shall administer such agents in a manner that is within the standard of care.
- (e) Patient monitoring:
 - (1) Patients who have been administered minimal conscious sedation shall be monitored during waiting periods prior to operative procedures. An adult who has accepted responsibility for the patient and been given written pre-procedural instruction may provide such monitoring. The patient shall be monitored for alertness, responsiveness, breathing and skin coloration.
 - (2) Dentists administering minimal conscious sedation shall maintain direct supervision of the patient during the operative procedure and for such a period of time necessary to establish pharmacologic and physiologic vital sign stability.
 - (A) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry, except as provided in Paragraph (e)(4) of this Rule.
 - (B) Ventilation. Observation of chest excursions or auscultation of breath sounds or both shall be performed.

- (C) Circulation. Blood pressure and pulse shall be taken and recorded initially and thereafter as appropriate except as provided in Paragraph (e)(4) of this Rule.
- (D) AED. Dentists administering minimal conscious sedation shall maintain a functioning automatic external defibrillator (AED).
- (3) An appropriate time oriented anesthetic record of vital signs shall be maintained in the permanent record including documentation of individual(s) administering the drug and showing the name of drug, strength and dosage used.
- (4) If the dentist responsible for administering minimal conscious sedation must deviate from the requirements set out in this Rule, he or she shall document the occurrence of such deviation and the reasons for such deviation.
- (f) Post-operative procedures:
 - (1) Following the operative procedure, positive pressure oxygen and suction equipment shall be immediately available in the recovery area or operatory.
 - (2) Vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation and circulation are stable and the patient is sufficiently responsive for discharge from the office.
 - (3) Patients who have adverse reactions to minimal conscious sedation shall be assisted and monitored either in an operatory chair or recovery area until stable for discharge.
 - (4) Recovery from minimal conscious sedation shall include:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient easily arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for the patient who is disabled, or incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.
 - (5) Prior to allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Paragraph (f)(4) of this Rule and the following discharge criteria:

- (A) oxygenation, circulation, activity, skin color and level of consciousness are sufficient and stable and have been documented;
- (B) explanation and documentation of written postoperative instructions have been provided to the patient or a responsible adult at time of discharge;
- (C) responsible individual is available for the patient to transport the patient after discharge;
- (D) A vested adult must be available to transport patients for whom a motor vehicle restraint system is required and an additional responsible individual must be available to attend to the patients.
- (g) The dentist, personnel and facility shall be prepared to treat emergencies that may arise from the administration of minimal conscious sedation, and shall have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

Authority G.S. 90-28; 90-30.1.

SECTION .0500 - RENEWAL OF PERMITS

21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED

- (a) General anesthesia and all sedation permits shall be renewed by the Board annually. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses. A one hundred (\$100.00) annual renewal fee shall be paid at the time of renewal.
- (b) All sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of general anesthesia or any level of conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.
- (c) As a condition for renewal of the general anesthesia permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0202 and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document ~~current, annual~~, successful completion of basic life support (BLS) training.
- (d) As a condition for renewal of the moderate conscious sedation permit or moderate pediatric conscious sedation permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0302 and the following criteria:
 - (1) document annual, successful completion of BLS training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education

required each calendar year for license renewal:

- (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) audit ACLS/Pediatric Advanced Life Support (PALS) ~~courses~~ courses; or
- (2) document current, successful completion of ACLS training or its age-specific equivalent, or other equivalent course and annual successful completion of ~~BLS~~ and BLS.
- ~~(3) moderate pediatric conscious sedation permit holders must have current PALS at all times.~~

(e) Moderate pediatric conscious sedation permit holders must have current PALS at all times.

~~(f)~~ As a condition for renewal of the minimal conscious sedation permit and the moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation, the permit holder shall meet the requirements of 16Q .0402 and shall document annual, successful completion of BLS training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;
- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; or
- (6) audit ACLS/PALS courses.

~~(g)~~ Any dentist who fails to renew a general anesthesia or sedation permit on or before March 31 of each year must complete a reinstatement application, pay the one hundred dollar (\$100.00) renewal fee and a one hundred dollar (\$100.00) penalty and comply with all conditions for renewal set out in this Rule for the permit sought. Dentists whose anesthesia or sedation permits have been lapsed for more than 12 calendar months must pass a facilities inspection as part of the reinstatement process.

Authority G.S. 90-28; 90-30.1; 90-48.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16G .0106 and amend the rules cited as 21 NCAC 16Q .0301 and .0302.

Proposed Effective Date:
21 NCAC 16G .0106 – November 1, 2009

21 NCAC 16Q .0301, .0302 – January 1, 2010

Public Hearing:

Date: August 6, 2009

Time: 7:00 p.m.

Location: Dental Board Office, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16G .0106 – The rule is proposed for adoption to clarify the circumstances under which dental hygiene schools may operate extension facilities and off campus hygiene classes.

21 NCAC 16Q .0301 – The rule is proposed for amendment to permit dentists who have successfully completed at least 100 moderate pediatric sedation cases between July 3, 2006 and July 3, 2009 to qualify for a moderate pediatric sedation permit.

21 NCAC 16Q .0302 – The rule is proposed for amendment to clarify that CRNAs may administer moderate pediatric sedation with appropriate supervision of a dentist and that dentists who travel to the office of another dentist to administer sedation may only provide sedation at the level for which they hold a valid permit, or a lower level of sedation.

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

Send written objections to Bobby D. White, Chief Operations Officer, NC State Board of Dental Examiners, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560.

Comments may be submitted to: Bobby D. White, Chief Operations Officer, NC State Board of Dental Examiners, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560

Comment period ends: September 14, 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 919-431-3000.

Fiscal Impact:

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

SUBCHAPTER 16G – DENTAL HYGIENISTS

SECTION .0100 – DENTAL HYGIENISTS

21 NCAC 16G .0106 DENTAL HYGIENE SCHOOL EXTENSION FACILITIES AND OFF CAMPUS CLASSES

(a) Dental hygiene schools may operate extension facilities and conduct off-campus hygiene classes in which dental hygiene services are provided to members of the public at Board approved sites, including non-profit health care facilities serving low income populations, state and county institutions with resident populations, hospitals, state or county health department and area health education centers.

(b) Dental hygiene schools which operate extension facilities or conduct hygiene classes off-campus must notify the Dental Board of the location and nature of each facility or off campus course location, the names of the students assigned thereto, and the names and qualifications of all instructors functioning therein.

(c) No student enrolled in an off-campus dental hygiene class or extension facility may receive fees, compensation or remuneration of any kind for providing dental hygiene services in accordance with G.S. 90-29(c)(4) or G.S. 90-233(c)(2).

Authority G.S. 90-29(c)(4); 90-233(c)(2).

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0300 – PARENTAL CONSCIOUS SEDATION

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE CONSCIOUS SEDATION, MODERATE PEDIATRIC CONSCIOUS SEDATION AND MODERATE CONSCIOUS SEDATION LIMITED TO ORAL ROUTES OF ADMINISTRATION AND NITROUS OXIDE

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist (CRNA) to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes of administration and nitrous oxide to dental patients on an outpatient basis, the dentist shall obtain a permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the facility of the permit holder.

(b) For a dentist to employ a certified registered nurse anesthetist to administer moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide or moderate pediatric conscious sedation, the dentist must demonstrate through the permitting process that he/she is capable of performing all duties and procedures to be delegated to the CRNA. The dentist must not delegate said CRNA to perform procedures outside of the scope of the technique and purpose of moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes and nitrous oxide as defined in Rule .0101 of this Subchapter.

(c) A dentist applying for a permit to administer moderate conscious sedation or moderate pediatric conscious sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training, including PALS, and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of a pre-doctoral dental or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule.

(d) Notwithstanding the foregoing, a dentist may also qualify for a permit to administer moderate pediatric conscious sedation by documenting, with patient names and dates of completion, at least 100 cases of moderate pediatric sedation procedures successfully completed between July 3, 2006 and July 3, 2009. A dentist who obtains a pediatric conscious sedation permit pursuant to this subsection may not administer sedation intravenously and such limitation shall be noted on the dentist's permit.

~~(e)(4)~~ A dentist may modify his/her moderate conscious sedation permit to include the privilege of moderate pediatric conscious sedation by completing a Board approved pediatric dental degree or pediatric dental residency program or obtaining the equivalent hours of continuing education program in pediatric dental anesthesia. If said qualifications are satisfied, it shall be so designated on the dentist's moderate conscious sedation permit and will be subject to the renewal requirements stated in Rule .0501(d) of this Subchapter.

~~(f)(e)~~ To be eligible for a moderate conscious sedation permit, moderate conscious sedation limited to oral routes and nitrous oxide inhalation permit or moderate pediatric conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, and is staffed with supervised auxiliary personnel for each procedure performed. The dentist shall ensure that auxiliary personnel document annual, successful completion of basic life support (BLS) training and are capable of assisting with procedures, problems and emergencies incident thereto.

~~(g)(4)~~ Prior to issuance of a moderate conscious sedation permit, moderate conscious pediatric sedation permit or moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation permit, the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

~~(h)(e)~~ The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for

his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.

~~(i)(4)~~ A dentist who holds a moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide inhalation or moderate pediatric conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly and unintentionally.

~~(j)(4)~~ A dentist may obtain a moderate conscious sedation permit limited to oral routes of administration and nitrous oxide inhalation, including the ability to add supplemental dosing to the techniques set out in Rule .0101(23) of this Subchapter upon compliance with the following requirements:

- (1) successfully complete 24 hours of didactic training and manage at least 10 adult case experiences, including at least three live clinical dental experiences. The live clinical cases shall not be handled by groups with more than five student participants. The remaining cases may include simulations, video presentations or both, but must include one experience in returning/rescuing a patient from deep to moderate sedation; or
- (2) document, with patient names and dates of completion, at least 100 cases of oral moderate conscious sedation procedures successfully completed within one year preceding the effective date of these Rules; and
- (3) fulfill all the requirements listed in Rule .0401 of this Subchapter for minimal conscious sedation.

~~(k)(4)~~ A dentist who is qualified to administer general anesthesia, moderate conscious sedation or moderate pediatric conscious sedation and holds a general anesthesia, moderate conscious sedation permit or a moderate pediatric conscious sedation permit may administer minimal conscious sedation without obtaining a separate minimal conscious sedation permit.

~~(l)(4)~~ Any dentist who holds an active parental conscious sedation permit as of October 1, 2007 shall be deemed to hold an active moderate conscious sedation permit. Such permits shall be subject to the renewal requirements set out in Rule .0501 of this Subchapter.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation or supervising the administration of moderate conscious sedation or moderate pediatric conscious sedation by a certified registered nurse anesthetist shall ensure that the facility in which the sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to

permit effective emergency management;

- (B) A CPR Board or a dental chair without enhancements, suitable for providing emergency treatment;
- (C) Lighting as necessary for specific procedures; and
- (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction.

- (2) The following equipment is maintained:
 - (A) Positive oxygen delivery system, including full face mask for adults and pediatric patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device;
 - (D) Pulse oximeter; and
 - (E) Automatic External Defibrillator (AED).
- (3) The following emergency equipment is maintained:
 - (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
 - (B) Syringes as necessary for specific procedures; and
 - (C) Tourniquet and tape.
- (4) The following drugs are maintained with a current shelf life and within easy access from the operatory and recovery area:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Narcotic antagonist;
 - (D) Antihistamine;
 - (E) Corticosteroid;
 - (F) Nitroglycerine;
 - (G) Bronchial dilator;
 - (H) Antiemetic;
 - (I) Benzodiazepine antagonist; and
 - (J) 50% Dextrose.
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and
- (6) The following records are maintained for at least 10 years:
 - (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;
 - (C) A sedation record which shall include:
 - (i) blood pressure;

- (ii) pulse rate;
- (iii) respiration;
- (iv) duration of procedure;
- (v) documentation of complications or morbidity; and
- (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, or where applicable, moderate pediatric conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. Practices limited to pediatric dentistry will not be required to demonstrate the deployment of an intravenous delivery system. Instead, they will orally describe to the evaluator the technique of their training in intravenous and intraosseous deployment. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression, if applicable;
- (4) Sterile technique;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation shall ensure that the facility is staffed with sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of a moderate pediatric conscious sedation or moderate conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide sedation services at the level for which the traveling dentist holds a valid permit, as well as minimal sedation or moderate conscious sedation limited to oral routes ~~minimal~~

~~sedation, moderate conscious sedation or moderate pediatric conscious sedation services~~ for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the facility in which the sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication. Holders of moderate conscious sedation permits limited to oral routes and nitrous oxide inhalation may not provide sedation at the office of a licensed dentist who does not hold an appropriate sedation permit.

Authority G.S. 90-28; 90-30.1; 90-48.

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Hearing Aid Dealers and Fitters Board intends to amend the rule cited as 21 NCAC 22L .0101.

Proposed Effective Date: November 1, 2009

Public Hearing:

Date: August 4, 2009

Time: 9:30 a.m.

Location: NCDA&CS Agronomic Services Division, 4300 Reedy Creek Road, Raleigh, NC 27607-6465

Reason for Proposed Action: *The Board cannot fully investigate an anonymous complaint. The Board needs the ability to interview the complainant and have him/her testify at an administrative hearing.*

Procedure by which a person can object to the agency on a proposed rule: *He or she can submit a letter to the Board or appear at the public hearing.*

Comments may be submitted to: *Rachel B. Smith, Executive Secretary, North Carolina State Hearing Aid Dealers and Fitter Board, P.O. Box 97833, Raleigh, NC 27624-7833, email info@nchalb.org*

Comment period ends: September 14, 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 919-431-3000.

Fiscal Impact:

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

**SUBCHAPTER 22L - ADMINISTRATIVE HEARINGS:
CONTESTED CASES**

**21 NCAC 22L .0101 COMMITTEE ON
INVESTIGATIONS**

(a) Upon receipt of a written and signed charge alleging misconduct against a licensee or registrant of the Board, the Board shall inform the accused party in writing of the nature of the charges as filed with the Board. The Board shall not accept anonymous complaints alleging misconduct against a licensee or registrant of the Board.

(b) The accused party shall respond to the charges by filing a written answer with the Board within 20 days of the receipt of the notification of charges.

(c) The complaining party shall be provided with a copy of the accused party's answer and within 20 days from receipt thereof shall file a reply to the accused party's answer.

(d) The charges as filed with the Board, the answer, and the reply shall be referred to the Committee on Investigations (hereinafter referred to as "Committee") unless the complaining party withdraws the complaint at the time the reply cited in Paragraph (c) of this Rule is filed. The Committee shall consist of two members of the Board, one of whom shall serve as chairman.

(e) Whenever the Board ~~anonymously~~ receives a written and signed complaint with documentation of an advertisement which, on its face, appears to contain a violation of the Board's Statute or Rules, the advertisement shall be referred to the Committee for investigation.

(f) The Committee shall investigate each complaint or advertisement referred to it by the Board and as part of the investigation shall invite the accused party and the complaining party, if known, before the Committee and the Board's legal counsel to present their oral statements, but neither party shall be compelled to attend.

(g) If the complaint has not been withdrawn by the complaining party at the time of the completion of the investigation, the Committee, after consulting with the Board's legal counsel, shall submit its findings to the Board and the Board shall determine whether or not there is probable cause to believe that the accused party has violated any standard of conduct which would justify a disciplinary hearing based upon the grounds as specified in G.S. 93D-13 or this Chapter.

(h) If probable cause is found, the Board shall authorize a Notice of Hearing to be served on the licensee or registrant as required by law as stated in G.S. 150B, Article 3A.

(i) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a private reprimand to the accused party. A statement of such reprimand shall be mailed to the accused party. Within 20 days after receipt of the reprimand, the accused party may refuse the reprimand. Such refusal shall be addressed to the Committee and filed with the Secretary for the Board. The legal counsel for the Board may thereafter prepare, file, and serve a Notice of Hearing as necessary. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the Board.

(j) If no probable cause is found, the Board shall dismiss the charges and direct the Committee to prepare a statement of the reasons therefor which shall be mailed to the accused party and the complaining party, if known.

(k) If no probable cause is found, but it is determined by the Board that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of discipline if continued or repeated, the Board may direct the Committee to inform the accused party in writing, stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated.

(l) Any committee member is deemed disqualified to participate further in the contested case involving any person for whom the committee member participated in the investigatory process.

Authority G.S. 93D-3; 150B-38.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, July 16, 2009 9:00 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 no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

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
Curtis Venable

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

July 16, 2009 August 20, 2009
September 17, 2009 October 15, 2009

RULES REVIEW COMMISSION

June 18, 2009

MINUTES

The Rules Review Commission met on Thursday, June 18, 2009, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, John Lewis, Dan McLawhorn, and Curtis Venable.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers and Dana Vojtko.

The following people were among those attending the meeting:

Amanda Reeder	DHHS/Division of Mental Health, Developmental Disabilities and Substance Abuse Services
Andrea Borden	DHHS/Division of Mental Health, Developmental Disabilities and Substance Abuse Services
Joan Troy	Wildlife Resources Commission
Jansen Averett	OAH Extern
Azzie Conley	DHHS/Division of Health Service Regulation
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
David Tuttle	Board of Examiners for Engineers and Surveyors
Adriene Weaver	DENR/Division of Water Quality
Juwan Smith	OAH Extern
Phyllis D. Jones	DENR/Division of Air Quality
Cory Menees	DHHS/Division of Public Health
Jeff Horton	DHHS/Division of Health Service Regulation
David McLeod	Department of Agriculture and Consumer Services
Nancy Pate	Department of Environment and Natural Resources
Mike Vicario	NC Hospital Association
Paul Grable	Department of Environment and Natural Resources
Alice Lenihan	DHHS/Division of Public Health
Donna Smith	Department of Justice
Will Crone	City of Raleigh Intern

APPROVAL OF MINUTES

The meeting was called to order at 9:06 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 May 21, 2009 meeting. There were none and the minutes were approved as distributed.

Chairman Hayman recognized several guests attending the meeting. They were Administrative Law Judge Bain Jones, Jansen Averett, OAH extern from UNC Law School, Juwan Smith, OAH extern from University of Detroit, and City of Raleigh intern, Will Crone from Campbell Law School.

FOLLOW-UP MATTERS

12 NCAC 07D .0112, .0806 – Private Protective Services Board. No rewritten rules have been submitted and no action was taken.

12 NCAC 09B .0301 – Criminal Justice Education and Training Standards Commission. No rewritten rule has been submitted and no action was taken.

21 NCAC 12 .0202 – Licensing Board for General Contractors. No rewritten rule has been submitted and no action was taken.

23 NCAC 02E .0401 – Board of Community Colleges. The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

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

All permanent rules were approved unanimously with the following exceptions:

10A NCAC 43D .0207: Commission for Public Health - The Commission objected to this rule based on lack of statutory authority and ambiguity. It is not clear what standards are in the "North Carolina State WIC Program Plan of Operations." There is no authority to require compliance with them if they have not been adopted as rules.

10A NCAC 43D .0408: Commission for Public Health - The Commission objected to this rule based on ambiguity. In (a), it is not clear what standards the state agency will use in approving a waiting list policy.

15A NCAC 02Q .0701, .0702, .0706, .0709: Environmental Management Commission - The Commission approved these rules, however the Commission has received requests from more than 10 persons clearly requesting legislative review of the rule and therefore they are subject to a delayed effective date.

21 NCAC 56 .0103: Board of Examiners for Engineers and Surveyors - The Commission objected to this rule based on lack of necessity. This rule is unnecessary in that it addresses many internal matters and affairs, and much of the business of the board that are already addressed by statute such as the rule of various officers and employees of the board.

21 NCAC 56 .0503: Board of Examiners for Engineers and Surveyors - The Commission objected to this rule based on lack of authority and ambiguity. In (e) the rule requires that an applicant must pass the "fundamentals of engineering exam" prior to sitting for the "principles and practice of engineering" unless the applicant obtains a waiver of the requirement. It lists one standard for this waiver, "unless the applicant can evidence 20 years of progressive engineering experience." It is unclear whether there are any standards other than the one listed. The agency has the authority to waive the requirement that an applicant must have passed the fundamentals exam, but it has to set out the specific guidelines the agency shall use in making this determination. In the case of this rule there is one guideline and it is unclear whether there are others. If there are other unspecified guidelines, then the agency has exceeded its authority. It is also unclear whether the waiver is a waiver of the order of taking the exams or a waiver of the requirement to take the "fundamentals of engineering exam."

Commissioners Crisp, Gray, Funderburk, McLawhorn, and Venable voted for the motion to object to Rule .0103 and Rule .0503 and to approve the remainder of the rules from the Board of Examiners for Engineers and Surveyors. Commissioners Horton and Lewis voted against the motion.

COMMISSION PROCEDURES AND OTHER BUSINESS

Camille Winston, Deputy Director, addressed the Commission about a provision in the House version of the budget bill that will reduce the Commissioner's per diem compensation by \$50.00 beginning in 2010.

The meeting adjourned at 10:09 a.m.

The next scheduled meeting of the Commission is Thursday, July 16, 2009 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

**LIST OF APPROVED PERMANENT RULES
June 18, 2009 Meeting**

PESTICIDE BOARD

<u>Definitions</u>	02	NCAC	09L	.2201
<u>Pesticide Use Limitation Areas</u>	02	NCAC	09L	.2202
<u>Pesticides With Additional Use Limitations</u>	02	NCAC	09L	.2203

MEDICAL CARE COMMISSION

<u>Preservations of Medical Records</u>	10A	NCAC	13B	.3903
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HHS - MENTAL HEALTH, DIVISION OF

<u>Scope</u>	10A	NCAC	27A	.0401
<u>Definitions</u>	10A	NCAC	27A	.0402
<u>Monthly Payments and Monthly Reporting</u>	10A	NCAC	27A	.0403
<u>Settlement of LME System Management Payments</u>	10A	NCAC	27A	.0404

PUBLIC HEALTH, COMMISSION FOR

<u>Dietetics</u>	10A	NCAC	43D	.0101
<u>Dietitian</u>	10A	NCAC	43D	.0102
<u>Nutritionist</u>	10A	NCAC	43D	.0103
<u>The American Dietetic Association</u>	10A	NCAC	43D	.0104
<u>Home Economist</u>	10A	NCAC	43D	.0105
<u>Competent Dietary Professional</u>	10A	NCAC	43D	.0106
<u>WIC</u>	10A	NCAC	43D	.0107
<u>Description</u>	10A	NCAC	43D	.0201
<u>Definitions</u>	10A	NCAC	43D	.0202
<u>References</u>	10A	NCAC	43D	.0203
<u>Contract with FNS</u>	10A	NCAC	43D	.0204
<u>General Administration</u>	10A	NCAC	43D	.0206
<u>Criteria for Selection of Local Agencies</u>	10A	NCAC	43D	.0302
<u>Continuation of Local Agencies</u>	10A	NCAC	43D	.0303
<u>Termination of Local WIC Agencies</u>	10A	NCAC	43D	.0305

RULES REVIEW COMMISSION

<u>Eligibility</u>	10A	NCAC	43D	.0401
<u>Application</u>	10A	NCAC	43D	.0402
<u>Medical and Nutrition Assessment</u>	10A	NCAC	43D	.0403
<u>Nutritional Risk Certification Criteria</u>	10A	NCAC	43D	.0404
<u>Schedule of Certification</u>	10A	NCAC	43D	.0405
<u>Documentation of Certification</u>	10A	NCAC	43D	.0406
<u>Transfer of Certification</u>	10A	NCAC	43D	.0407
<u>Required Notification</u>	10A	NCAC	43D	.0409
<u>Participant Violations and Sanctions</u>	10A	NCAC	43D	.0410
<u>Dual Participation</u>	10A	NCAC	43D	.0411
<u>Supplemental Foods</u>	10A	NCAC	43D	.0501
<u>Quantity of Foods</u>	10A	NCAC	43D	.0502
<u>Education of Participants</u>	10A	NCAC	43D	.0601
<u>Documentation of Nutrition Education</u>	10A	NCAC	43D	.0602
<u>Continuing Education of Staff</u>	10A	NCAC	43D	.0603
<u>The Local Agency Nutrition Education Plan</u>	10A	NCAC	43D	.0604
<u>The North Carolina Automated WIC System</u>	10A	NCAC	43D	.0701
<u>Issuance of Food Instruments</u>	10A	NCAC	43D	.0702
<u>Use of Food Instruments</u>	10A	NCAC	43D	.0703
<u>Validity of Food Instruments and Cash-Value Vouchers</u>	10A	NCAC	43D	.0704
<u>Payment of WIC Food Instruments and Cash-Value Vouchers</u>	10A	NCAC	43D	.0705
<u>Authorized WIC Vendors</u>	10A	NCAC	43D	.0706
<u>Administration</u>	10A	NCAC	43D	.1001
<u>Public Health Dietitians</u>	10A	NCAC	43D	.1003
<u>Nutrition Program Consultants</u>	10A	NCAC	43D	.1004

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Outstanding Resource Waters</u>	15A	NCAC	02B	.0225
<u>Little Tennessee River Basin and Savannah River Drainage ...</u>	15A	NCAC	02B	.0303
<u>Applicability</u>	15A	NCAC	02Q	.0701
<u>Exemptions</u>	15A	NCAC	02Q	.0702
<u>Modifications</u>	15A	NCAC	02Q	.0706
<u>Demonstrations</u>	15A	NCAC	02Q	.0709

COASTAL RESOURCES COMMISSION

<u>Specific Use Standards for Ocean Hazard Areas</u>	15A	NCAC	07H	.0308
<u>Purpose</u>	15A	NCAC	07H	.1101
<u>Approval Procedures</u>	15A	NCAC	07H	.1102
<u>Permit Fee</u>	15A	NCAC	07H	.1103
<u>General Conditions</u>	15A	NCAC	07H	.1104
<u>Specific Conditions</u>	15A	NCAC	07H	.1105
<u>Purpose</u>	15A	NCAC	07H	.1201
<u>General Conditions</u>	15A	NCAC	07H	.1204
<u>Specific Conditions</u>	15A	NCAC	07H	.1205

WILDLIFE RESOURCES COMMISSION

<u>Burke County</u>	15A	NCAC	10F	.0323
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COSMETIC ART EXAMINERS, BOARD OF

Live Model/Mannequin Performance Requirements 21 NCAC 14J .0207

PSYCHOLOGY BOARD

Licensed Psychologist 21 NCAC 54 .1803

Activities 21 NCAC 54 .2701

ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

Records of Applications 21 NCAC 56 .0402

Requirements for Licensing 21 NCAC 56 .0601

Standard Certification Requirements 21 NCAC 56 .1103

Improper Practice by a Licensee 21 NCAC 56 .1301

Classification/Land Information System/Geographic Informa... 21 NCAC 56 .1608

Dual Licensees 21 NCAC 56 .1710

Forms 21 NCAC 56 .1711

COMMUNITY COLLEGES, BOARD OF

Customized Training Program 23 NCAC 02E .0401

AGENDA
RULES REVIEW COMMISSION
Thursday, July 16, 2009, 9:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Commission for Public Health – 10A NCAC 43D .0207, .0408 (Bryan)
 - B. Private Protective Services Board – 12 NCAC 07D .0112, .0806 (Bryan)
 - C. Criminal Justice Education and Training Standards Commission – 12 NCAC 09B .0301 (Bryan)
 - D. Licensing Board for General Contractors – 21 NCAC 12 .0202 (DeLuca)
 - E. Board of Examiners for Engineers and Surveyors – 21 NCAC 56 .0103, .0503 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between May 21, 2009 and June 22, 2009 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
 - Next meeting: August 20, 2009

**Commission Review
Log of Permanent Rule Filings
May 21, 2009 through June 22, 2009**

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); criteria and standards for gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and criteria and standards for hospice inpatient facilities and hospice residential care facilities (.4000).

<u>Definitions</u>	10A NCAC 14C	.2601
Amend/*		
<u>Information Required of Applicant</u>	10A NCAC 14C	.2602
Amend/*		

HHS - MENTAL HEALTH, DIVISION OF

The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000);

emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

<u>Scope</u>	10A NCAC 27G	.0601
Amend/*		
<u>Definitions</u>	10A NCAC 27G	.0602
Amend/*		
<u>Incident Response Requirements for Categories A and B Pro...</u>	10A NCAC 27G	.0603
Amend/*		
<u>Incident Reporting Requirements for Categories A and B Pr...</u>	10A NCAC 27G	.0604
Amend/*		
<u>Local Management Entity Management of Incidents</u>	10A NCAC 27G	.0605
Amend/*		
<u>Referral of Complaints to Local Management Entities Perta...</u>	10A NCAC 27G	.0606
Amend/*		
<u>Complaints Pertaining to Category A or Category B Provide...</u>	10A NCAC 27G	.0607
Repeal/*		
<u>Local Monitoring</u>	10A NCAC 27G	.0608
Amend/*		
<u>Local Management Entity Reporting Requirements</u>	10A NCAC 27G	.0609
Amend/*		
<u>Requirements Concerning the Need for Protective Services</u>	10A NCAC 27G	.0610
Amend/*		

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 45 are general procedures for public health programs.

The rules in Subchapter 45A are rules about payment programs including general provisions (.0100); eligibility determinations (.0200); eligibility procedures (.0300); reimbursement (.0400); and quality control (.0500).

<u>Determination of Financial Eligibility</u>	10A NCAC 45A	.0202
Amend/*		

JUSTICE ACADEMY

The rules in Chapter 6 are from the North Carolina Justice Academy.

The rules in Subchapter 6A concern organization and rules including general provisions (.0100); purpose (.0200); organization (.0300); course availability (.0400); student costs (.0500); student conduct (.0600); building use (.0700); and student awards and certificates (.0800).

<u>Name and Location</u>	12 NCAC 06A	.0101
Amend/*		
<u>Mailing Address</u>	12 NCAC 06A	.0102
Amend/*		
<u>Firearms</u>	12 NCAC 06A	.0603
Amend/*		
<u>Valuables</u>	12 NCAC 06A	.0604
Repeal/*		
<u>Use by Public</u>	12 NCAC 06A	.0703
Repeal/*		
<u>Appeal Upon Unsatisfactory Completion of Course</u>	12 NCAC 06A	.0803

Repeal/*

REVENUE, DEPARTMENT OF

The rules in Chapter 7 are sales and use tax.

The rules in Chapter 7B concern state sales and use tax including general provisions (.0100); general application of law to manufacturing and industrial processing (.0200); specific tangible personalty classified for use by industrial users (.0300); specific industries (.0400); exempt sales to manufacturers (.0500); sales of mill machinery and accessories (.0600); specific industry purchases (.0700); adjustments, replacements and alterations and installation sales (.0800); advertising, advertising agencies and public relations firms (.0900); barbers, beauty shop operators, shoe and watch repairmen (.1000); sales of bulk tobacco barns and farm machines and equipment (.1100); hotels, motels, tourist camps and tourist cabins (.1200); sales in interstate commerce (.1300); sales of medicines, drugs and medical supplies (.1400); finance companies, finance charges and carrying charges (.1500); sales to or by hospitals, educational, charitable or religious institutions, and refunds thereto (.1600); sales to or by the state, counties, cities and other political subdivisions (.1700); hospitals and sanitariums (.1800); tire recappers and retreaders: and tire and tube repairs (.1900); sales and gifts by employers to employees or other users (.2000); electricity, piped natural gas, bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas and other combustibles (.2100); food and food products for human consumption (.2200); sales to out-of-state merchants for resale (.2300); sales of medical supplies and equipment to veterinarians (.2400); furniture and storage warehousemen (.2500); liability of contractors, use tax on equipment brought into state and building materials (.2600); dentists, dental laboratories and dental supply houses (.2700); florists, nurserymen, greenhouse operators and farmers (.2800); vending machines (.2900); articles taken in trade, trade-ins, repossessions, returned merchandise and used or secondhand merchandise (.3000); radio and television stations and motion picture theatres (.3100); telecommunications and telegraph companies (.3200); orthopedic appliances (.3300); memorial stone and monument dealers and monument manufactures (.3400); machinists, foundrymen and pattern makers (.3500); funeral expenses (.3600); lubricants and oils and greases (.3700); premiums and gifts and trading stamps (.3800); containers, wrapping and packing and shipping materials (.3900); fertilizer, seeds and feed and insecticides (.0400); artists, art dealers and photographers (.4100); sales to the United States government or agencies thereof (.4200); refunds to interstate carriers (.4300); lease or rental (.4400); laundries, dry cleaning plants, launderettes, linen rentals and solicitors for such businesses (.4500); motor vehicles and boats (.4600); printers and newspaper or magazine publishers (.4700); basis of reporting (.4800); transportation charges (.4900); eyeglasses and other ophthalmic aids and supplies, oculists and optometrists and opticians (.5000); leased departments and transient sellers (.5100); baby chicks and poult (5200); certificate of authority and bond requirements (.5300); and forms used for sales and use tax purposes (.5400).

<u>Parents and Teachers Associations</u>	17	NCAC 07B	.1603
Amend/*			
<u>Sawdust Used as Fuel</u>	17	NCAC 07B	.2102
Amend/*			
<u>LP Gas Sold to Farmers</u>	17	NCAC 07B	.2104
Amend/*			
<u>Seafoods</u>	17	NCAC 07B	.2212
Amend/*			
<u>Subcontractors</u>	17	NCAC 07B	.2607
Amend/*			
<u>Sales of Developed Film to Television Stations</u>	17	NCAC 07B	.3105
Amend/*			
<u>Cable Service Providers</u>	17	NCAC 07B	.3106
Amend/*			
<u>Memorial Stone Sales</u>	17	NCAC 07B	.3401
Amend/*			
<u>Monument Manufacturers: Tools and Supplies</u>	17	NCAC 07B	.3402
Amend/*			
<u>Machinists: Foundrymen: Pattern Makers</u>	17	NCAC 07B	.3501
Amend/*			
<u>Molds: Dies: Retained by Seller</u>	17	NCAC 07B	.3504
Amend/*			
<u>Molds: Dies: Record Keeping</u>	17	NCAC 07B	.3506
Amend/*			

<u>Funeral Expenses</u>	17	NCAC 07B	.3601
Amend/*			
<u>Death Benefit Payments</u>	17	NCAC 07B	.3603
Repeal/*			
<u>Sales of Lubricants</u>	17	NCAC 07B	.3702
Amend/*			
<u>Premiums and Gifts</u>	17	NCAC 07B	.3801
Amend/*			
<u>Redemption of Trading Stamps</u>	17	NCAC 07B	.3803
Amend/*			
<u>Fertilizer and Seeds</u>	17	NCAC 07B	.4002
Amend/*			
<u>Conditional Sales Contract</u>	17	NCAC 07B	.4413
Amend/*			
<u>Receipts of Laundries, etc.</u>	17	NCAC 07B	.4501
Amend/*			
<u>Equipment and Supplies for Laundries, etc.</u>	17	NCAC 07B	.4503
Amend/*			
<u>Laundry Business: Interstate</u>	17	NCAC 07B	.4508
Amend/*			
<u>Independent Cleaning Solicitors</u>	17	NCAC 07B	.4510
Amend/*			
<u>Cleaning Machinery Repairs</u>	17	NCAC 07B	.4514
Amend/*			

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); and temporary volunteer dental license (.0800).

<u>In General</u>	21	NCAC 16B	.0201
Amend/*			

The rules in Subchapter 16F concern professional corporations.

<u>Corporate or Limited Liability Company Name</u>	21	NCAC 16F	.0103
Amend/*			
<u>Certificate of Registration</u>	21	NCAC 16F	.0104
Amend/*			

The rules in Subchapter 16Y concern permitting intern dentists.

<u>Eligibility Requirements</u>	21	NCAC 16Y	.0101
Amend/*			

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern the Board of Massage and Bodywork Therapy and include organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

Definitions 21 NCAC 30 .0602
Amend/*

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

The rules in Chapter 64 are from the Board of Examiners for Speech and Language Pathologists and Audiologists and include general provisions (.0100); interpretative rules (.0200); code of ethics (.0300); rulemaking petitions (.0400); notice of rulemaking (.0500); conduct of rulemaking hearings (.0600); declaratory rulings (.0700); contested case hearings (.0800); other matters relating to administrative hearings (.0900); and use of speech/language pathology assistants (.1000).

Hearing Screening 21 NCAC 64 .0212
Amend/*

STATE PERSONNEL COMMISSION

The rules in Subchapter 1D are the rules dealing with compensation and include administration of the pay plan (.0100); new appointments (.0200); promotion (.0300); demotions or reassignments (.0400); separation (.0500); reallocation (.0600); salary range revision (.0700); initial classification (.0800); transfer (.0900); reinstatement (.1000); longevity pay (.1200); holiday premium pay (.1300); shift premium pay (.1400); emergency call-back pay (.1500); foreign service pay (.1600); employment of physicians for extended duty (.1800); hours of work and overtime compensation (.1900); unemployment insurance (.2000); special salary adjustments (.2100); comprehensive compensation system (.2500); and in-range salary adjustments (.2600).

Total State Service Defined 25 NCAC 01D .0112
Amend/*

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900); miscellaneous leave (.1000); other types of leave without pay (.1100); community involvement (.1200); the voluntary shared leave program (.1300); family and medical leave (.1400); child involvement leave (.1500); community services leave (.1600); and administrative leave (.1700).

Compensatory Time 25 NCAC 01E .1006
Amend/*

The rules in Subchapter 1H concern recruitment and selection including general provisions (.0600); general provision for priority consideration (.0700); promotional priority (.0800); reduction-in-force-priority reemployment (.0900); exempt priority consideration (.1000); and veteran's preference (.1100).

Posting and Announcement of Vacancies 25 NCAC 01H .0631
Amend/*

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100), mediated settlement conferences (.0200), and expedited hearing procedures for complex contested cases (.0300).

Hearing Procedures Rules 26 NCAC 03 .0401
Adopt/*

Mediation Settlement Conference Rules 26 NCAC 03 .0402
Adopt/*

Expedited Hearings Procedures for Complex Contested Cases 26 NCAC 03 .0403
Adopt/*

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	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
<u>CRIME VICTIMS COMPENSATION</u>				
Robert Melvin v. Janice Carmichael, NC Crime Victim Compensation	08 CPS 2634	Elkins	06/01/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09	
Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09	
A list of Child Support Decisions may be obtained by accessing the OAH Website: http://www.ncoah.com/hearings/decisions/				
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Abudant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09	
Amy G. Poteat v. Health Care Personnel Registry	08 DHR 3489	May	06/03/09	
Victoria Martin v. Surry County Dept of Health and Human Services AFDC/Work First	09 DHR 1533	May	06/04/09	
Michael Parks Fresh Start Residential Services Inc. v. NC DHHS Division of Health Service Regulation Mental Health Licensure Certification	09 DHR 1474	Overby	06/17/09	
Angela Conner Tawes, Conner's Cape Hatteras Supermarket, Inc v. North Carolina Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section	09 DHR 2717	Gray	06/15/09	
<u>DEPARTMENT OF ADMINISTRATION</u>				
Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09	
<u>DEPARTMENT OF JUSTICE</u>				
Tyrone Scott v. North Carolina Private Protective Services Board	09 DOJ 0658	Gray	05/28/09	
Jaime Patrick Clayborne v. Department of Justice Company Police Program	09 DOJ 1949	Webster	05/27/09	
William Marquis Davis v. North Carolina Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09	

DEPARTMENT OF TRANSPORTATION

CONTESTED CASE DECISIONS

Alvin J. Smith v. NC Div of Motor Vehicles, Driver Ass't Branch 09 DOT 2616 Brooks 06/09/09

DEPARTMENT OF STATE TREASURER

Hilda Harris Member ID: 1725605 v. Department of State Treasurer
Retirement Systems Division 09 DST 1290 Overby 05/27/09

EDUCATION, STATE BOARD OF

Courtney M. Sears, Petitioner v. Department of Public Instruction
Licensure Section 08 EDC 3644 Morrison 06/08/09

Jennifer Satinsky v. North Carolina State Board of Education 08 EDC 3650 Morrison 06/05/09

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

Old Mill Forestry, LLC v. N.C. Department of Environment and Natural
Resources, Division of Water Quality 08 EHR 1806 Lassiter 05/08/09

Cherokee County Health Department James Pann(managing member,
Creek Ridge Holdings, LLC) v. N.C. Department of Environment
and Natural Resources 08 EHR 2986 Gray 05/27/09

John C Campbell Folk School, John M Clarke, Bldgs & Ground Mgr v.
NCDENR Public Water Supply Section 09 EHR 1852 Overby 06/03/09

MISCELLANEOUS

Rodney Dale v. Judge Angela Hoyle 09 MIS 2704 May 06/09/09

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Julie Norris Watson v. NC DPI 08 OSP 0541 Brooks 05/22/09

Jody Lynn Hinson v. N.C. Department of Crime Control and Public
Safety, N.C. Highway Patrol 08 OSP 2409 Overby 06/03/09

Timothy Strong v. Central Regional Hospital, NC DHHS 09 OSP 2401 Elkins 05/27/09

Benjamin Hicks v. Central Regional Hospital, NC DHHS 09 OSP 2399 Elkins 05/27/09

OFFICE OF SECRETARY OF STATE

Robert Lee Evans v. NC Office of Administrative Hearings 09 SOS 2300 Lassiter 06/03/09

UNC HOSPITALS

Carlos A Perez-Sanchez v. UNC Hospitals 09 UNC 1294 Overby 06/03/09

Mary Ann Strickland v. UNC Hospitals 09 UNC 2712 Overby 06/04/09