

# NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 11 • Pages 869 - 910

December 1, 2011

<b>I. EXECUTIVE ORDERS</b>	
Executive Order No. 109 .....	869 – 870
<b>II. PROPOSED RULES</b>	
<b>Health and Human Services, Department of</b>	
Medical Care Commission .....	871 – 872
Public Health, Commission for .....	872 – 873
<b>Occupational Licensing Boards and Commissions</b>	
Cosmetic Art Examiners, Board of .....	873 – 881
<b>State Personnel, Office of</b>	
State Personnel Commission .....	881 – 886
<b>III. APPROVED RULES</b> .....	887 – 899
<b>Agriculture, Department of</b>	
Agriculture, Board of	
<b>Commerce, Department of</b>	
Alcoholic Beverage Control Commission	
<b>Health and Human Services, Department of</b>	
Deaf and Hard of Hearing, Division of Services for the	
Mental Health, Commission for	
Social Services Commission	
<b>Insurance, Department</b>	
Department	
<b>Occupational Licensing Boards and Commissions</b>	
Medical Board	
Onsite Wastewater Contractors and Inspectors Certification Board	
Perfusion Advisory Committee	
Podiatry Examiners, Board of	
<b>State Personnel, Office of</b>	
State Personnel Commission	
<b>IV. RULES REVIEW COMMISSION</b> .....	900 – 906
<b>V. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions .....	907 – 910

## **Contact List for Rulemaking Questions or Concerns**

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

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

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

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071  
Dana Vojtko, Publications Coordinator dana.vojtko@oah.nc.gov (919) 431-3075  
Julie Edwards, Editorial Assistant julie.edwards@oah.nc.gov (919) 431-3073  
Tammara Chalmers, Editorial Assistant tammara.chalmers@oah.nc.gov (919) 431-3083

### **Rule Review and Legal Issues**

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

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081  
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

### **Fiscal Notes & Economic Analysis and Governor's Review**

Office of State Budget and Management  
116 West Jones Street (919) 807-4700  
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX  
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners  
215 North Dawson Street (919) 715-2893  
Raleigh, North Carolina 27603  
contact: Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000  
215 North Dawson Street  
Raleigh, North Carolina 27603  
contact: Erin L. Wynia ewynia@nclm.org

### **Legislative Process Concerning Rule-making**

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

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net  
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2011 – December 2011

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
25:16	02/15/11	01/25/11	03/02/11	04/18/11	04/20/11	06/01/11	05/2012	11/12/11
25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
25:18	03/15/11	02/22/11	03/30/11	05/16/11	05/20/11	07/01/11	05/2012	12/10/11
25:19	04/01/11	03/11/11	04/16/11	05/31/11	06/20/11	08/01/11	05/2012	12/27/11
25:20	04/15/11	03/25/11	04/30/11	06/14/11	06/20/11	08/01/11	05/2012	01/10/12
25:21	05/02/11	04/08/11	05/17/11	07/01/11	07/20/11	09/01/11	05/2012	01/27/12
25:22	05/16/11	04/25/11	05/31/11	07/15/11	07/20/11	09/01/11	05/2012	02/10/12
25:23	06/01/11	05/10/11	06/16/11	08/01/11	08/22/11	10/01/11	05/2012	02/26/12
25:24	06/15/11	05/24/11	06/30/11	08/15/11	08/22/11	10/01/11	05/2012	03/11/12
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26:06	09/15/11	08/24/11	09/30/11	11/14/11	11/21/11	01/01/12	05/2012	06/11/12
26:07	10/03/11	09/12/11	10/18/11	12/02/11	12/20/11	02/01/12	05/2012	06/29/12
26:08	10/17/11	09/26/11	11/01/11	12/16/11	12/20/11	02/01/12	05/2012	07/13/12
26:09	11/01/11	10/11/11	11/16/11	01/03/12	01/20/12	03/01/12	05/2012	07/28/12
26:10	11/15/11	10/24/11	11/30/11	01/17/12	01/20/12	03/01/12	05/2012	08/11/12
26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

## 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. 109

EXTENDING EXECUTIVE ORDERS NO. 103, 104, 105 and 107

**WHEREAS**, I issued Executive Order No. 103 on August 24, 2011, declaring a state of emergency as a result of the approach of Hurricane Irene; and

**WHEREAS**, I issued Executive Order No. 104 on August 25, 2011, which waived the rules and regulations that limit the hours of service for operators of certain commercial vehicles and lifted weight restrictions on certain vehicles including for storm debris removal; and

**WHEREAS**, I issued Executive Order No. 105 on September 1, 2011, which facilitated the appropriate disposal and removal of vegetative debris by those individuals whose property was impacted by the storm; and

**WHEREAS**, the aforementioned Executive Orders were extended by Executive Order 108 on September 21, 2011; and

**WHEREAS**, I issued Executive Order No. 107 on September 8, 2011, which facilitated the expedited movement of temporary housing units to the impacted counties and is set to expire on November 8, 2011; and

**WHEREAS**, the ongoing recovery efforts related to Hurricane Irene, including debris removal and disposal from those impacted areas, and the movement of temporary housing for our displaced citizens transported into and moved to the impacted areas in the State, require that these executive orders remain in place.

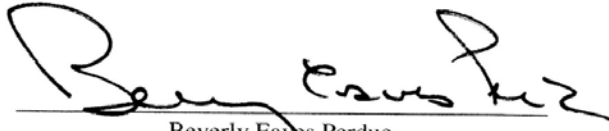
**NOW, THEREFORE**, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Executive Orders No. 103, 104, 105 and 107 are hereby extended until midnight December 15, 2011.

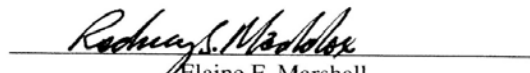
This order is effective immediately.

**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 first day of November in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Chief Deputy Secretary of State

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to adopt the rule cited as 10A NCAC 13P .0221.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

**Proposed Effective Date:** April 1, 2012

**Public Hearing:**

**Date:** January 24, 2012

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

**Location:** Wright Building, Room 131, NC Division of Health Service Regulation, Dorothea Dix Campus, Umstead Drive, Raleigh, NC 27603

**Reason for Proposed Action:** *The purpose for the proposed rule adoption is to allow Specialty Care Transport Programs to transport both critical and non-critical patients between hospitals, and transport patients being discharged from the hospital to the patient’s residence, as well as to exempt the minimum staffing requirements of G.S. 131E-158 for these providers.*

**Procedure by which a person can object to the agency on a proposed rule:** *An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. An individual may also object by attending the public hearing and personally voicing his/her objection(s) during that time.*

**Comments may be submitted to:** *Megan Lamphere, Division of Health Service Regulation, 2708 Mail Service Center, Raleigh, NC 27699-2708; fax (919) 733-2757; email [DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)*

**Comment period ends:** January 30, 2012

**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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).**

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM: August 12, 2011
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

**CHAPTER 13 - NC MEDICAL CARE COMMISSION**

**SUBCHAPTER 13P - EMERGENCY MEDICAL SERVICES AND TRAUMA RULES**

**SECTION .0200 - EMS SYSTEMS**

**10A NCAC 13P .0221 PATIENT TRANSPORTATION BETWEEN HOSPITALS**

(a) For the purpose of this Rule, hospital means those facilities as defined in Rule .0102(30) of this Subchapter.

(b) Every ground ambulance when transporting a patient between hospitals shall be occupied by all of the following:

- (1) one person who holds a credential issued by the OEMS as a Medical Responder or higher who is responsible for the operation of the vehicle and rendering assistance to the patient caregiver when needed; and
- (2) at least one of the following who is responsible for the medical aspects of the mission:
  - (A) Emergency Medical Technician;
  - (B) EMT-Intermediate;
  - (C) EMT-Paramedic;
  - (D) nurse practitioner;
  - (E) physician;
  - (F) physician assistant;
  - (G) registered nurse; or
  - (H) respiratory therapist.

(c) Information must be provided to the OEMS by the licensed EMS provider:

- (1) describing the intended staffing pursuant to Rule .0204(a)(3) of this Section; and

(2) showing authorization pursuant to Rule .0204(a)(4) of this Section by the county in which the EMS provider license is issued to use the staffing in Paragraph (b) of this Rule.

(d) Ambulances used for patient transports between hospitals must contain all medical equipment, supplies, and medications approved by the medical director, based on the treatment protocols.

Authority G.S. 131E-155.1; 131E-158(b); 143-508(d)(1),(d)(8).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rule cited as 10A NCAC 41A .0214.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://cph.ncpublichealth.info/>

Proposed Effective Date: April 1, 2012

Public Hearing:

Date: December 19, 2011

Time: 1:00 P.M.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: G.S. 130A-144-Investigation and control measures provides the Commission with the following authority: "the Commission shall adopt rules that prescribe control measures for communicable diseases and condition..." Control measures for Hepatitis C Virus (HCV), when correctly implemented, can decrease the risk of disease transmission. HCV infection is the most common chronic blood-borne infection in the United States. HCV is most efficiently transmitted through large or repeated percutaneous exposure to infected blood (e.g., through transfusion of blood from unscreened donors or through use of injecting drugs). Also, the delivery of health care has the potential to transmit Hepatitis C virus (HCV) to both health care workers and patients.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: Chris G. Hoke, JD, Rule-Making Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; email [chris.hoke@dhhs.nc.gov](mailto:chris.hoke@dhhs.nc.gov)

Comment period ends: January 30, 2012

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 after the adoption of the Rule. If the

Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM: February 1, 2011
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 41 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

10A NCAC 41A .0214 CONTROL MEASURES – HEPATITIS C

The following are the control measures for hepatitis C infection.

- (1) Infected persons shall:
  - (a) not share needles or syringes, any other drug-related equipment or paraphernalia, or personal items, such as razors, that may be contaminated with blood through previous use;
  - (b) not donate or sell blood, plasma, platelets, or other blood products.
- (2) Persons with acute hepatitis C infection shall if the time of initial infection is known, identify to the local health director all needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been needle partners during the previous six months.
- (3) The attending physician shall:
  - (a) advise all patients known to be at high risk, including injection drug users, hemodialysis patients, patients who received blood transfusions or solid organ transplants before July 1992, patients who received clotting factor concentrates made before 1987, persons with HIV infection, and persons with known exposure to



- hepatitis C, that they should be tested for hepatitis C;
  - (b) advise infected persons of the potential for transmission to others via blood or body fluids;
  - (c) provide or recommend that the infected patient seek medical evaluation for the presence or development of chronic liver disease;
  - (d) recommend to hepatitis C chronic carriers receive hepatitis A and hepatitis B vaccines unless serological testing indicates that they are immune to these infections by virtue of past infection or vaccination.
- (4) When a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that would pose a significant risk of hepatitis C transmission if the source were infected with the hepatitis C virus, the following shall apply:
- (a) When the source is known, the attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and, unless the source is already known to be infected, shall test the source for hepatitis C virus infection with or without consent unless it reasonably appears that the test cannot be performed without endangering the safety of the source person or the person administering the test. If the source person cannot be tested, an existing specimen of his or her blood, if one exists, shall be tested. The attending physician of the exposed person shall be notified of the infection status of the source.
  - (b) The attending physician of the exposed person shall inform the exposed person about the infection status of the source and shall instruct the exposed person regarding the necessity for protecting confidentiality. If the source person is infected with hepatitis C virus or the source person's infection status is unknown, the attending physician of the exposed person shall advise the exposed person to seek testing for hepatitis C virus infection at baseline

and 4-6 months after the exposure. If the source person was hepatitis C virus infected, the attending physician shall give the exposed person the control measures listed in Sub-Items (1)(a) through (b) of this Rule.

*Authority G.S. 130A-135; 130A-144.*

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

**CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to adopt the rules cited as 21 NCAC 14B .0607; 14H .0201-.0204, .0301-.0304, .0401-.0404, .0501-.0505; 14R .0105 and amend the rule cited as 21 NCAC 14B .0307.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://www.nccosmeticarts.com/uploads/board/proctober2011.pdf>

**Proposed Effective Date:** *April 1, 2012*

**Public Hearing:**

**Date:** *December 16, 2011*

**Time:** *9:00 a.m.*

**Location:** *1201 Front Street, Suite 110, Raleigh, NC*

**Reason for Proposed Action:** *These rules have been written by the Board to more clearly define the processes of public hearings for proposed Board rules, to provide clearer language for sanitation standards and to address regulations for the continuing education review process as required by G.S. 88B.*

**Procedure by which a person can object to the agency on a proposed rule:** *Interested persons may present oral or written comments at the Rule-making Hearing. In addition, the record will be open for receipt of written comments from October 24, 2011 to January 30, 2012. Written comments not presented at the hearing should be directed to Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609, phone (919)715-0018, email skuzdrall@nccosmeticarts.com.*

**Comments may be submitted to:** *Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609, phone (919)715-0018, email skuzdrall@nccosmeticarts.com*

**Comment period ends:** *January 30, 2012*

**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 after the adoption of the Rule. If the*

Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Date submitted to OSBM:
Substantial economic impact (>=\$500,000)
Approved by OSBM
No fiscal note required

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0300 - HEARINGS

21 NCAC 14B .0307 CONTROL OF HEARINGS

(a) Purpose. The purpose of this Rule is to provide uniform procedures for the conduct of public comment hearings.

(b) The presiding officer at the hearings shall have complete control of the proceedings including the following:

- extension of any time requirements,
recognition of speakers,
time allotment for presentations, and
direction of the flow of discussion and the management of the hearing.

(c) The presiding officer at all times shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

(d) Public comment hearing shall be open to the public, and members of the public shall be entitled to testify, subject to the provisions of this Rule.

(e) Public comment hearing shall be open to print and electronic media, subject to the following limitations by the board, or the person designated by the board to preside over the hearing, when such limitations are necessary to allow the hearing to go forward:

- Limitation of the number of media representatives when their number together with the number of members of the public present exceeds the capacity of the hearing room;
Limitation on the placement of cameras to specific locations within the hearing room; or
Prohibition of interviews conducted within the hearing room during the hearing.

(f) Public comment hearings shall be presided over by the board or an individual knowledgeable in the subject area of the

proposed rules who has been designated by the director to preside over the hearing.

(g) The person presiding over the hearing shall:

- Call the hearing to order;
Identify the proposed rules which are the subject matter of the hearing, and provide copies of them upon request;
Cause a recording of the hearing to be made;
Establish limits;
Recognize those who wish to be heard;
If necessary, refuse to recognize people for speaking, or revoke recognition of speakers;
If necessary, limit the activity of the media;
If necessary, postpone or move the hearing; and
Adjourn or continue the hearing.

(h) The hearing shall be postponed when:

- The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing are unable to do so;
The chairman or the individual designated by the chairman to preside over the hearing is ill or unavoidably absent; or
Postponement will facilitate greater participation by the public.

(i) The hearing shall be moved to another location when the original location is not able to accommodate the number of people who wish to attend the hearing.

(j) The hearing shall be continued past the scheduled time or to another date when:

- The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or
The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend the hearing and it is not possible to move the hearing to another location.

(k) People who wish to speak about the rules which are the subject matter of the hearing shall be asked to write on the speaker's list their full names and if they represent other persons, the identity of the persons represented.

(l) People who wish to speak shall be asked to provide the information called for by Paragraph (a) of this Rule no later than before the last speaker on the list has finished speaking.

(m) People whose names appear on the speaker's list shall be afforded an opportunity to speak at the hearing within the limits on public participation.

(n) Written comments, may be submitted by the deadline listed in the rule making notice.

(o) The person presiding over the hearing shall:

- Refuse to recognize for speaking or revoke the recognition of any person who:
Speaks or acts in an abusive or disruptive manner; or
Refuses to keep comments relevant to the proposed rules which are the subject matter of the hearing;

- (2) Limit the duration of the hearing and limit the amount of time each speaker may speak to a time which allocates approximately equal speaking time to each person shown on the speaker's list as wishing to speak; and
- (3) Limit presentations on behalf of the same organization or entity to no more than three, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.

Authority G.S. 150B 21.2.

**21 NCAC 14B .0607 WAIVERS**

(a) Individuals who wish to request a waiver of an administrative rule shall submit a written request to the Board, which includes:

- (1) The rule for which a waiver is requested;
- (2) The reason for requesting the waiver along with supporting documents;
- (3) Evidence of how the waiver will provide for the health and safety of the consumer or licensee; and
- (4) The signature of applicant.

(b) The Board shall approve a waiver request only if:

- (1) The administrative rule for which the waiver is being requested is not mandated by law; and
- (2) The Board finds that approval of the requested waiver shall not jeopardize the health and safety of employees or the public.

Authority G.S. 88B-4.

**SECTION .0200 - SHOP LICENSING AND PHYSICAL DIMENSIONS**

**21 NCAC 14H .0201 APPLICATION FOR SHOP LICENSE**

Persons desiring to open as cosmetic art shop in the State of North Carolina shall make application to the North Carolina State Board of Cosmetic Art Examiner on the Board's application form. Persons desiring to change ownership of a cosmetic art shop, relocate or reopen a shop which has been closed more than 90 days shall make application to the North Carolina State Board of Cosmetic Art Examiner on the Board's application form.

Authority G.S. 88B-2; 88B-4; 88 B-14; 88B-22.

**21 NCAC 14H .0202 SEPARATION OF COSMETIC ART SHOPS**

- (a) A cosmetic art shop, whether residential or non-residential, shall be separated from any building or room used for any other business by solid walls at least seven ft. in height.
- (b) An entrance to a cosmetic art shop from a passageway, walkway or mall area used only for access to the shop, or to the shop and other businesses, may be open.

Authority G.S. 88B-2; 88B-4; 88B-14.

**21 NCAC 14H .0203 NEWLY ESTABLISHED RESIDENTIAL SHOPS**

- (a) A cosmetic art shop shall be separate and apart from any building or room used for any other business or purpose, separated by a solid wall of at least seven feet in height and must have a separate outside entrance.
- (b) A newly established cosmetic art shop, shall be separate and apart from any building or room used for living, dining or sleeping and shall be separate and apart from any other room used for any other purpose by a solid wall of ceiling height, making separate and apart rooms used for a cosmetic art shop. All entrances to the cosmetic art shop shall be through solid, full length doors installed in solid walls of ceiling height.
- (c) A residential cosmetic art shop shall furnish bathroom facilities separate and apart from the residence.

Authority G.S. 88B-2; 88B-4; 88B-14.

**21 NCAC 14H .0204 DIMENSIONS OF COSMETIC ART SHOPS**

Within the clinic area each shop shall maintain no less than the following working distances:

- (1) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
- (2) 24 inches from the center of the chair forward;
- (3) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
- (4) at least 30 inches of space from the back of each styling chair, esthetics table or manicuring table to the wall of the shop.

Authority G.S. 88B-2; 88B-4; 88B-14.

**SECTION .0300 - COSMETIC ART SHOP AND EQUIPMENT**

**21 NCAC 14H .0301 WATER SUPPLY**

- (a) Cosmetic art shops shall have a sink with hot and cold running water in the clinic area, separate from restrooms.
- (b) When a service is provided in a room closed off by a door, the water supply required in this Rule must be within 20 feet of the door or 25 feet from the service table or chair. The restroom sink shall not be used to meet this requirement.

Authority G.S. 88B-2; 88B-4; 88B-14.

**21 NCAC 14H .0302 VENTILATION AND LIGHT**

- (a) Necessary ventilation shall be provided at all times in the areas where patrons are serviced in all cosmetic art shops, there must be a continuous exchange of air.
- (b) All doors and windows, if open for ventilation, effectively screened.
- (c) Light shall be provided in the service area.

(d) All cosmetic art shops must adhere to any federal, state and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**21 NCAC 14H .0303 BATHROOM FACILITIES**

Toilet and hand washing facilities consisting of at least one commode and one hand washing sink with hot and cold running water, liquid soap and individual clean towels or hand air dryer shall be provided.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**21 NCAC 14H .0304 EQUIPMENT**

Cosmetic art shops shall maintain equipment and supplies to safely perform any cosmetic art service offered in the shop.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**SECTION .0400 - SANITATION PROCEDURES AND PRACTICES**

**21 NCAC 14H .0401 LICENSEES AND STUDENTS**

(a) Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

(b) Each licensee and student shall wear clean garments and shoes while serving patrons.

(c) Licensees or students must not use or possess in a cosmetic art school or shop any of the following products:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
- (2) Razor-type callus shavers designed and intended to cut growths of skin including but not limited to skin tags, corns and calluses;
- (3) FDA rated Class III devices;
- (4) Carboic acid (phenol) over two percent strength;
- (5) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (6) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.

(d) A licensee or student must not:

- (1) Use any product, implement or piece of equipment in any manner other than the product, implement or equipment's intended use as described or detailed by the manufacturer;
- (2) Diagnose any medical condition or treat any medical condition unless referred by a physician;
- (3) Provide any service unless trained prior to performing the service;
- (4) Perform services on a client if the licensee has reason to believe the client has any of the following:

- (A) a contagious condition or disease;
- (B) an inflamed, infected, broken, raised or swollen skin or nail tissue; or
- (C) an open wound or sore in the area to be worked on;

(5) Alter or duplicate a license issued by the Board;

(6) Advertise or solicit clients in any form of communication in a manner that is false or misleading;

(7) Use any Class II device without the documented supervision of a licensed physician; or

(8) Use any product that will penetrate the dermis.

(e) In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended by the manufacturer in the Material Safety Data Sheet.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**21 NCAC 14H .0402 COSMETIC ART SHOPS AND SCHOOLS**

(a) The cosmetic art facility shall be kept clean.

(b) Waste material shall be kept in receptacles with a disposable liner. The area surrounding the waste receptacles shall be maintained in a sanitary manner.

(c) All doors and windows shall be kept clean.

(d) Furniture, equipment, floors, walls, ceilings and fixtures must be clean and in good repair.

(e) Animals or birds shall not be in a cosmetic art shop or school. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**21 NCAC 14H .0403 DISINFECTION PROCEDURES**

(a) Sanitation rules which apply to towels and cloths are as follows:

(1) Clean protective capes, drapes linens and towels shall be used for each patron;

(2) After a protective cape has been in contact with a patron's neck it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer. Capes that cannot be laundered and dried in a heater dryer may be disinfected with an EPA registered hospital grade disinfectant mixed and used in accordance with the manufacturer directions; and

(3) After a drape, linen or towel has been in contact with a patron's skin it shall be placed in a clean, covered container until laundered with soap and hot water and dried in a heated dryer. A covered container may have an opening so soiled items may be dropped into the container.

(b) Any paper or nonwoven protective drape or covering shall be discarded after one use.

(c) There shall be a supply of clean protective drapes, linens and towels at all times.

(d) Clean drapes, capes, linens, towels and all other supplies shall be stored in a clean area.

(e) Bathroom facilities must be kept cleaned.

(f) All implements shall be cleaned and disinfected after each use in the following manner:

(1) They shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.

(2) They shall be disinfected in accordance with the following:

(A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) or tuberculocidal, that is mixed and used according to the manufacturer's directions; They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or

(B) 1 and 1/3 cup of 5.25 percent household bleach to one gallon of water for 10 minutes. They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or

(C) UV-C, ultraviolet germicidal irradiation used accordance with the manufacturer's directions.

(3) If the implement is not immersible or is not disinfected by UV-C irradiation, it shall be cleaned by wiping it with a clean cloth moistened or spraying with a disinfectant EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) or tuberculocidal, used in accordance with the manufacturer's directions.

(4) Implements that come in contact with blood, shall be disinfected by:

(A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency; or

(B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions; or

(C) household bleach in a 10 percent solution for 10 minutes.

(g) All disinfected non-electrical implements shall be stored in a clean closed cabinet or clean closed container.

(h) All disinfected electrical implements shall be stored in a clean area.

(i) Disposable and porous implements and supplies must be discarded after use or upon completion of the service.

(j) Product that comes into contact with the patron must be discarded upon completion of the service.

(k) Disinfected implements must be kept in a clean closed cabinet or clean closed container and must not be stored with any implement or item that has not been disinfected.

(l) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

(m) All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers, and must conform in all respects to the requirements of the Pure Food and Drug Law. Any product apportioned for use and removed from original containers must be distributed in a sanitary manner that prevents contamination of product or container. Any product dispensed in portions into another container must be dispensed into a sanitized container and applied to patrons by means of a disinfected or disposable implement or other sanitized methods. Any product dispensed in portions not dispensed into another container must be used immediately and applied to patrons by means of a disinfected or disposable implement or other sanitized methods. No product dispensed in portions may be returned to the original container.

(n) As used in this Rule whirlpool or footspa means any basin using circulating water.

(o) After each patron each whirlpool or footspa must be cleaned and disinfected as follows:

(1) All water must be drained and all debris removed from the basin;

(2) The basin must be disinfected by filling the basin with water and circulating:

(A) Two tablespoons of automatic dishwashing powder and ¼ cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or

(B) Surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, tuberculocidal, fungicidal and virucidal activity used according to manufacturer's instructions through the unit for 10 minutes;

(3) The basin must be drained and rinsed with clean water; and

(4) The basin must be wiped dry with a clean towel.

(p) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:

(1) The screen must be removed and all debris trapped behind the screen removed;

(2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;

(3) Before replacing the screen one of the following procedures must be performed:

(A) The screen must be totally immersed in a household bleach solution of ¼ cup of 5.25percent household bleach to one gallon of water for 10 minutes; or

(B) The screen must be totally immersed in an EPA registered disinfectant with bactericidal tuberculocidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions for 10 minutes;

(4) The inlet and area behind the screen must be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and

(5) The spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.

(g) Every week after cleaning and disinfecting pursuant to Paragraphs (a) and (b) of this Rule each whirlpool and footspa must be cleaned and disinfected in the following manner:

(1) The whirlpool or footspa basin must be filled with water and ¼ cup of 5.25 percent household bleach for each one gallon of water or EPA registered disinfectant with bactericidal, tuberculocidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions; and

(2) The whirlpool or footspa system must be flushed with the bleach and water or EPA registered disinfectant solution for 10 minutes and allowed to sit for at least six hours; and

(3) The whirlpool or footspa system must be drained and flushed with water before use by a patron.

(r) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason and name of the staff member that performed the cleaning. This record must be made for each whirlpool or footspa and must be kept and made available for at least 90 days upon request by either a patron or inspector.

(s) The water in a vaporizer machine must be emptied daily and the unit disinfected.

(t) The area where services are performed that come in contact with the patron's skin including treatment chairs, treatment tables and beds shall be disinfected between patrons.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**21 NCAC 14H .0404 FIRST AID**

(a) Each cosmetic art shop and school must have antiseptics, gloves or finger guards, sterile bandages and other necessary supplies available to provide first aid.

(b) If the skin of the licensee or student is punctured, the licensee or student shall immediately do the following:

(1) Apply antiseptic and a sterilized bandage;

(2) Disinfect any implement exposed to blood before proceeding; and

(3) Put on disposable, protective gloves or a finger guard.

(c) If the skin of the patron is punctured, the licensee or student shall immediately do the following:

(1) Make available to the patron antiseptic and a sterilized bandage;

(2) Disinfect any implement exposed to blood before proceeding; and

(3) Put on disposable, protective gloves or a finger guard.

*Authority G.S. 88B-2; 88B-4; 88B-14.*

**SECTION .0500 - ENFORCEMENT, MAINTENANCE OF LICENSURE**

**21 NCAC 14H .0501 INSPECTION OF COSMETIC ART SHOPS**

(a) A newly established cosmetic art shop, a shop which has been closed for more than 90 days, or a shop which has changed ownership, must file an application for licensure with the Board prior to opening. A newly established cosmetic art shop, a shop which has been closed for more than 90 days, a shop which has changed ownership or a shop which has been operating without a license shall be inspected before a license will be issued.

(b) Each cosmetic art shop must pass inspection by an agent of the Board pursuant to 21 NCAC 14H. Inspections shall be conducted at least annually and may be conducted without notice.

*Authority G.S. 88B-2; 88B-4; 88B-14; 88B-27.*

**21 NCAC 14H .0502 FAILURE TO PERMIT INSPECTION**

If an inspector is unable to inspect a salon twice with appointment, the Board may initiate proceedings to revoke or suspend the salon license or may refuse to renew the shop license.

*Authority G.S. 88B-2; 88B-4; 88B-14; 88B-27.*

**21 NCAC 14H .0503 SANITARY RATINGS AND POSTING OF RATINGS**

(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:

(1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;

(2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B;

(3) all establishments receiving a rating of at least 70 percent or more, and less than 80 shall be awarded grade C;

**PROPOSED RULES**

- (4) any cosmetic art shop or school with a sanitation grade of 70 or below shall be awarded a failed inspection notice.
- (b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art shop shall be graded once a year.
- (c) The sanitary rating or failed inspection notice given to a beauty establishment shall be posted in a conspicuous place near the front entryway at all times.
- (d) All new establishments must receive a rating of at least 90 percent before a license will be issued.
- (e) The operation of a cosmetic art shop or school which fails to receive a sanitary rating of at least 70 percent (grade C) shall be sufficient cause for revoking or suspending the license.
- (f) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.

- (g) A whirlpool and footspa sanitation record must be kept on each whirlpool and footspa for inspection on a form provided by the Board.
- (h) All cosmetic art shops and schools with a failed inspection report shall be sufficient cause for the immediate suspension of licensure. All cosmetic art shops and schools with a failed inspection report must close until the sanitation conditions have improved to be awarded a passing grade.
- (i) Mobile cosmetic art shops and schools are prohibited.

*Authority G.S. 88B-2; 88B-4; 88B-14; 88B-26; 88B-27.*

**21 NCAC 14H .0504 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS**

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in this subchapter shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

<u>Sanitation</u>	<u>Point Value</u>
<u>Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.</u>	<u>2</u>
<u>Each licensee and student shall wear clean garments and shoes while serving patrons.</u>	<u>2</u>
<u>The cosmetic art facility shall be kept clean.</u>	<u>3</u>
<u>Waste material shall be kept in receptacles with a disposable liner. The area surrounding the waste receptacles shall be maintained in a sanitary manner.</u>	<u>4</u>
<u>All doors and windows shall be kept clean.</u>	<u>2</u>
<u>Furniture, equipment, floors, walls, ceilings and fixtures must be clean and in good repair.</u>	<u>3</u>
<u>Clean protective capes, drapes, linens and towels shall be used for each patron</u>	<u>3</u>
<u>After a cape, drape, linen or towel has been in contact with a patron's skin it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer.</u>	<u>5</u>
<u>Any paper or nonwoven protective drape or covering shall be discarded after one use.</u>	<u>2</u>
<u>There shall be a supply of clean protective drapes, linens and towels at all times.</u>	<u>2</u>
<u>Clean drapes, capes, linens and towels shall be stored in a clean area.</u>	<u>5</u>
<u>Bathroom facilities must be kept cleaned.</u>	<u>3</u>
<u>All implements shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.</u>	<u>2</u>
<u>All implements shall be disinfected</u>	<u>10</u>
<u>All disinfected electrical implements shall be stored in a clean area.</u>	<u>2</u>
<u>Disposable and porous implements and supplies must be discarded after use or upon completion of the service.</u>	<u>10</u>
<u>Product that comes into contact with the patron must be discarded upon completion of the service.</u>	<u>3</u>
<u>Disinfected implements must be kept in a clean closed cabinet or clean closed container and must not be stored with any implement or item that has not been disinfected.</u>	<u>10</u>
<u>Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.</u>	<u>2</u>
<u>All creams, lotions, wax, cosmetics, and other products dispensed to come in contact patron's skin must be kept in clean, closed containers and dispensed in a sanitary manner. No product dispensed in portions may be returned to the container.</u>	<u>10</u>
<u>After each patron each whirlpool or footspa must be cleaned and disinfected</u>	<u>10</u>
<u>The water in a vaporizer machine must be emptied daily and the unit disinfected.</u>	<u>2</u>
<u>The area where services are performed that come in contact with the patron's skin including chairs, tables and beds shall be disinfected between patrons.</u>	<u>3</u>

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-26.

**21 NCAC 14H .0505      RULE COMPLIANCE AND ENFORCEMENT MEASURES**

(a) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of three hundred dollars (\$300.00) per container of product or piece of equipment:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; or
- (2) Razor-type callus shavers designed and intended to cut growths of skin including but not limited to skin tags, corns and calluses.

(b) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of one hundred dollars (\$100.00) per container of product or piece of equipment:

- (1) FDA rated Class III devices; or
- (2) Carbolic acid (phenol) over two percent strength; or
- (3) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (4) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.

(c) The action of any student or licensee to violate the Board rules in the following manner shall result in civil penalty in the amount of one hundred dollars (\$100.00) per instance of each action:

- (1) use any product, implement or piece of equipment in any manner other than the product, implement or equipment's intended use as described or detailed by the manufacturer; Diagnosis of any medical condition or treat any medical condition unless referred by a physician; or
- (2) Use any product that will penetrate the dermis; or
- (3) Provide any service unless trained prior to performing the service; or
- (4) Perform services on a client if the licensee has reason to believe the client has any of the following:
  - (A) a contagious condition or disease; an inflamed;
  - (B) infected, broken, raised or swollen skin or nail tissue; or
  - (C) an open wound or sore in the area to be worked on; or
- (5) Alter or duplicate a license issued by the Board; or
- (6) Advertise or solicit clients in any form of communication in a manner that is false or misleading; or
- (7) Use any class II device without the documented supervision of a licensed physician.

(d) The presence of an animals or birds in a cosmetic art shop or school shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per animal or bird. Animals trained for the purpose of accompanying disabled persons are exempt.

(e) The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as required by this subchapter including the date, time, reason and name of the staff member that performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.

(f) The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.

(g) The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.

(h) The failure to have in a cosmetic art shop or school to maintain a sink with hot and cold running water in the clinic area, separate from restrooms shall result in civil penalty in the amount of one hundred dollars (\$100.00).

(i) The failure to maintain a water supply within 20 feet of the door or 25 feet from the service table or chair shall result in civil penalty in the amount of fifty dollars (\$50.00) per inspection occurrence.

(j) The failure to provide necessary ventilation at all times in the areas where patrons are serviced in all cosmetic art shops, there must be a continuous exchange of air shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(k) The failure to effectively screen all doors and windows, open for ventilation shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(l) The failure to provide light in the service area shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(m) The failure to adhere to any federal, state and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(n) The failure to provide toilet and hand washing facilities consisting of at least one commode and one hand washing sink with hot and cold running water, liquid soap and individual clean towels shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(o) The failure to maintain equipment and supplies to safely perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).

(p) The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).

(q) The failure to display in a conspicuous place a current grade card shall result in a civil penalty in the amount of one hundred dollars (\$100.00).

(r) Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any



one individual, shop or school shall result in a mandatory disciplinary hearing.

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27.

**21 NCAC 14R .0105 CONTINUING EDUCATION**

(a) Each licensee wishing to maintain his/her license shall obtain continuing education during each licensing period.

The licensee shall maintain records of attendance of a continuing education course including the following information:

- (1) Course title and detail description;
- (2) Date conducted;
- (3) Address location where the course was conducted; and
- (4) Continuing education hours earned.

(b) Each licensee must ensure at least 50 percent of subject matter broadens the licensee knowledge of the cosmetic arts profession.

(c) Each instructor must ensure at least 50 percent of subject matter relates to teacher training techniques and enhance the ability to communicate.

(d) The continued education shall be approved by the board providing it meets the requirements above.

(e) Audits of the licensee's continuing education may be conducted at any time. Upon the Board's request each licensee shall provide completed records to the Board.

(f) The Board may suspend a license, revoke a license, or deny the renewal of any licensee, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

(g) Continuing education courses completed prior to an individual's being licensed by the Board shall not qualify for continuing education credit.

(h) Apprentices do not need to earn continuing education for renewal.

(i) Licensees are exempt from 8 hours of continuing education requirements until the licensing period commencing after their initial licensure.

(j) After completion of the continuing education requirements for any licensing cycle the licensee shall forward the following:

- (1) the license renewal application;
- (2) the license renewal fee; and
- (3) A date and signature affirming the following pledge: "I, hereby certify that I have obtained all continuing education hours required in accordance with the general statute and board rules and regulations. I am aware that false or dishonest misleading information may be grounds for 1) disciplinary action against my license; and further that 2) false statements are punishable by law."

(k) Failure to produce documents or file a response to a request for audit from the Board within 30 days of the request shall result in civil penalty to the licensee in the amount of two hundred and fifty dollars (\$250.00).

(l) The presentation of fraudulent continuing education documentation to the Board by a licensee shall result in civil penalty of five hundred dollars (\$500.00).

(m) The failure to attend continuing education courses as required by G.S. 88B and determined through Board audit shall result in civil penalty in the amount of five hundred dollars (\$500.00) per renewal cycle.

(n) Licensees in inactive status can reactivate licensure by taking no less than eight hours of continuing education per year of inactivity up to 24 total hours.

Authority G.S. 88B-2; 88B-4; 88B-21; 88B-24; 88B-29.

**TITLE 25 – OFFICE OF STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01J .1101; and 01L .0102, .0104.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.osp.state.us/rtable.comm/spc.htm>

**Proposed Effective Date:** April 1, 2012

**Public Hearing:**

**Date:** December 16, 2011

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

**Location:** Third Floor Conference Room, Administration Building, 116 West Jones Street, Raleigh, NC 27603

**Reason for Proposed Action:** *These rules are being amended to add the criterion of "genetic information" to the already existing prohibition against unlawful workplace harassment based on race, sex, creed, religion, national origin, age, color, or disabling condition. The motivation for the rule change is to ensure that the State's Equal Employment Opportunity Rule, EEO Program implementation and the Unlawful Workplace Harassment Rules conform to the requirements of the federal Genetic Information Act of 2008 (GENA) law, which prohibits discrimination based on genetic information. The rule change would also ensure that Human Resources personnel, employees and job applicants become knowledgeable of the new requirements, thus preventing any potential instances of discrimination or harassment based on genetic information.*

**Procedure by which a person can object to the agency on a proposed rule:** *A public hearing will be held on December 16, 2011 at 10 a.m. The hearing will be held in the third floor conference room, Administration Building, 116 West Jones Street, Raleigh, NC. The purpose of the hearing is to receive oral and written comments/objections regarding the proposed amendments of the following rules: 25 NCAC 01J .1101 Policy; 25 NCAC 01L .0102 Purpose; and 25 NCAC 01L .0104 Program Implementation; Agency and University Level. Written comments/objections not submitted during the public hearing should be sent to: Ms. Nellie Riley, Director of EEO, Diversity and Compliance Division, Office of State Personnel, 1331 Mail*

Service Center, Raleigh, NC 27603. The public comment period will end on January 30, 2012.

Comments may be submitted to: Ms. Nellie Riley, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 807-4800; fax (919) 733-0653; email Nellie.Riley@osp.nc.gov

Comment period ends: January 30, 2012

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 (check all that apply).

- State funds affected
Environmental permitting of DOT affected Analysis submitted to Board of Transportation
Local funds affected
Date submitted to OSBM:
Substantial economic impact (≥\$500,000)
Approved by OSBM
No fiscal note required

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01J - EMPLOYEE RELATIONS

SECTION .1000 - STATE EMPLOYEES' ASSISTANCE PROGRAM

25 NCAC 01J .1101 POLICY

(a) Purpose. The purpose of this policy is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment of state employees or applicants, and to require that every agency subject to the State Personnel Act establishes policies and programs to ensure that work sites are free of unlawful workplace harassment.

(b) Unlawful workplace harassment is defined as unsolicited, and unwelcome speech or conduct based upon race, sex, creed, religion, national origin, age, color, genetic information, or disabling condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo.

- (1) Hostile Work Environment is one that both a reasonable person would find hostile or

abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.

- (2) Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:
(A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
(B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
(3) Retaliation is adverse action taken because of opposition to unlawful workplace harassment.

(c) Policy. The policy of the State of North Carolina is that no state employee may engage in conduct that falls under the definition of unlawful workplace harassment indicated in Paragraph (b) of this Rule. No personnel decisions shall be made on the basis of race, sex, creed, religion, national origin, age, color, genetic information, or disabling condition as defined by G.S. 168A-3.

(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation. Unlawful workplace harassment shall henceforth be deemed a form of discrimination prohibited by G.S. 126-16 and G.S. 126-36.

(e) Grievances. Any current or former state employee who feels he/she has been the victim of unlawful workplace harassment in violation of this policy and G.S. 126-16 and G.S. 126-36 may file a grievance through the departmental grievance procedure. Filing such a written complaint shall be a prerequisite to any further appeal to the State Personnel Commission regarding unlawful workplace harassment. After the employee's written complaint is submitted to the department or agency, the department or agency shall have 60 days within which to consider the complaint and take any remedial action, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The waiver and acknowledgement shall be in writing. Consistent with G.S. 126-34, G.S. 126-34.1, G.S. 126-36 and G.S. 126-36.1, any current or former state employee who feels that he/she has been subjected to unlawful workplace harassment may appeal directly to the State Personnel Commission (such appeal consisting of a contested case hearing under G.S. 150B and a decision by the State Personnel Commission) only after submitting a written complaint and after receiving notification of remedial action, if any, by the department or agency.

(f) Departmental Plans. Each department head or university chancellor shall include as a supplement to the Affirmative

Action Plan a plan setting for the steps to be taken to prevent and correct unlawful workplace harassment. Each department or university shall submit such a plan to the Office of State Personnel for review, technical assistance, and approval by the Director of State Personnel. Each plan on unlawful workplace harassment shall, at the minimum, include:

- (1) publishing and disseminating a policy statement establishing that unlawful workplace harassment of employees and applicants is prohibited;
- (2) establishment of internal procedure to handle complaints of unlawful workplace harassment. This procedure shall provide prompt investigation and resolution of complaints within the department or university and shall offer the employee recourse other than through the immediate supervisor;
- (3) utilization of training and other methods to prevent unlawful workplace harassment;
- (4) stating that the department will, in allegations of unlawful workplace harassment, review the entire record and the totality of the circumstances, to determine whether the alleged conduct constitutes unlawful workplace harassment;
- (5) development of disciplinary actions for conduct determined to constitute unlawful workplace harassment, to be implemented on a case by case basis on the facts of each complaint;
- (6) prohibition of internal interference, coercion, restraint or reprisal against any person complaining of alleged unlawful workplace harassment;
- (7) notification to all employees that a complaint or allegation of unlawful workplace harassment must be filed within the department or agency and that the agency or department has 60 days (or less, if waived by agency or department and acknowledged by employee) to take action, if any, in response to the complaint prior to the filing of a complaint of unlawful workplace harassment with the State Personnel Commission.

Authority G.S. 126-4; 126-16; 126-17; 126-36; 126-36.1.

**SUBCHAPTER 01L - EQUAL OPPORTUNITY**

**SECTION .0100 - EQUAL EMPLOYMENT OPPORTUNITY PLANS AND PROGRAMS**

**25 NCAC 01L .0102 PURPOSE**

(a) The State is committed to equal employment opportunity and recognizes that effective and efficient government requires the talents, skills and abilities of all available human resources. It is the official policy of the State of North Carolina to provide all current employees and applicants for state employment with equal employment opportunities, without discrimination on the

basis of race, color, religion, national origin, sex, age, genetic information, or handicapping condition as defined by G.S. 168A or disability as defined by the Americans With Disabilities Act. All personnel policies, practices and programs shall be administered and implemented in a non-discriminatory manner by all state agencies and universities.

(b) The commitment to equal employment opportunity shall be undertaken by state government through an equal employment opportunity plan in order to:

- (1) assure that all personnel policies and practices relevant to total employment in state government will guarantee and preserve equal employment opportunities for all persons of the state;
- (2) assure diversity at all occupational levels of the state's workforce.

Authority G.S. 126-4(10); 126-16; 126-19.

**25 NCAC 01L .0104 PROGRAM IMPLEMENTATION: AGENCY AND UNIVERSITY LEVEL**

(a) Each state agency head and University Chancellor shall develop and implement an agency or university equal employment opportunity program and plan.

(b) Each state agency and university shall submit a plan by March 1 of each year to the Office of State Personnel for review, technical assistance and approval by the Director of State Personnel. The Plan and program shall be approved if it complies with the requirements in this Rule.

(c) Each state agency's and university's equal employment opportunity plan and program shall include but not be limited to the following elements:

- (1) The State EEO policy and an EEO policy statement applicable to the agency or university. The policy shall commit the agency or university to equal employment opportunity, prohibit discrimination, provide equal employment opportunity to applicants and employees without regard to race, color, national origin, religion, creed, sex, age, genetic information, or disability; list applicable laws, regulations and guidelines pertaining to EEO compliance including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1968 as amended, Executive Order 11246 as amended, the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1988, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991, Genetic Information Nondiscrimination Act of 2008, G.S. 126-16 as amended and other state EEO and anti-discrimination laws or statutes; provide a provision prohibiting retaliatory actions against employees who file a complaint or charge of employment discrimination, testify, assist or participate in

any manner in a hearing, proceeding or investigation of employment discrimination; provide provisions to commit agency or university to non-discriminatory practices in recruitment, selection, hiring, promotion, compensation, performance appraisal, disciplinary and grievance procedures, separations, and reduction in force; describe provisions for providing reasonable accommodation for persons with disabilities; provide a provision for preventing harassment, including sexual harassment; provide provisions describing the accountability of agency head or chancellor, managers, supervisors and others for EEO compliance; provide provisions for monitoring and evaluating the plan and program effectiveness; and include the signature of the agency head or the chancellor and date;

(2) The assignment of responsibility and accountability. The assignment of responsibility and accountability shall describe the responsibilities of the following:

(A) the agency head or the university chancellor responsibilities shall include, but are not limited to: the appointment or designation of a management-level official responsible to oversee the EEO program; communication of agency or university commitment to EEO policies, plans, and procedures to all employees, applicants and the general public; providing necessary resources to ensure the successful implementation of the EEO program; and ensuring the development and implementation of policies, procedures, and programs necessary to achieve a workforce in each occupational category that reflects the N.C. State working population as defined by U.S. Census data.

(B) ~~he~~ the managers and supervisors responsibilities shall include, but are not limited to: assisting in the development and implementation of the EEO plan and program; establishing program objectives; maintaining a diverse workforce for the department, division, work unit, or section; assisting the EEO officer in periodic evaluations to determine the effectiveness of the EEO program; and providing a work environment and management practices which support equal opportunity in all terms and conditions of employment,

(C) the EEO Officer(s) responsibilities shall include, but are not limited to: the interpretation and application of Federal laws, state statutes, policy regulations and guidelines related to discrimination in employment and equal opportunity; reviewing hiring recommendations for compliance with EEO program objectives prior to the final agency or university hiring decision; maintaining and analyzing workforce utilization data for development of the equal employment plan and program in conjunction with management; maintaining and analyzing data on employment practices to monitor and evaluate the effectiveness of the EEO program and make recommendations; advising management of the program's impact and effectiveness on workforce demographics at all occupational levels; providing or coordinating EEO training for management and employees; providing confidential counseling or consultation for management and employees in matters involving EEO concerns or complaints alleging discrimination (formally, informally and within agency or university guidelines); establishing and maintaining effective working relations with groups concerned with equal employment opportunity; coordinating special programs (internally or in cooperation with State Personnel) to achieve program objectives and to provide for management and employee input and assistance in program development and implementation; presenting information on the EEO plan and program to management and employees on a regular basis,

(D) the EEO Committee responsibilities shall include, but are not limited to: serving as a communication link between managers and employees and the EEO staff on aspects of the EEO plan and program; reviewing and evaluating the equal employment opportunity plan and program; reviewing workforce representation data in each occupational category; surveying the organizational climate, employee attitudes and evaluating the resultant data; meeting with the agency head or university chancellor

in conjunction with the EEO Officer to discuss EEO programs, report on the employees' employees' concerns, and recommend changes or additions to the EEO policy, plan, or program; identifying recruitment resources and other activities designed to strengthen the EEO program; meeting as a committee at least quarterly;

(3) The dissemination procedures. These procedures shall include methods for communicating the commitment, intent, and provisions or the EEO plan and program to employees and the general public;

(4) The workforce analysis. This analysis shall be used to examine the representation of each demographic group within each occupational category using one of the following three bases for comparison:

(A) the N.C. working populations (ages 18-64) as established by the U.S. Census. The statewide NC working population shall be used for the officials and administrators, management related and professional occupational categories and the geographical recruiting area working population shall be used for the other occupational categories; or

(B) two factor analysis as defined by the Office of Federal Contract Compliance Programs (OFCCP) regulations; or

(C) NC Occupational specific civilian labor force and NC working population (18-64) compromise standard. The occupation specific labor force of each demographic group and the working population by each demographic group shall be compared to the agency or university workforce. An average of the underutilization resulting from the comparisons of the two criteria shall be used to determine the workforce underutilization by occupational category for each demographic group. When calculating the underutilization resulting from the occupation specific/working population

(D) comparison, the statewide working population and the statewide occupational specific category compromise numbers shall be used for analyzing the officials and administrators, management related and the professional occupational categories. When calculating the underutilization resulting from the

occupation specific/working population comparison, the working population in the local geographical recruiting area and the occupation specific category compromise numbers in the local geographical recruiting area may be used for analyzing the other occupational categories. Only one basis or criteria for comparison may be selected for use by an agency head or university chancellor. The analysis shall identify each occupational category in which groups are underutilized, as defined as having fewer employees in a demographic group in a particular occupational category than would be expected based on the selected basis or criteria for comparison. The analysis shall also assess the agency's or university's workforce needs and capability for addressing the identified underutilization;

(5) The program objectives. These objectives shall establish specific strategies targeted at eliminating or reducing any underutilization identified in each occupational category;

(6) The program activities and strategies. These activities and strategies shall be implemented to accomplish program objectives. These strategies shall include, but are not limited to, the following:

(A) recruitment procedures to attract a diverse pool of applicants to each occupational category,

(B) disciplinary process designed to provide equitable treatment for all employees in accordance with the State's discipline policy,

(C) selection procedures designed to ensure that all of the steps in the process are nondiscriminatory and job related,

(D) hiring process designed to include consistent information for new hires regarding employment conditions (e.g. type of appointment, salary, etc.),

(E) promotion procedures designed to enhance upward mobility and fully utilize the skills of the existing workforce,

(F) training procedures designed to enhance employee development and advancement opportunities,

(G) compensation and benefits analysis procedures designed to review benefits; monitor salaries; and analyze practices in order to

- (H) determine trends; and to ensure that all employees receive compensation and benefits without discrimination, performance appraisal designed to hold managers and supervisors accountable for the progress of the agency's or university's EEO program; to establish, maintain, and apply employee performance standards that are free from bias,
  - (I) transfer or separation analysis designed to identify trends and to measure impact on underutilized groups,
  - (J) grievance procedures to ensure fair and equitable review of complaints in accordance with agency or university procedures and State policy on grievance, and
  - (K) a process to enroll managers and supervisors in the Equal Employment Opportunity Institute (EEOI), an EEO educational and diversity training program, as defined by G.S. 126-16.1;
- (7) An evaluation mechanism. This evaluation mechanism shall be designed to assess overall effectiveness of the equal employment opportunity program and to determine the achievement of agency or university EEO objectives as identified in the EEO plan and program;
- (8) A reporting mechanism. This reporting mechanism shall be designed to provide
- agency or university management, on a regular basis throughout the year, with data on the various program activities, workforce trends, and progress towards achievement of program objectives;
- (9) Procedures to prevent and eliminate harassment. These procedures shall be designed to create an environment that is fair to all employees without regard to race, sex, age, national origin, color, creed, religion, genetic information, or disability;
- (10) Reduction-in-force procedures. These procedures shall be designed to analyze layoff decisions and to determine their actual or potential adverse impact on underutilized groups; and
- (11) Procedures for monitoring. These procedures shall establish a data management system for maintaining and analyzing data on transactions regarding agency or university trends in compensation, promotion, selection, recruitment, training, separations, performance appraisals, and all other terms and conditions or employment.
- (d) Each state agency head and university chancellor shall designate an official at the deputy secretary, assistant secretary or vice-chancellor or assistant vice-chancellor level or high level official with a direct reporting relationship to the agency head, or chancellor, to assume responsibility for the operation and implementation of their equal opportunity plan and program.

*Authority G.S. 126-4(10); 126-16; 126-19.*

**APPROVED RULES**

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on October 20, 2011.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**AGRICULTURE, BOARD OF**

<u>Adoption by Reference</u>	02	NCAC	38	.0701*	25:20 NCR
<u>Admission Regulations</u>	02	NCAC	43L	.0309*	25:20 NCR

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Maintenance of Working Capital</u>	04	NCAC	02R	.0902*	26:02 NCR
<u>Stores: Appearance and State List</u>	04	NCAC	02R	.1703*	26:02 NCR
<u>Customer Service</u>	04	NCAC	02R	.1706*	26:02 NCR
<u>General Guidelines</u>	04	NCAC	02S	.0201	26:02 NCR
<u>Advertising of Mixed Beverages</u>	04	NCAC	02S	.1010	26:02 NCR
<u>Advertising of Spirituous Liquors</u>	04	NCAC	02S	.1011*	26:02 NCR

**SOCIAL SERVICES COMMISSION**

<u>Effect of Administrative Action</u>	10A	NCAC	10	.0313*	26:01 NCR
<u>Definition of Start-up Funds</u>	10A	NCAC	10	.0401	26:01 NCR
<u>Review Criteria for Start-up Funds</u>	10A	NCAC	10	.0402	26:01 NCR
<u>Appeals</u>	10A	NCAC	10	.0603	26:01 NCR
<u>Appeals</u>	10A	NCAC	10	.0703	26:01 NCR
<u>Local Purchasing Agency Responsibility</u>	10A	NCAC	10	.0803*	26:01 NCR
<u>Definition of a Special Needs Child</u>	10A	NCAC	10	.0910*	26:01 NCR

**HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE**

<u>Reports from Local Agencies</u>	10A	NCAC	17D	.0217	25:24 NCR
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**MENTAL HEALTH, COMMISSION FOR**

<u>Definition of Goals</u>	10A	NCAC	27B	.0601	25:24 NCR
<u>Eligibility Requirements</u>	10A	NCAC	27B	.0602	25:24 NCR
<u>Criteria</u>	10A	NCAC	27B	.0603	25:24 NCR
<u>Scope</u>	10A	NCAC	27G	.2501	25:24 NCR
<u>Definitions</u>	10A	NCAC	27G	.2502	25:24 NCR
<u>Staff Requirements</u>	10A	NCAC	27G	.2503	25:24 NCR
<u>Follow-along</u>	10A	NCAC	27G	.2504	25:24 NCR

**INSURANCE, DEPARTMENT OF**

<u>Location, Mailing Address, and...</u>	11	NCAC	17	.0103*	n/a G.S. 150B-21.5(4)
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**MEDICAL BOARD**

<u>Application for Physician License</u>	21	NCAC	32B	.1303*	25:22 NCR
<u>Reinstatement of Physician License</u>	21	NCAC	32B	.1350*	25:22 NCR
<u>Application of Resident's Training...</u>	21	NCAC	32B	.1402*	25:22 NCR

**NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE**

<u>Continuing Education</u>	21	NCAC	32V	.0105*	25:22 NCR
<u>Fees</u>	21	NCAC	32V	.0115	25:22 NCR

**ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD**

<u>Code of Ethics</u>	21	NCAC	39	.0801*	25:22 NCR
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**PODIATRY EXAMINERS, BOARD OF**

<u>Continuing Education</u>	21	NCAC	52	.0208*	26:01 NCR
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**STATE PERSONNEL COMMISSION**

<u>Agency and Employee Responsibilities</u>	25	NCAC	01H	.0904*	25:18 NCR
<u>Office of State Personnel Responsibilities</u>	25	NCAC	01H	.0905	25:18 NCR
<u>Agency and Employee Responsibilities</u>	25	NCAC	01H	.1003	25:18 NCR
<u>Office of State Personnel Responsibilities</u>	25	NCAC	01H	.1004	25:18 NCR
<u>Policy</u>	25	NCAC	01N	.0602	25:18 NCR

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**02 NCAC 38 .0701 ADOPTION BY REFERENCE**

The following are incorporated by reference, including subsequent amendments, as standards for storage, handling and installation of liquefied petroleum gas:

- (1) National Fire Protection Association, document NFPA 58 "Liquefied Petroleum Gas Code," with the following additions and exceptions:
  - (a) All cut-off valves and regulating equipment exposed to rain, sleet, or snow shall be protected against such elements either by design or by a hood;
  - (b) "Firm Foundation" means that the foundation material has a level top surface, rests on solid ground, is constructed of a masonry material or wood treated to prevent decay by moisture rot and will not settle, careen or deteriorate;
  - (c) "Concrete pads" as used in section 6.6.3.1(G) (2011 Edition) means a foundation of solid concrete blocks,

placed concrete pad, or poured concrete foundation sufficient to support the container or container-pump assembly mounted on a common base without breaking or settling that is detrimental to the integrity or safe operation of the installation.

- (d) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air in spray guns or other pressure operated equipment;
- (e) Piping, tubing or regulators are considered well supported when they are rigidly fastened in their intended position;
- (f) At bulk storage installations, the bulkhead and the plant piping on the hose side of the bulkhead shall be designed and constructed so that an application of force from the hose side will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the bulkhead shall incorporate a means, for



instance, mechanical or pneumatic, to automatically close emergency valves in the event of a pull away;

- (g) As an alternative to the requirement for a fire safety analysis the owner, or his designee, of an LP-gas facility which utilizes individual storage containers in excess of 4,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons, shall, for all installations of containers of such capacity or for additions to an existing LP-gas facility which result in containers of such capacity, meet with fire officials for the jurisdiction in which the facility is located in order to:

- (i) review potential exposure to fire hazards to or from real property which is adjacent to such facility;
- (ii) identify emergency access routes to such facility; and
- (iii) review the equipment and emergency shut-down procedures for the facility.

The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record. This documentation shall be made available to the Department not later than 60 days after installation of the new or additional containers. Compliance with the availability requirement shall be met by having a copy of the documentation kept on site or at the owner's office and available for review by NCDA&CS inspection personnel. This meeting, review, and documentation shall be repeated when NCDA&CS determines that the plant design has changed or that potential exposures have significantly changed, so as to increase the likelihood of injury.

- (h) An LP-gas facility which utilizes storage containers that are interconnected through the vapor withdrawal outlets of the containers

only with an aggregate water capacity in excess of 4,000 gallons, but not in excess of 6,000 gallons, is exempt from the requirements of a fire safety analysis; and

- (i) A fire safety analysis as described in NFPA 58 may be prepared by the owner of an LP-Gas facility, or by an employee of such owner in the course of the employee's employment, and the Department shall not require that it be prepared, approved or sealed by a professional engineer. Note: This is in keeping with a formal interpretation (F.I. No.: 58-01-2) by the technical committee for Liquefied Petroleum Gases issued by the National Fire Protection Association on November 7, 2001, with an effective date of November 27, 2001. However, the North Carolina Board of Examiners for Engineers and Surveyors regulates the practice of engineering, and has taken the position that the preparation of a fire safety analysis constitutes the practice of engineering.

- (2) National Fire Protection Association, document NFPA 54, "National Fuel Gas Code," with the addition that underground service piping shall rise above ground immediately (within six inches of wall) before entering a building.

- (3) National Fire Protection Association, document NFPA 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages," Chapter 12 (in 2008 Edition) as it applies to LP-Gas dispensers for motor vehicle fuel along with dispensers for other motor vehicle fuels.

Copies of NFPA 54, NFPA 58 and NFPA 30A are available for inspection in the Office of the Director of the Standards Division. They may be obtained at a cost of forty-eight dollars and fifty cents (\$48.50) each for NFPA 54 and NFPA 58 and for thirty-seven dollars and fifty cents (\$37.50) for NFPA 30A (February 2011 prices), plus shipping, by contacting National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02269, by calling them at 617-770-3000 or 800-344-3555, or by accessing them on the Internet at [www.nfpacatalog.org](http://www.nfpacatalog.org).

*History Note: Authority G.S. 119-55; Eff. May 1, 1983; Amended Eff. November 1, 2011; April 1, 2009; September 1, 2002; August 1, 2002; January 1, 1994; June 1, 1993; December 1, 1988; December 1, 1987.*

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**02 NCAC 43L .0309 ADMISSION REGULATIONS**

(a) All persons entering the Western North Carolina Agricultural Center grounds during the North Carolina Mountain State Fair must have an admission ticket, except persons holding worker's permits. Fair management shall issue one-time-only admission tickets to persons who are employed by the fair or are asked to appear on the grounds by the fair management for a purpose relative to the operation of the fair.

(b) The gates of the Western North Carolina Agricultural Center shall open one hour prior to fair time and close one hour after closing of the fair midway each day of the fair. Opening of the fair midway and exhibit building may vary each day of the fair.

(c) The Western North Carolina Agricultural Center Manager shall operate a pass-out system at one or more of the outside gates during the fair. Persons exiting through these gates shall, upon request, have their hand or vehicle stamped for readmittance through the same gate without additional charge. Readmittance must occur before 10:00 p.m. on the same day as pass-out or the hand stamp shall not be honored.

*History Note: Authority G.S. 106-6.1; Eff. June 1, 1994; Amended Eff. November 1, 2011; July 1, 2000.*

(4) the Commission believes that continued operation of the local board will not lead to profits in the next fiscal year.

(d) As used in this Rule, "long term debt" means the loans and financial obligations lasting over one year.

*History Note: Authority G.S. 18B-100; 18B-203(a)(20); 18B-702(u); 18B-805(d); Eff. January 1, 1982; Amended Eff. November 1, 2011; July 1, 1992; June 1, 1988; May 1, 1984.*

**04 NCAC 02R .1703 STORES: APPEARANCE AND STATE LIST**

(a) Interior Appearance of Stores. Stores shall meet the following standards:

- (1) Stores shall be well lit so as an average customer can shop safely and be free of trash;
- (2) Floors shall be clean;
- (3) Bottles and shelves shall be clean;
- (4) Signs and displays shall not be faded or worn;
- (5) Televisions that are on shall be tuned to a news, weather or community service channel when not providing liquor related information and the volume shall be kept low enough so as not to interfere with sales;
- (6) Smoking shall not be permitted in any stores, warehouses or storage areas; and
- (7) Security systems shall be functional.

(b) Exterior Appearance of Stores. Stores shall meet the following standards:

- (1) Areas around stores shall be well lit and free of trash; and
- (2) Signs shall not be faded or worn.

(c) State List to be Available. Every store shall make available for its customers' inspection a copy of the most current complete state price list and any supplemental price lists. A local board may draw up and post its own price list for items or brands sold in its stores, provided the items and prices listed on the local list are also listed on the complete state list.

*History Note: Authority G.S. 18B-100; G.S. 18B-102(a); 18B-203(a)(20); 18B-807; Eff. January 1, 1982; Amended Eff. November 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02R .1706 CUSTOMER SERVICE**

(a) The manager and the employees in every store shall see that customers are waited on professionally and as soon as possible to reduce customers' wait time. The manager and the employees shall not allow people without the intent to purchase to loiter.

(b) If a local board has a price discrepancy between the price on the shelf or bottle and the cash register, and the price on the shelf or bottle is lower, the local board shall sell the item at the shelf or bottle price and correct the shelf or bottle price to match the Commission's published price.

(c) If a customer inquires about a product that a local board does not carry, the local board's manager or employee shall inform the customer that a case of the product can be special ordered. The

**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 02R .0902 MAINTENANCE OF WORKING CAPITAL**

(a) As used in this Rule, "working capital" means the total of cash, investments and inventory less all unsecured liabilities.

(b) A local board shall set its working capital requirements at not less than two weeks' average gross sales of the latest fiscal year nor greater than:

- (1) four months of the latest fiscal year for boards with gross sales less than one million five hundred thousand dollars (\$1,500,000);
- (2) three months of the latest fiscal year for boards with gross sales greater than or equal to one million five hundred thousand dollars (\$1,500,000) and less than fifty million dollars (\$50,000,000); and
- (3) two months of the latest fiscal year for boards with gross sales equal to or greater than fifty million dollars (\$50,000,000).

Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2),(3), and (4).

(c) A local board is considered insolvent if all of the following conditions apply:

- (1) the local board does not adhere to the working capital requirements as stated in Paragraph (b) of this Rule;
- (2) the local board's current assets are less than the local board's current liabilities and the current portion of long term debt;
- (3) the local board is unable to pay its debts as they fall due; and

manager or employee shall also inform the customer what guidelines must be followed to place the special order.

*History Note: Authority G.S. 18B-100; 18B-203(a)(20); 18B-807;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2011.*

**04 NCAC 02S .0201 GENERAL GUIDELINES**

(a) The permittee shall ensure that the Commission's rules governing the sale, possession, transportation, storage, and consumption of alcoholic beverages on the licensed premises are adhered to by employees and patrons. Further, a permittee shall ensure that all Commission rules on the operation of a business with ABC permits are adhered to by employees and patrons.

(b) Wrist bands, ink stamps or other similar devices are not reasonable indications of age of a purchaser at the time of sale as referenced by G.S. 18B-302(d)(2).

(c) The permittee is responsible for the actions of all sellers and servers of alcoholic beverages on the permitted premises.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-302(d)(2); 18B-1003(b);  
Eff. January 1, 1982;  
Amended Eff. November 1, 2011; May 1, 1984.*

**04 NCAC 02S .1010 ADVERTISING OF MIXED BEVERAGES**

*History Note: Authority G.S. 18B-105;  
Eff. January 1, 1982;  
Amended Eff. July 1, 1992; May 1, 1984;  
Repealed Eff. November 1, 2011.*

**04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS**

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. During the approval process the Commission shall consider the following factors:

- (1) the proximity of the ABC store to schools and churches;
- (2) the number and size of the signs requested;
- (3) the text and graphics on the sign;
- (4) the materials that make up the sign; and
- (5) the public concern in matters of the public's welfare.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards; Media. Industry members may advertise spirituous liquor on outdoor billboards, by radio, television, newspaper, magazine or internet, and by other similar means. Outdoor billboards or signs shall not be displayed on the premises of any retail permittee's establishment nor in areas where sale of that product is unlawful.

(d) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or
- (2) refer to the availability of or offer any alcoholic beverages by mail.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission prior to their display in an ABC store.

(e) Local ABC Boards. Local ABC boards may advertise on their web site or social networking page the following information:

- (1) general information such as the history of the ABC board, locations, hours of operation, contact information, employment opportunities, alcohol enforcement, alcohol education, underage drinking education and other local government information; and
- (2) liquor products and prices, as long as:
  - (A) no logos are shown;
  - (B) when a product is listed, all products that are offered are listed;
  - (C) when a product's regular price is listed, all products' regular prices offered by the board are listed; and
  - (D) when a special price is listed for a product, all products with special prices offered by the board are listed.

(f) Local boards may join local chambers of commerce or visitor's bureaus and may provide them general board information which includes store locations and hours to be distributed through the chambers of commerces' or visitor's bureaus' media information.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-207; 18B-801;  
Eff. January 1, 1982;  
Amended Eff. November 1, 2011; January 1, 2011; July 1, 1992;  
May 1, 1984.*

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

**10A NCAC 10 .0313 EFFECT OF ADMINISTRATIVE ACTION ISSUED AGAINST PROVIDER**

(a) All child care subsidy payments made pursuant to a Provider Agreement shall terminate 45 days after issuance of an administrative action revoking, summarily suspending, or denying a license to operate a child care facility issued pursuant to G.S. 110-90.

(b) An appeal of an administrative action revoking, summarily suspending, or denying a license does not stay the termination of approval to participate in the state's Subsidized Child Care

Program. If under appeal, the maximum time period during which payments from the state's Subsidized Child Care Program may be made is 45 days from the date on the notice of the administrative action. A provider subject to administrative action as described in this Paragraph shall not be paid with subsidized child care funds for any new children enrolled after the date on the notice of the administrative action.

(c) A child care provider who has received an administrative action revoking or denying a license by the Division of Child Development and Early Education, or who is currently under summary suspension, is ineligible to participate in the state's Subsidized Child Care Program as a nonlicensed child care home.

History Note: Authority G.S. 143B-153; Eff. December 1, 2011.

**10A NCAC 10 .0401 DEFINITION OF START-UP FUNDS**

**10A NCAC 10 .0402 REVIEW CRITERIA FOR START-UP FUNDS**

History Note: Authority G.S. 143B-10; 143B-153(2a); Eff. January 16, 1980; Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; Repealed Eff. December 1, 2011.

**10A NCAC 10 .0603 APPEALS**

History Note: Authority G.S. 143B-153(2a); 150B-23; Eff. February 1, 1986; Amended Eff. April 1, 2001; July 1, 1990; Repealed Eff. December 1, 2011.

**10A NCAC 10 .0703 APPEALS**

History Note: Authority G.S. 143B-153(2a); 150B-23; Eff. January 1, 1988; Amended Eff. April 1, 2001; July 1, 1990; Repealed Eff. December 1, 2011.

**10A NCAC 10 .0803 LOCAL PURCHASING AGENCY RESPONSIBILITY**

(a) The local purchasing agency shall review the application and parent/responsible adult-provider self-check list and shall determine compliance with the rules adopted by the Social Services Commission for all nonlicensed child care homes from which care is purchased with funds administered by the local purchasing agency.

(b) The county director of social services shall deny or revoke approval of an arrangement where the caregiver or an individual who resides in the home where care is provided was found by the county director to be the perpetrator of abuse or neglect in accordance with G.S. 7B-302 or G.S. 108A, Article 6, and where approval of the arrangement poses a threat to the child's health or safety. Approval shall also be denied or revoked as described under the standard set forth in this Rule when an investigation of abuse or neglect is currently in process. Information regarding the fact that the prospective provider or individual in the home

has been reported or investigated for alleged abuse or neglect shall not be given to the parent or any other individual unless such information is a matter of public record.

(c) The local purchasing agency shall deny or revoke approval of an arrangement when the nonlicensed caregiver or an individual who resides in the home where care is provided is named on the Responsible Individuals List (RIL) as defined in G.S. 7B-311(b).

History Note: Authority G.S. 143B-153(2a); 45 C.F.R. 98.41; 45 C.F.R. 255.4(c); 45 C.F.R. 257.41; Eff. February 1, 1993; Amended Eff. December 1, 2011; April 1, 2001.

**10A NCAC 10 .0910 DEFINITION OF SPECIAL NEEDS CHILD**

(a) As used in this Chapter a special needs child is one who qualifies under one or more of the criteria listed in this Paragraph:

- (1) a child who is determined by the Division of Public Health, Children's Developmental Service Agency, to be developmentally delayed or have an established condition pursuant to 10A NCAC 43G .0110; including subsequent amendments; or
- (2) a child who is determined by the local educational agency (LEA) to have a disability as defined in G.S. 115C-106.3.

A copy of 10A NCAC 43G .0110 may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina, 27699-6714, (919) 431-3000.

(b) The agency determining eligibility for the services shall have on file an Individualized Education Program (IEP) as defined in G.S. 115C-106.3, an Individualized Family Service Plan (IFSP) as defined in 10A NCAC 27G .0903, a Section 504 Plan as defined in 29 USC 794 or a Person Centered Plan (PCP) as defined in 10A NCAC 70G .0402 to document the "special need" or "disability".

(c) Eligibility for the supplemental rate is contingent upon the provider's compliance with the activities designated for the provider in the child's individualized plan.

History Note: Authority G.S. 143B-153(2a); Eff. December 1, 1992; Amended Eff. December 1, 2011; April 1, 2001; February 1, 1996.

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**10A NCAC 17D .0217 REPORTS FROM LOCAL AGENCIES**

History Note: Authority G.S. 143B-216.34; Eff. December 1, 1988; Amended Eff. April 1, 1990; Repealed Eff. November 1, 2011.

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**10A NCAC 27B .0601 DEFINITION AND GOALS**

*History Note:* Authority G.S. 143B-10; 143B-147;  
 Eff. July 1, 1979;  
 Amended Eff. March 1, 1983;  
 Transferred from T10.43D .0236 Eff. July 1, 1983;  
 Amended Eff. July 1, 1984;  
 Repealed Eff. November 1, 2011.

**10A NCAC 27B .0602 ELIGIBILITY REQUIREMENTS  
 10A NCAC 27B .0603 CRITERIA**

*History Note:* Authority G.S. 143B-10; 143B-147;  
 Eff. July 23, 1979;  
 Amended Eff. March 1, 1983;  
 Transferred from T10.43I .0102 Eff. July 1, 1983 (.0602);  
 Transferred from T10.43I .0104 Eff. July 1, 1983 (.0603);  
 Amended Eff. July 1, 1984;  
 Repealed Eff. November 1, 2011.

**10A NCAC 27G .2501 SCOPE  
 10A NCAC 27G .2502 DEFINITIONS  
 10A NCAC 27G .2503 STAFF REQUIREMENTS  
 10A NCAC 27G .2504 FOLLOW-ALONG**

*History Note:* Authority G.S. 122C-51; 143B-147; 20 U.S.C.  
 Sections 1401 et. seq., 1471 et. seq.; 20 USC 1471;  
 Eff. May 1, 1996;  
 Repealed Eff. November 1, 2011.

**TITLE 11 – DEPARTMENT OF INSURANCE**

**11 NCAC 17 .0103 LOCATION, MAILING  
 ADDRESS, AND TELEPHONE**

- (a) The primary location of SHIP is 11 South Boylan Avenue, Raleigh, N.C. 27603.
- (b) The mailing address of SHIP is 1201 Mail Service Center, Raleigh, North Carolina, 27699-1201.
- (c) The telephone numbers for SHIP are toll-free 1-800-443-9354 and 1-919-807-6900.

*History Note:* Authority G.S. 58-2-5; 58-2-25; 58-2-40(1);  
 58-54-25; 58-55-30;  
 Eff. July 1, 1992;  
 Amended Eff. November 1, 2011; September 1, 2002.

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

**CHAPTER 32 – MEDICAL BOARD**

**21 NCAC 32B .1303 APPLICATION FOR PHYSICIAN  
 LICENSE**

- (a) In order to obtain a Physician License, an applicant shall:
  - (1) submit a completed application, attesting under oath that the information on the

- (2) application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign this form, verifying the information;
- (6) for an applicant who has graduated from a medical or osteopathic school approved by the LCME, the CACMS or COCA, meet the requirements set forth in G.S. 90-9.1;
- (7) for an applicant graduating from a medical school not approved by the LCME, meet the requirements set forth in G.S. 90-9.2;
- (8) provide proof of passage of an examination testing general medical knowledge. In addition to the examinations set forth in G.S. 90-10.1 (a state board licensing examination; NBME; USMLE; FLEX, or their successors), the Board accepts the following examinations (or their successors) for licensure:
  - (A) COMLEX,
  - (B) NBOME, and
  - (C) MCCQE;
- (9) submit proof that the applicant has completed graduate medical education as required by G.S. 90-9.1 or 90-9.2, as follows:
  - (A) A graduate of a medical school approved by LCME, CACMS or COCA shall have satisfactorily completed at least one year of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
  - (B) A graduate of a medical school not approved by LCME shall have satisfactorily completed three years of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
  - (C) An applicant may satisfy the graduate medical education requirements of

- Parts (A) or (B) of this Subparagraph by showing proof of current certification by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA;
- (10) submit a FCVS profile, if an applicant has a completed FCVS profile;
  - (11) if a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
    - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
    - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
  - (12) submit reports from all state medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the licensee;
  - (13) submit an AMA Physician Profile and, if applicant is an osteopathic physician, also submit an AOA Physician Profile;
  - (14) if applying on the basis of the USMLE, submit:
    - (A) a transcript from the FSMB showing a score on USMLE Step 1, both portions of Step 2 (clinical knowledge and clinical skills) and Step 3; and
    - (B) proof that the applicant has passed each step within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years;
  - (15) if applying on the basis of COMLEX, submit:
    - (A) a transcript from the NBOME showing a score on COMLEX Level 1, both portions of Level 2 (cognitive evaluation and performance evaluation) and Level 3; and
    - (B) proof that the applicant has passed COMLEX within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years;
  - (16) if applying on the basis of any other board-approved examination, submit a transcript showing a passing score;
  - (17) submit a NPDB / HIPDB report, dated within 60 days of submission of the application;
  - (18) submit a FSMB Board Action Data Report;
  - (19) submit two completed fingerprint record cards supplied by the Board;
  - (20) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
  - (21) provide two original references from persons with no family or marital relationship to the applicant. These references must be:
    - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
    - (B) on forms supplied by the Board;
    - (C) dated within six months of the submission of the application; and
    - (D) bearing the original signature of the writer;
  - (22) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
  - (23) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (b) In addition to the requirements of Paragraph (a) of this Rule, the applicant shall submit proof that the applicant has:
- (1) within the past 10 years taken and passed either:
    - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBOME; USMLE; COMLEX; or MCCQE or their successors);
    - (B) SPEX (with a score of 75 or higher); or
    - (C) COMVEX (with a score of 75 or higher);
  - (2) within the past 10 years obtained certification or recertification or CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA;
  - (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
  - (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.
- (c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant shall be required to appear in person for an interview with the Board or its agent, if the Board needs more information to complete the application.

(e) An application must be completed within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

*History note: Authority G.S. 90-8.1; 90-9.1; 90-9.2; 90-13.1; Eff. August 1, 2010; Amended Eff. November 1, 2011; October 1, 2011.*

**21 NCAC 32B .1350 REINSTATEMENT OF PHYSICIAN LICENSE**

(a) Reinstatement is for a physician who has held a North Carolina License, but whose license either has been inactive for more than one year, or whose license became inactive as a result of disciplinary action (revocation or suspension) taken by the Board. It also applies to a physician who has surrendered a license prior to charges being filed by the Board.

(b) All applicants for reinstatement shall:

- (1) submit a completed application, attesting under oath that information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (4) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (5) submit reports from all state medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license

- (6) and whether or not any action has been taken against the license;
  - (6) submit the AMA Physician Profile; and, if applicant is an osteopathic physician, also submit the AOA Physician Profile;
  - (7) submit a NPDB/HIPDB report dated within 60 days of the application's submission;
  - (8) submit a FSMB Board Action Data Bank report;
  - (9) submit documentation of CME obtained in the last three years, upon request;
  - (10) submit two completed fingerprint cards supplied by the Board;
  - (11) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
  - (12) provide two original references from persons with no family or material relationship to the applicant. These references must be:
    - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
    - (B) on forms supplied by the Board;
    - (C) dated within six months of submission of the application; and
    - (D) bearing the original signature of the author;
  - (13) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
  - (14) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.
- (c) In addition to the requirements of Paragraph (b) of this Rule, the applicant shall submit proof that the applicant has:
- (1) within the past 10 years taken and passed either:
    - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBME; NBOME; USMLE; FLEX; COMLEX; or MCCQE or their successors);
    - (B) SPEX (with a score of 75 or higher); or
    - (C) COMVEX (with a score of 75 or higher);
  - (2) within the past ten years obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA;
  - (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
  - (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.
- (d) All reports must be submitted directly to the Board from the primary source, when possible.

(e) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character, if the Board needs more information to complete the application.

(f) An application must be complete within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

*History Note: Authority G.S. 90-8.1; 90-9.1; 90-10.1; 90-13.1;  
Eff. August 1, 2010;  
Amended Eff. November 1, 2011.*

**21 NCAC 32B .1402 APPLICATION FOR RESIDENT'S TRAINING LICENSE**

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) submit a photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign the form verifying the information;
- (5) If the graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (6) submit an appointment letter from the program director of the GME program or his appointed agent verifying the applicant's appointment and commencement date;

- (7) provide two original references from persons with no family or marital relationship to the applicant. These references must be:
  - (A) from physicians who have observed the applicant's work in a clinical setting;
  - (B) on forms supplied by the Board;
  - (C) dated within six months of the application; and
  - (D) bearing the original signature of the writer;
- (8) submit two completed fingerprint record cards supplied by the Board;
- (9) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (10) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
- (11) provide proof that the applicant has taken and passed:
  - (A) the COMLEX Level 1 and both components of COMLEX Level 2 (cognitive evaluation and performance evaluation); or
  - (B) the USMLE Step 1 and both components of the USMLE Step 2 (Clinical Knowledge and Clinical Skills); and
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character, if the Board needs more information to complete the application.

*History Note: Authority G.S. 90-8.1; 90-12.01; 90-13.1;  
Eff. August 1, 2010;  
Amended Eff. November 1, 2011.*

**21 NCAC 32V .0105 CONTINUING EDUCATION**

- (a) The licensed perfusionist must maintain documentation of 30 hours of continuing education (CE) completed for every two year period. Of the 30 hours, at least 10 hours must be Category I hours as recognized by the American Board of Cardiovascular Perfusion (ABCP), the remaining hours may be Category II or III hours as recognized by the ABCP. CE documentation must be available for inspection by the Committee or Board or an agent of the Committee or Board upon request.
- (b) A perfusionist who possesses a current certification with the ABCP shall be deemed in compliance with the requirement of Paragraph (a) of this Rule. The perfusionist must attest on his or her biennial renewal that he or she is currently certified by the ABCP.

*History Note: Authority G.S. 90-685(3) and (8);  
Eff. September 1, 2007;*



Amended Eff. November 1, 2011.

21 NCAC 32V .0115 FEES

- (a) A fee of three hundred and fifty dollars (\$350.00) is due at the time of application for a perfusion license... (b) A fee of three hundred and fifty dollars (\$350.00) shall be paid to the North Carolina Medical Board... (c) A late fee of one hundred dollars (\$100.00) shall be charged to those who fail to renew timely a perfusion license or a provisional perfusion license.

History Note: Authority G.S. 90-685(7); 90-688; 90-689; 90-690; Eff. March 1, 2008; Amended Eff. November 1, 2011.

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CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

21 NCAC 39 .0801 CODE OF ETHICS

- (a) Contractors and inspectors shall at all times recognize their primary obligation is to protect the public in the performance of their professional duties... (b) Opinions expressed by contractors and inspectors in the discharge of their duties shall only be based on their education, experience, and honest convictions... (c) Neither a contractor nor an inspector shall disclose any information about the results of an inspection without the approval of the client... (d) No contractor or inspector shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties... (e) No contractor or inspector shall accept or offer commissions or allowances, directly or indirectly, from or to other parties dealing with the client in connection with work for which the licensee is responsible... (f) No contractor or inspector shall provide an appraisal nor express an opinion of the market value of the inspected property during an inspection or in the inspection report... (g) Before the execution of a contract to perform an on-site wastewater system inspection, an inspector shall disclose to the client any interest the inspector has in a business that may affect the client... (h) Before the execution of a contract to perform an on-site wastewater system installation, a contractor shall disclose to the

client any interest a contractor has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the installation work that the contractor may be called upon to perform.

- (i) Contractors shall not knowingly or willfully install a non-permitted system. (j) Contractors shall not knowingly or willfully install a system or any part of a system other than what is specified in the permit by the local health department. (k) Contractors and inspectors shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public. (l) Contractors and inspectors shall discharge their duties in accordance with Article 5 of Chapter 90A of the North Carolina General Statutes and the rules of the Board.

History Note: Authority G.S. 90A-72; 90A-74; Eff. November 1, 2011.

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CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0208 CONTINUING EDUCATION

- (a) An additional requirement for issuance of the annual renewal certificate shall be certification to the board of proof of having complied with the continuing education provisions of the General Statutes. The board shall notify all podiatrists that 25 hours are required annually. (b) General CME policy – Minimum requirement of 25 hours per year, as follows: (1) Completion of 25 hours of Continuing Medical Education (CME) is required per year (July 1- June 30) for renewal of licensure. CME credits cannot be carried over from the previous licensure year. (2) It shall be the responsibility of the individual podiatrist to ascertain in advance that the courses which he or she attends have received proper approval of the certifying organizations. The Board shall respond in writing or by email with approval or denial based on the standards in this Rule to individuals requesting approval of CME courses and credit hours. Decisions by the Board are the final agency decision and may be appealed as set out in G.S. 150B-23. (3) Certificates of completion of courses other than that sponsored by the NC Foot and Ankle Society (NCF&AS) must be submitted to the Board along with the podiatrist's annual license renewal documents. Completion certificates must contain the following information: (A) Podiatrist's name; (B) Course name, location, and date; (C) Number of hours CME completed; (D) Signature of seminar chairperson; and

- (E) Name of certifying or sponsoring agency.

Handwritten certificates are not acceptable. It is the podiatrist's responsibility to contact the seminar organizer to secure a printed certificate before submitting to the Board for approval along with a renewal.

(c) Category 1: Minimum requirement of 20 hours per year, as follows:

- (1) Continuing medical education (CME) credit shall be allowed for attendance at educational seminars offered by the North Carolina Foot and Ankle Society (NCF&AS). The number of qualifying hours of continuing education shall be determined and approved by the Board in advance based on the standards in 90-202.11. NCF&AS shall provide the Board directly with a listing of individuals attending its CME events and credits earned.
- (2) Continuing medical education credit shall be recognized for attendance at educational seminars offered by other national, state and podiatric education providers, as certified by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association (APMA). The number of qualifying hours of continuing education shall be determined and approved by the Council on Podiatric Medical Education.
- (3) Lecturers may receive one hour of credit for each hour of CPME- or APMA- approved lectures given, but such credit shall be limited to one hour for each discrete topic. A brief summary of the content of each lecture must be submitted for approval.
- (4) Category 1 is limited to educational seminars either offered by NCF&AS or by sponsors pre-approved by CPME:  
<http://www.apma.org/Members/Education/CPMEAccreditation/ContinuingEducation/CPME700.aspx?FT=.pdf>

(N.B.: APMA- or CPME- approved online or journal courses are considered Category 2.)

(d) Category 2: A maximum of 5 of the total 25 CME hours per year shall be allowed as follows:

- (1) Continuing medical education (CME) credit shall be allowed for educational programs approved for Category 1 credit by the American Medical Association (AMA) and the American Osteopathic Association (AOA) or their affiliated organizations.
- (2) Continuing medical education (CME) credit shall be allowed for courses approved by North Carolina Area Health Education Center (AHEC).
- (3) Online or medical journal courses approved by CPME are permitted.

- (4) For courses not pre-approved by AHEC, AOA, or AMA, all requests for CME approval must contain a timeline and course description.

*History Note: Authority G.S. 90-202.4(g); 90-202.11; Eff. February 1, 1976; Amended Eff. November 1, 2011; June 1, 2011; December 1, 1988.*

**TITLE 25 – OFFICE OF STATE PERSONNEL**

**25 NCAC 01H .0904 AGENCY AND EMPLOYEE RESPONSIBILITIES**

(a) The employing agency shall notify the employee of impending separation in accordance with G.S. 126-7.1(a1), and inform the employee of the priority consideration to be afforded.

- (b) The agency shall notify the Office of State Personnel when:
- (1) an employee is officially notified of reduction in force;
  - (2) an eligible employee accepts a position that satisfies the priority consideration;
  - (3) an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or
  - (4) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

*History Note: Authority G.S. 126-4(6), (10); Eff. March 1, 1987; Amended Eff. December 1, 1995; June 1, 1992; November 1, 1988; Recodified from 25 NCAC 01D .0515 Eff. December 29, 2003; Amended Eff. November 1, 2011; February 1, 2007.*

**25 NCAC 01H .0905 OFFICE OF STATE PERSONNEL RESPONSIBILITIES**

(a) The Office of State Personnel shall maintain a list of employees notified of reduction in force that will serve as a reference for agencies in applying priority consideration reemployment.

(b) The Office of State Personnel shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.

*History Note: Authority G.S. 126-4(6), (10); Eff. March 1, 1987; Recodified from 25 NCAC 01D .0516 Eff. December 29, 2003; Amended Eff. November 1, 2011; February 1, 2007.*

**25 NCAC 01H .1003      AGENCY AND EMPLOYEE  
RESPONSIBILITIES**

- (a) The employing agency shall inform the employee of the priority consideration to be afforded.
- (b) The Agency shall notify the Office of State Personnel when:
- (1) an employee is officially notified of reduction in force;
  - (2) an eligible employee accepts a position that satisfies the priority consideration;
  - (3) an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or
  - (4) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

*History Note: Authority G.S. 126-4(6),(10);  
Eff. February 1, 2007;  
Amended Eff. November 1, 2011.*

**25 NCAC 01H .1004      OFFICE OF STATE  
PERSONNEL RESPONSIBILITIES**

- (a) The Office of State Personnel shall maintain a list of employees that will serve as a reference for agencies in applying priority reemployment.
- (b) The Office of State Personnel shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.

*History Note: Authority G.S. 126-4(6),(10);  
Eff. February 1, 2007;  
Amended Eff. November 1, 2011.*

**25 NCAC 01N .0602      POLICY**

It is the policy of the State to assist working mothers who are nursing children during their transition back to work following the birth or adoption of a child by providing lactation support. A lactation support program allows a nursing mother to express breast milk periodically during the work day.

*History Note: Authority G.S. 126-4(6),(10);  
Eff. January 1, 2011;  
Amended Eff. November 1, 2011.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday December 15, 2011 10:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Addison Bell  
Margaret Currin  
Pete Osborne  
Bob Rippy  
Faylene Whitaker

**Appointed by House**

Ralph A. Walker  
Curtis Venable  
George Lucier  
Garth K. Dunklin  
Stephanie Simpson

**COMMISSION COUNSEL**

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

**RULES REVIEW COMMISSION MEETING DATES**

December 15, 2011      January 19, 2012  
February 16, 2011      March 15, 2012

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**AGENDA**

**RULES REVIEW COMMISSION**

**Thursday, December 15, 2011 10:00 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. Child Care Commission – 10A NCAC 09 .0102, .2819, .2820, .2822 (DeLuca)
  - B. Social Services Commission – 10A NCAC 10 .0203 (Bryan)
  - C. Board of Examiners for Plumbing, Heating and Fire Sprinkler Contractors – 21 NCAC 50 .0107, .0301, .0306, .0505, .0516, .1401 (Bryan)
  - D. Building Code Council – 2012 Fuel Gas Code - 311 (DeLuca)
  - E. Building Code Council – 2012 Mechanical Code – 313 (DeLuca)
  - F. Building Code Council – 2012 Plumbing Code – 315 (DeLuca)
  - G. Building Code Council – 2009 Residential Code – 313.1 (DeLuca)
  - H. Building Code Council – 2012 Residential Code – 315 (DeLuca)
- V. Review of Log of Filings (Permanent Rules) for rules filed between October 21, 2011 and November 21, 2011
- VI. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VII. Commission Business
  - Next meeting: January 19, 2012

**Commission Review  
Log of Permanent Rule Filings  
October 21, 2011 through November 21, 2011**

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

The rules in Chapter 14 are from the Director of the Division of Health Service Regulation.

The rules in Subchapter 14A concern rulemaking (.0100); contested cases (.0200); and hearings, transfers and discharges (.0300).

<u>Rulemaking Procedures</u> Amend/*	10A NCAC 14A .0102
<u>Request for Determination</u> Amend/*	10A NCAC 14A .0202
<u>Initiating a Hearing</u> Amend/*	10A NCAC 14A .0303
<u>Notice of Hearing</u> Amend/*	10A NCAC 14A .0304

**MENTAL HEALTH, COMMISSION FOR**

The rules in Chapter 26 are general mental health rules.

The rules in Subchapter 26E concern the manufacture, distribution, and dispensing of controlled substances including general provisions and registration (.0100); labeling, packaging, and record keeping (.0200); prescriptions (.0300); some miscellaneous provisions (.0400); administrative functions, practices, and procedures (.0500); and controlled substance reporting system (.0600).

<u>Requirements for Transmission of Data</u> Amend/*	10A NCAC 26E .0603
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**WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Wildlife Taken for Depredations or Accidentally</u> Amend/*	15A NCAC 10B .0106
<u>Dog Training and Field Trials</u> Amend/*	15A NCAC 10B .0114
<u>Prohibited Taking and Manner of Take</u> Amend/*	15A NCAC 10B .0201
<u>Bear</u> Amend/*	15A NCAC 10B .0202
<u>Deer (White Tailed)</u> Amend/*	15A NCAC 10B .0203
<u>Crows</u> Amend/*	15A NCAC 10B .0215
<u>Falconry</u> Amend/*	15A NCAC 10B .0216
<u>Coyote</u> Amend/*	15A NCAC 10B .0219

<u>Feral Swine</u> Adopt/*	15A NCAC 10B .0223
<p>The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).</p>	
<u>Public Mountain Trout Waters</u> Amend/*	15A NCAC 10C .0205
<u>Open Seasons: Creel and Size Limits</u> Amend/*	15A NCAC 10C .0305
<u>Open Seasons: Creel and Size Limits</u> Amend/*	15A NCAC 10C .0305
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u> Amend/*	15A NCAC 10C .0401
<u>Special Device Fishing</u> Amend/*	15A NCAC 10C .0404
<p>The rules in Subchapter 10D are game lands rules.</p>	
<u>General Regulations Regarding Use</u> Amend/*	15A NCAC 10D .0102
<u>Hunting On Game Lands</u> Amend/*	15A NCAC 10D .0103
<u>Possession and Removal of Animals, Plants and Materials</u> Adopt/*	15A NCAC 10D .0105
<p>The rules in Subchapter 10E concern fishing and boating access areas.</p>	
<u>Use of Areas Regulated</u> Amend/*	15A NCAC 10E .0104
<p>The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).</p>	
<u>Hyde County</u> Amend/*	15A NCAC 10F .0313
<u>Davidson County</u> Amend/*	15A NCAC 10F .0324
<p>The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).</p>	
<u>Definitions</u> Amend/*	15A NCAC 10H .0801
<u>Permit and License Requirements</u> Amend/*	15A NCAC 10H .0802
<u>Application for License Requirements</u> Amend/*	15A NCAC 10H .0803
<u>Examination</u> Amend/*	15A NCAC 10H .0804

<u>Duration of License</u> Amend/*	15A NCAC 10H .0805
<u>Acquisition, Sale and Status Change</u> Amend/*	15A NCAC 10H .0806
<u>Levels of Licenses</u> Amend/*	15A NCAC 10H .0807
<u>Facilities and Equipment</u> Amend/*	15A NCAC 10H .0808
<u>Marking</u> Amend/*	15A NCAC 10H .0809
<u>Taking Raptors</u> Amend/*	15A NCAC 10H .0810
<u>Other Restrictions and Conditions</u> Amend/*	15A NCAC 10H .0811
<u>Interstate Transportation</u> Amend/*	15A NCAC 10H .0812
<u>Raptor Propagation Permit</u> Repeal/*	15A NCAC 10H .0813
<u>Release of Raptors or Moved to Other Permit</u> Adopt/*	15A NCAC 10H .0814
<u>Other Uses and Allowed Activities</u> Adopt/*	15A NCAC 10H .0815

The rules in Subchapter 10I concern endangered and threatened species.

<u>Protection of Endangered/Threatened/Special Concern</u> Amend/*	15A NCAC 10I .0102
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The rules in Subchapter 10J cover wildlife conservation areas.

<u>General Regulations Regarding Use of Conservation Areas</u> Amend/*	15A NCAC 10J .0102
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**COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14T concern cosmetic art schools including scope and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curriculum (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>Scope</u> Adopt/*	21 NCAC 14T .0101
<u>New School Applications</u> Adopt/*	21 NCAC 14T .0102
<u>All Cosmetic Art Schools</u> Adopt/*	21 NCAC 14T .0201
<u>Cosmetology Schools</u> Adopt/*	21 NCAC 14T .0202
<u>Esthetics Schools</u> Adopt/*	21 NCAC 14T .0203
<u>Manicuring Schools</u> Adopt/*	21 NCAC 14T .0204
<u>Natural Hair Care Schools</u> Adopt/*	21 NCAC 14T .0205

<u>Equipment for All Cosmetic Art Schools</u> Adopt/*	21	NCAC	14T	.0301
<u>Equipment for Cosmetology Schools</u> Adopt/*	21	NCAC	14T	.0302
<u>Equipment for Esthetics Schools</u> Adopt/*	21	NCAC	14T	.0303
<u>Equipment for Manicuring Schools</u> Adopt/*	21	NCAC	14T	.0304
<u>Equipment for Natural Hair Care Styling Schools</u> Adopt/*	21	NCAC	14T	.0305
<u>Cosmetology and Apprentice Student Equipment</u> Adopt/*	21	NCAC	14T	.0401
<u>Esthetics Student Equipment</u> Adopt/*	21	NCAC	14T	.0402
<u>Manicuring Student Equipment</u> Adopt/*	21	NCAC	14T	.0403
<u>Natural Hair Care Styling Student Equipment</u> Adopt/*	21	NCAC	14T	.0404
<u>Submission of Records</u> Adopt/*	21	NCAC	14T	.0501
<u>Permanent Records, Forms and Documentation</u> Adopt/*	21	NCAC	14T	.0502
<u>Cosmetic Art Curriculum</u> Adopt/*	21	NCAC	14T	.0601
<u>Cosmetology Curriculum</u> Adopt/*	21	NCAC	14T	.0602
<u>Apprentice Cosmetology Curriculum</u> Adopt/*	21	NCAC	14T	.0603
<u>Esthetics Curriculum</u> Adopt/*	21	NCAC	14T	.0604
<u>Manicuring Curriculum</u> Adopt/*	21	NCAC	14T	.0605
<u>Natural Hair Care Styling Curriculum</u> Adopt/*	21	NCAC	14T	.0606
<u>Cosmetology Teacher Trainee Curriculum</u> Adopt/*	21	NCAC	14T	.0607
<u>Esthetic Teacher Trainee Curriculum</u> Adopt/*	21	NCAC	14T	.0608
<u>Manicurist Teacher Trainee Curriculum</u> Adopt/*	21	NCAC	14T	.0609
<u>Natural Hair Care Teacher Curriculum</u> Adopt/*	21	NCAC	14T	.0610
<u>Online Instruction</u> Adopt/*	21	NCAC	14T	.0611
<u>Instruction Guidelines</u> Adopt/*	21	NCAC	14T	.0612
<u>Uniforms and Identification</u> Adopt/*	21	NCAC	14T	.0613
<u>Internships</u> Adopt/*	21	NCAC	14T	.0614
<u>Field Trips</u> Adopt/*	21	NCAC	14T	.0615



<u>Additional Hours</u> Adopt/*	21	NCAC	14T	.0616
<u>Teacher Trainees</u> Adopt/*	21	NCAC	14T	.0617
<u>School Operations/Licensure Maintenance</u> Adopt/*	21	NCAC	14T	.0701
<u>Transfer of Credit</u> Adopt/*	21	NCAC	14T	.0702
<u>Expiration of Student Credit</u> Adopt/*	21	NCAC	14T	.0703
<u>Felony Applicants</u> Adopt/*	21	NCAC	14T	.0704
<u>School Performance Requirements</u> Adopt/*	21	NCAC	14T	.0705
<u>School Approval Changes and School Closing</u> Adopt/*	21	NCAC	14T	.0706
<u>Inspection Reports</u> Adopt/*	21	NCAC	14T	.0801
<u>School Sanitation Grades</u> Adopt/*	21	NCAC	14T	.0802
<u>School Inspections</u> Adopt/*	21	NCAC	14T	.0803
<u>School Probation</u> Adopt/*	21	NCAC	14T	.0901

**MEDICAL BOARD**

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32B concern license to practice medicine including general provisions (.0100); license by written examination (.0200); license by endorsement (.0300); temporary license by endorsement of credentials (.0400); resident's training license (.0500); special limited license (.0600); certificate of registration for visiting professors (.0700); medical school facility license (.0800); special volunteer license (.0900) prescribing (.1000); reactivation of full license (.1100); reinstatement of full license (.1200); general (.1300); resident's training license (.1400); and faculty limited license (.1500).

<u>Application for Physician License</u> Amend/*	21	NCAC	32B	.1303
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The rules in Subchapter 32C concern professional corporations.

<u>Name of Corporation</u> Amend/*	21	NCAC	32C	.0102
<u>Prerequisites for Incorporation</u> Amend/*	21	NCAC	32C	.0103
<u>Certification of Registration</u> Amend/*	21	NCAC	32C	.0104
<u>Stock and Financial Matters</u> Amend/*	21	NCAC	32C	.0105
<u>Charter Amendments and Stock Transfers</u> Amend/*	21	NCAC	32C	.0106
<u>Documents</u> Repeal/*	21	NCAC	32C	.0107
<u>Fees</u>	21	NCAC	32C	.0108

Amend/\*

Registration of Foreign Professional Corporation

21 NCAC 32C .0109

Adopt/\*

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**CONTESTED CASE DECISIONS**

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

Randall May  
A. B. Elkins II  
Joe Webster

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
ABC Commission v. TruVisions Enterprises, LLC, T/A Touch	10 ABC 7025	06/29/11	26:06 NCR 509
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
ABC Commission v. Quick Quality Inc., T/A Quick Quality	11 ABC 2543	07/19/11	
ABC Commission v. Lead C. Corp v. T/A Burger King/Shell Convenience Store	11 ABC 5066	10/19/11	
ABC Commission v. GK Mart Inc., T/A GK Mart	11 ABC 02647	07/22/11	
ABC Commission v. Triangle Food and Fun LLC, T/A Six Forks Pub	11 ABC 07107	09/16/11	
ABC Commission v. CH Pub LLC, T/A Kildares Irish Pub	11 ABC 07109	08/16/11	
<b><u>BOARD OF MASSAGE AND BODYWORK THERAPY</u></b>			
Byung Yoon Kim v. Board of Massage and Bodywork Therapy	11 BMT 09241	09/30/11	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
Donnie R. Holbrook, Susan R Holbrook v. Victim and Justice Service	09 CPS 0449	08/19/11	
Felicia G. Awaritoma v. Crime Victims Compensation Commission	10 CPS 01451	09/01/11	
Larry Overby v. Department of Crime Control Victim Compensation Division	10 CPS 06106	10/14/11	
Dianne Moody Costello v. Victim and Justice Services	11 CPS 05780	06/20/11	
Rosalena Merriam v. Victims Compensation	11 CPS 09780	09/19/11	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
Scott M. Jensen, DMD v. DHHS, Division of Medical Assistance	09 DHR 3252	06/21/11	
Association of Home and Hospice Care of North Carolina, Inc., v. DMA, DHHS	09 DHR 6765	10/12/11	
Patricia Anne Edwards v. DHHS, Division of Child Development	10 DHR 0292	06/06/11	
Marchell Gunter, The Home of Marchell F Gunter v. DHHS	10 DHR 0557	06/03/11	
Qingxia Chen and Chen Family Child Care Home Inc v. Division of Child Development	10 DHR 0790	07/29/11	
Theracare Home Health and Staffing, LLC v. DHHS, Division of Medical Assistance Program Integrity	10 DHR 1455	06/01/11	
Brenda P Simms v. Longleaf Neuromedical Treatment Center, Dept. of Health and Human Services	10 DHR 01572	10/14/11	
Ronnie Newton v. DHHS, Division of Health Service Regulation	10 DHR 2172	08/22/11	
Alternative Life Programs, Inc. Marchell F Gunter v. DHHS	10 DHR 3583	06/03/11	
Carolyn Rucker v. DHHS, Division of Medical Assistance	10 DHR 3717	05/19/11	
Qingxia Chen and Chen Family Child Care Home Inc v. Division of Child Development	10 DHR 4182	07/29/11	
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc, d/b/a Rex Healthcare, Holly Springs Surgery Center, LLC and Novant Health, Inc	10 DHR 5274	05/17/11	26:04 NCR 274
Rex Hospital Inc d/b/a Rex Healthcare v. DHHS, Division of Health Service Regulation, CON Section And WakeMed, Springs Surgery Center, LLC and Novant Health, Inc	10 DHR 5275	05/17/11	26:04 NCR 274
Angela Mackey v. DHHS, Division of Health Service Regulation	10 DHR 5499	06/01/11	
Cynthia Dawn Sloope v. DHHS	10 DHR 5500	06/07/11	
Carteret Family Practice Clinic, P.A., v. DHHS, DMA, Program Integrity Section	10 DHR 5859	07/13/11	26:06 NCR 516
Alternative Life Programs, Inc. Marchell F Gunter	10 DHR 6204	06/03/11	

**CONTESTED CASE DECISIONS**

Cherie L Russell v. DHHS, Division of Health Services Regulation	10 DHR 6240	05/17/11	
Grover L. Hunt v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	10 DHR 6710	05/25/11	
Christopher Sanders v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	10 DHR 7511	06/23/11	
Raymond Taylor Mabe Jr. v. OAH, Debbie Odette/Glana Surles	10 DHR 8094	05/26/11	
Shanta M. Collins v. DHHS, Division of Health Service Regulation	10 DHR 8444	06/22/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 8735	07/08/11	
Randall Ephraim v. DHHS, Division of Health Service Regulation	10 DHR 9278	09/12/11	
Coretta Francine Hicks v. Health Care Registry	10 DHR 01065	08/19/11	
Marcell Gunter, Alternative Life Programs Inc. v. DHHS, Durham Center LME and DMA (CSCEVC NC Medicaid Provider)	10 DHR 03827	06/23/11	
Revonda McCluney Smith v. DHHS, Division of Health Service Regulation	10 DHR 04755	09/29/11	
American Human Services Inc, v. DHHS, Division of Medical Assistance	10 DHR 05575	08/19/11	26:06 NCR 540
Chera L Dargan v. Department of Health and Human Services Registry	10 DHR 05796	09/01/11	
Gwendolyn Fox, Trinity III v. DMA Program Integrity DMA Controller's Section	10 DHR 06499	09/01/11	
Carter Behavior Health Services Inc. Terry Speller v. DMA/Program Integrity	10 DHR 06715	10/14/11	
WakeMed v. DHHS, Division of Health Service Regulation, CON Section	10 DHR 08008	08/19/11	26:08 NCR 705
Terry Melvin v. Health Care Personnel Registry	10 DHR 08545	10/26/11	
Edna Lee v. DHHS, Division of Health Service Regulation	10 DHR 08938	07/22/11	
Yolanda M. Brown v. Health Care Registry Personnel	10 DHR 09708	07/14/11	
James L. Graham v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	11 DHR 0303	06/28/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 0691	07/08/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 0762	07/08/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 0763	07/08/11	
Angela Clark v. DHHS	11 DHR 1565	06/03/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	11 DHR 2021	07/08/11	
April G. Cooper v. Edgecombe County, Dept. of Social Services (DHHS) Food Stamps	11 DHR 2146	06/15/11	
Patricia Anne Edwards v. DHHS, Division of Child Development	11 DHR 2149	06/06/11	
Nicole Shante McGee v. DHHS, Division of Facility Services, Health Care Personnel	11 DHR 2355	08/08/11	
Demetrius L. Brooks v. DHHS, Division of Health Service Regulation	11 DHR 2441	06/30/11	
Koisey Lorlu Dahn v. DHHS, Division of Health Service Regulation	11 DHR 2443	09/08/11	
Danielle Whitman v. DHHS	11 DHR 2709	08/08/11	
Cyonna Hallums v. DHHS, Healthcare Registry	11 DHR 2858	06/30/11	
Angela L. Jordan v. DHHS, Division of Health Service Regulation	11 DHR 2920	06/30/11	
Creative Hands Occupational Therapy v. Susan Olmschenk v. Office of Administrative Hearings	11 DHR 2924	06/10/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2990	05/27/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2993	05/27/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2994	05/27/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2995	05/27/11	
Daphne Davis v. DHHS, Division of Facility Services, Health Care Personnel Registry	11 DHR 3110	07/13/11	
Hee Soon Kwon d/b/a Beatties Ford Mart v. DHHS	11 DHR 3168	07/18/11	
Nellie v. Mitchell, Little Lamb's Daycare v. DHHS, Division of Child Development	11 DHR 3391	06/13/11	
Yolanda McKinnon v. DHHS, Division of Child Development	11 DHR 4117	06/09/11	
Kenneth Dellinger Executive Office KD Support Services d/b/a Kellys Care #5 v. DHHS, Division of Health Care Service Regulation Adult Care Licensure Section	11 DHR 4755	07/14/11	
Amy Robinson v. DHHS, Division of Facility Services	11 DHR 4758	07/27/11	
Angelicia Linney v. Alexander County DSS	11 DHR 4965	06/21/11	
Robin Whistsett-Crite/RJ Whistsett Residential Services v. DHHS	11 DHR 5146	07/12/11	
Kathy Daniels v. CNS Registry	11 DHR 6318	08/04/11	
Calvin E. Cowan, Shirley Cowan v. DHHS	11 DHR 6880	08/16/11	
Melody Barnette v. Department of Social Services	11 DHR 7330	09/06/11	
Samuel Swindell v. DHHS, Regulatory and Licensing Section and Alexander Youth Network	11 DHR 8314	08/22/11	
Joyce Muhammad v. DHHS	11 DHR 00198	07/11/11	
Support Staff v. DHHS, Division of Medical Assistance	11 DHR 01449	07/11/11	
Pamela Terry – President/Administrator PALS-Magnolia v. DHHS, Division of Health Service Regulation Mental Health Licensure & Certification Section	11 DHR 01952	09/06/11	
Maithily H Patel v. Nutrition Service Branch, DHHS	11 DHR 02144	06/30/11	
Kishja Marlin v. DHHS	11 DHR 03313	07/07/11	
Wonne Mills v. Department of Social Services/Fraud Department, Office of Administrative Hearings	11 DHR 03389	06/27/11	
Beau A. Davis v. DHHS	11 DHR 03691	06/20/11	
Edna Lee v. DHHS, Division of Health Service Regulation	11 DHR 03836	07/22/11	
Bertha's Place Inc, Wayne Louis Garris v. Mecklenburg County LME	11 DHR 04186	06/17/11	
Crystal Lashay Eason v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	11 DHR 04473	08/12/11	
Nicole McGee v. Health Care Personnel Registry	11 DHR 04475	06/17/11	
Nyanga G. (Godee) Lumumba v. DHHS	11 DHR 01387	06/24/11	
Nyanga G. (Godee) Lumumba v. DHHS	11 DHR 01913	06/24/11	
Dondra R. Sugg v. Carteret County Social Services Food Stamp	11 DHR 04958	07/15/11	

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**CONTESTED CASE DECISIONS**

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Stepping Stones Group Homes Inc v. DHHS, Division Of Health Service Regulation Mental Health Licensure and Certification	11 DHR 05068	07/19/11
Leslie Cowans v. DHHS, Division of Health Services Regulation	11 DHR 05426	09/08/11
Janet K Wallace v. DHHS, Division of Health Service Regulation	11 DHR 05517	10/11/11
Jerris McPhail v. Department of Health and Human Services	11 DHR 05518	07/19/11
Cynthia Neely v. Dept. of Social Services	11 DHR 05786	07/28/11
Tonya Monique Little v. Health Care Personnel Registry	11 DHR 06066	10/04/11
Bobby F Huskey v. Dept. of Health and Human Service Division Health Service Regulation	11 DHR 06238	08/04/11
Silverette Denise Swindell v. DHHS	11 DHR 06429	08/11/11
Recovery Center of Durham v. Division of Health Service Regulation	11 DHR 06491	09/15/11
Sandra Grace and Making Changes, Inc., v. The Beacon Center and DHHS	11 DHR 06792	08/26/11
Comprehensive Rehab of Wilson Inc. Eileen R Carter v. Office of Controller DMA-Accounts Receivable, Rheba C Heggs	11 DHR 07331	08/18/11
Darnell Holman v. DHHS, Division of Health Service Regulation	11 DHR 07856	09/23/11
Teresa Slye v. DHHS, Office of the Chief Medical Examiner	11 DHR 07858	08/19/11
Nicole Jackson v. DHHS, Division of Health Service Regulation	11 DHR 08103	08/22/11
Tony Ledwell v. DHHS, Division of Health Service Regulation	11 DHR 08158	08/31/11
Kevin Warren v. Health Care Personnel Registry	11 DHR 08552	08/23/11
Annette Adams v. DHHS, Division of Health Service Regulation	11 DHR 08897	09/19/11
Robin R Chavis v. Division of Child Development, DHHS	11 DHR 08932	10/14/11
Carson Daycare, Brenda Carson v. Division of Child Development – DHHS	11 DHR 09030	09/23/11
Sherry Marie Jones v. Health Care Personnel Registry HCPR Investigations Branch	11 DHR 09146	09/29/11
Family Intervention & Prevention Services LLC, a North Carolina limited liability company	11 DHR 09243	08/05/11
Audrey A Crawford v. DHHS	11 DHR 09308	09/09/11
Hope Mills v. DHHS, Health Services Regulation	11 DHR 10738	10/11/11

**DEPARTMENT OF CORRECTION**

Andria Lambert v. DOC	10 DOC 3417	08/11/11
Robert Lee Hood v. DOC	11 DOC 7655	08/16/11
John Channon Engle v. Department of Correction	11 DOC 07333	07/11/11

**DEPARTMENT OF JUSTICE**

Timothy Scott Phillips v. Criminal Justice Education and Training Standards Commission	10 DOJ 2518	07/20/11
Aaron R Taylor v. Company Police Program	10 DOJ 5356	05/27/11
Dustin Clark v. Department of Justice, Company Police Program	10 DOJ 5877	05/24/11
Travis Mark Caskey v. Sheriffs' Education and Training Standards Commission	10 DOJ 6966	06/02/11
John Patrick Harris v. Sheriffs' Education and Training Standards Commission	10 DOJ 7772	07/21/11
Robert Scott MacFayden v. Sheriffs' Education and Training Standards Commission	10 DOJ 7773	06/01/11
Thomas Lee Midgette v. Criminal Justice Education and Training Standards Commission	10 DOJ 07778	10/14/11
Ikeisha Simone Jacobs v. Criminal Justice Education and Training Standards Commission	10 DOJ 07780	07/15/11
Edwards Lee Bombria, IV v. Sheriffs' Education and Training Standards Commission	10 DOJ 08360	07/14/11
Clifford Allan Jones v. Sheriffs' Education and Training Standards Commission	11 DOJ 2018	06/28/11
Richard Alan Hadley v. Sheriffs' Education and Training Standards Commission	11 DOJ 2019	07/28/11
Kristopher Adam Vance v. Sheriffs' Education and Training Standards Commission	11 DOJ 2020	07/21/11
Jason Timothy Winters v. Sheriffs' Education and Training Standards Commission	11 DOJ 4825	07/28/11
James Robert Graham v. Private Protective Services Board	11 DOJ 4956	09/09/11
Heath Dwayne Kinney v. Alarm Systems Licensing Board	11 DOJ 4957	06/28/11
Eric Steven Britt v. Alarm Systems Licensing Board	11 DOJ 5515	07/21/11
Darren Jay Taylor v. Alarm Systems Licensing Board	11 DOJ 5516	07/21/11
William Edgard Whidbee v. Sheriffs' Education and Training Standards Commission	11 DOJ 6778	09/03/11
Laduan Vinyah Jacobs v. Private Protective Services Board	11 DOJ 7650	07/21/11
Glen Thomas Buckner v. Alarm Systems Licensing Board	11 DOJ 8429	09/09/11
Charles William Evegane v. Sheriffs' Education and Training Standards Commission	11 DOJ 02016	06/03/11
Darius Antuan McLean v. Sheriffs' Education and Training Standards Commission	11 DOJ 04824	07/11/11
Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission	11 DOJ 04832	08/30/11
Drew Wayne Adkins v. Sheriffs' Education and Training Standards Commission	11 DOJ 06780	08/15/11
Robert Wayne Gregg v. Criminal Justice Education and Training Standards Commission	11 DOJ 06787	08/04/11
Gary Richard Sessons v. Criminal Justice Education and Training Standards Commission	11 DOJ 06790	08/30/11
Miriam A. Pearson v. DOJ, Campus Police Program	11 DOJ 07218	10/20/11
Rodney Dale; Class (John Doe) Health Taylor Gerard v. State of North Carolina, Department of Justice, Charlotte Mecklenburg Police Department, Mecklenburg County Superior Court, Mecklenburg County Sheriffs' Office, Mecklenburg County Attorney's Office	11 DOJ 09708	08/10/11
Dustin Matthew James v. Criminal Justice Education and Training Standards Commission	11 DOJ 10314	10/31/11
David Lee Putman v. Criminal Justice Education and Training Standards Commission	11 DOJ 10321	10/26/11

**DEPARTMENT OF LABOR**

Hilliard Glass Company, Inc v. Department of Labor, Wage and Hour Bureau	11 DOL 07329	07/15/11
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**DEPARTMENT OF STATE TREASURER**

Malcolm Woodall v. Department of State Treasurer, Retirement Systems Division	10 DST 6343	09/01/11
Edwinna Sexton v. DST, Retirement Systems Divisions	10 DST 02710	10/23/11

**STATE BOARD OF EDUCATION**

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**CONTESTED CASE DECISIONS**

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Jeffery Covington v. State Board of Education	10 EDC 7273	06/21/11	
Joseph Dawson v. State Board of Education	10 EDC 06744	07/25/11	
Charla Ann Lewallen v. State Board of Education	11 EDC 04191	07/20/11	
Janice Lucille Muse v. Public Schools of North Carolina State Board of Education, Department of Public Instruction	11 EDC 08155	07/19/11	
Stephanie Alina Sossamon v. Dept. of Public Instruction	11 EDC 08431	07/19/11	
<b><u>DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES</u></b>			
Superior Realty, LLC v. DENR	09 EHR 6631	06/10/11	
Floyd A. Rager, Jr., and Marianne Rager v. Cherokee Co. Health Department, DENR	10 EHR 6163	07/20/11	
Farmington Square LLC, Jawahar Muniyandi v. City of Raleigh Stormwater Management	10 EHR 01613	07/14/11	
Kevan Busik v. DENR, Division of Coastal Management and 1118 Longwood Avenue, Realty Corporation	10 EHR 08355	06/01/11	26:05 NCR 427
Jeff Snavelly/Triad Siteworks Inc v. NCDENR	11 EHR 2475	06/06/11	
Mary Louies Haggins v. Environmental Service, Terra Jane Barnhill	11 EHR 03694	07/21/11	
Jeryl D Jones v. DENR	11 EHR 04312	08/31/11	
Chris & Mary Ricksen v. Swain County Health Department, DENR	11 EHR 05427	08/05/11	
Carolyn Grayson Owens and Guy Owens	11 EHR 11866	10/04/11	
<b>DEPARTMENT OF INSURANCE</b>			
Janet McKillop v. Blue Cross Blue Shield of, State Health Plan	11 INS 2711	08/04/11	
<b><u>OFFICE OF STATE PERSONNEL</u></b>			
Lewis Ray Murray v. NCSU	09 OSP 00570	08/30/11	
Sandra J. Barile v. Dare County Department of Social Services	10 OSP 0469	07/11/11	
Vlzdimir Zaytsev v. DENR	10 OSP 0905	07/13/11	
Gary W. Buchanan v. DOC	10 OSP 3181	07/15/11	
Mary Bach v. Gaston County DSS	10 OSP 3419	06/23/11	
Daniel Wayne Creson v. DOC	10 OSP 4113	06/16/11	
Robert Lindsey v. Department of Correction	10 OSP 5362	07/05/11	
Beverly M. Terry v. County of Durham, Department of Social Services	10 OSP 5765	07/26/11	26:06 NCR 526
Christopher Sanders v. DHHS	10 OSP 5943	06/23/11	
Katherine Kwesell Harris v. DOT, Retirement of Systems Division	11 OSP 5946	08/24/11	
Charlotte Boyd v. DOT	10 OSP 6533	06/17/11	
Denise Mclean v. DOC	10 OSP 8549	08/01/11	
Earlene F. Hicks v. State Health Plan	10 OSP 06200	09/19/11	
Cynthia White v. School of Science and Math	10 OSP 06491	07/21/11	
Shelia A. Hawley v. DOC, EEO/Title VII Section	10 OSP 07698	10/28/11	
Barbara Jenkins v. Department of Commerce/NCIC	10 OSP 08215	08/15/11	
Reginald Lyons v. Fayetteville State University	11 OSP 0510	08/19/11	
Melissa A McLean v. Ms. Gerri Robinson, MSW Social Services Director, Durham County, Dept. of Social Services	11 OSP 1379	06/03/11	
Vickie D. Randleman v. NCSU	11 OSP 3838	06/09/11	
Mary K. Severt v. Iredell Dept. of Social Services	11 OSP 4757	06/27/11	
Carol Ann Melton v. Allen Reed Rutherford Correctional Center	11 OSP 5143	07/14/11	
Dr. Arlise McKinney v. UNC at Greensboro	11 OSP 6163	07/14/11	
Olewole Popoola v. DHHS, Dorothea Dix Hospital	11 OSP 9962	10/04/10	
Lynnette Cole v. Davidson County	11 OSP 10019	07/26/11	
Henry Dennis Tysor III v. Dept. of Corrections, Fountain Corrections	11 OSP 02643	07/12/11	
Jessie M Chambers v. Brown Creek Correctional Institution	11 OSP 03747	06/23/11	
David Wesley Vondiford v. DOT	11 OSP 04954	07/29/11	
Kennedy Willams v. UNC Charlotte	11 OSP 06901	10/26/11	
Tiffany Lashanda Elkerson v. RJ Blackley ADATC	11 OSP 08106	10/07/11	
Kimberly B. Allison v. Office of Administrative Office of the Courts	11 OSP 08847	08/15/11	
<b><u>OFFICE OF SECRETARY OF STATE</u></b>			
Husayn Ali Bey v. Department of Secretary of State	10 SOS 09195	06/28/11	
Christopher R. Eakin v. Department of Secretary of State	11 SOS 0139	06/08/11	
<b>UNC HOSPITALS</b>			
Elizabeth Pate v. UNC Hospital Systems	11 UNC 06879	08/31/11	
Linda K Shaw v. UNC Hospitals	11 UNC 09432	09/30/11	