

The **NORTH CAROLINA REGISTER**

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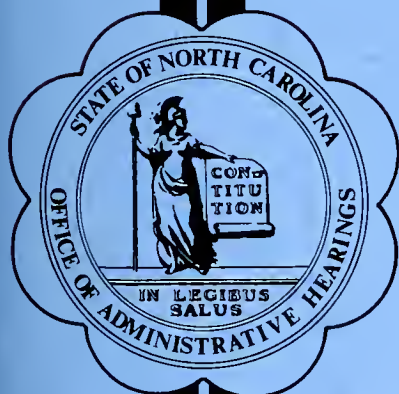
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ISSUE DATE: April 4, 1994

Volume 9 • Issue 1 • Pages 1 - 75



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of
Administrative Hearings, ATTN: Rules Division, P.O.
Drawer 27447, Raleigh, North Carolina 27611-7447, (919)
733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(March 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
8:24	03/15/94	02/22/94	03/01/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
9:12	09/15/94	08/24/94	08/31/94	09/30/94	10/17/94	10/20/94	12/01/94
9:13	10/03/94	09/12/94	09/19/94	10/18/94	11/02/94	11/21/94	01/01/95
9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published 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 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NO. 40
AMENDING EXECUTIVE ORDER NUMBER 9 CONCERNING
THE COMMISSION FOR A COMPETITIVE NORTH CAROLINA**

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

Section 2 of Executive Order Number 9 is hereby amended to read:

Section 2. Membership.

The Commission shall consist of up to 45 members appointed by the Governor. The membership may include representatives of the private sector, the nonprofit sector, local government, and the North Carolina General Assembly.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 21st day of March, 1994.

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

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:DLK:GRS:emr
DJ 166-012-3
94-0086

March 10, 1994

George A. Weaver, Esq.
Lee, Reece & Weaver
P. O. Box 2047
Wilson, North Carolina 27894-2047

Dear Mr. Weaver:

This refers to the realignment of voting precincts in Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 10, 1994.

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

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
POST OFFICE BOX 29535
RALEIGH, NORTH CAROLINA 27626-0535

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL
NPDES PERMITS

Public notice of intent to issue State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater associated with the following activities:

1. NPDES General Permit No. NCG140000 for stormwater point source discharges and rinse waters associated with activities classified as Ready Mixed Concrete [Standard Industrial Classification Code (SIC) 3273]. This General Permit is applicable to stormwater and rinse water discharges from industrial activities at those facilities as described above. Also included in this General Permit are stormwater discharges from those areas at the facilities described above which are used for vehicle maintenance activities.

2. NPDES General Permit No. NCG150000 for stormwater point source discharges associated with activities classified as general aviation Air Transportation [Standard Industrial Classification Code (SIC) 45]. This General Permit is applicable to stormwater discharges from areas where vehicle maintenance, including rehabilitation, mechanical repairs, painting, fueling, and lubrication; equipment cleaning operations or deicing operations are occurring at general aviation facilities. Specifically excluded from coverage under this General Permit are hub airports.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling:

Bill Mills
Water Quality Section
N.C. Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
Telephone (919) 733-5083

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than May 4, 1994. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

The draft Permits, Fact Sheets and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 925-B, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG140000 or NCG150000.

Date: 3/18/94
A. Preston Howard, Jr., P.E., Director
Division of Environmental Management

**TITLE 4 - DEPARTMENT
OF COMMERCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Energy Division, N.C. Department of Commerce intends to amend rule cited as 4 NCAC 12C .0007.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 10:00 a.m. on April 19, 1994 at the Energy Division, NC Dept. of Commerce, Conference Room, Rm. 1151 I, 430 N. Salisbury, Street, Raleigh, NC 27611.

Reason for Proposed Action: To accommodate the changes in the State Plan for Technical Assistance and Energy Conservation Measures: Grant Programs for Schools and Hospitals and for Buildings Owned by Units for Local Government and Public Care Institutions in accordance to the latest revision to Federal Rules and Regulations 10 CFR Part 455.

Comment Procedures: Comments received at the public hearing will be reviewed for inclusion in the North Carolina State Plan. Any interested person or organization may send written comments to the Energy Division, NC Department of Commerce, PO Box 25249, Raleigh, NC 27611, by May 5, 1994. All written comments will become part of the record of the hearing. Any interested person or organization desiring an opportunity to make an oral presentation at the hearing must file a copy of the text of their comments with the Energy Division at the above address prior to the date of the hearing. All oral presentations may be limited as to time at the discretion of the Hearing Officer.

CHAPTER 12 - ENERGY

SUBCHAPTER 12C - ORGANIZATION

**.0007 INSTITUTIONAL CONSERVATION
PROGRAM**

The Department of ~~Economic and Community Development~~ Commerce, Energy Division, has adopted a State Plan for Technical Assistance and Energy Conservation Measures: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care

Institutions, as amended ~~February 7, 1990~~ March 9, 1994, pursuant to Title III of the National Energy Conservation Policy Act of 1978 (Public Law 95-619, 92 Stat. 3206, 42 U.S.C. Section 8201). This State Plan, and any future amendments to this plan are incorporated herein by reference and is adopted in this Rule by reference as if written herein word for word. Copies of the State Plan may be obtained from the Energy Division, North Carolina Department of ~~Economic and Community Development~~ Commerce, Post Office Box 25249, Raleigh, North Carolina 27611.

Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 150B-12; Title III NECPA, P.L. 95-619, 92 Stat. 3206, 42 U.S.C. Section 8201.

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rules cited as 10 NCAC 3E .0101, .0106 - .0107, .0111, .0201 - .0202, .0204 - .0206, .0303 - .0306, and .0309 - .0311.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 2:00 p.m. on April 19, 1994 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Action: To amend abortion rules to bring them in line with nationally recognized standards of practice.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603, by May 4, 1994.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3E - CERTIFICATIONS
OF CLINICS FOR ABORTION**

**SECTION .0100 - CERTIFICATION
PROCEDURE**

.0101 DEFINITIONS

The following definitions will apply throughout this Subchapter: ~~For the purpose of implementing G.S. 14-45.1, a "clinic" is defined as~~

- (1) "Clinic" means a freestanding facility (a facility neither physically attached nor operated by a licensed hospital) for the performance of abortions during the first 20 weeks of pregnancy.
- (2) "Complication" includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration and retained products of conception.
- (3) "Division" means the Division of Facility Services of the North Carolina Department of Human Resources.
- (4) "Fetal age" means the length of pregnancy as indicated by the date of conception.
- (5) "Governing authority" means the individual, agency or group or corporation appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the abortion clinic is vested.
- (6) "New facility" means one that is not certified as an abortion clinic by the Division as of July 1, 1994, and has not been certified within the previous six months of the application for certification.

Statutory Authority G.S. 14-45.1(a).

.0106 APPLICATION

(a) Prior to the admission of patients, an application from the clinic for certification shall be submitted to and approved by the Division of Facility Services.

(b) Application forms may be obtained by contacting the Division of Facility Services.

(c) The application form ~~will~~ shall set forth the ownership, staffing patterns, clinical services to be rendered, professional staff in charge of services, and general information that would be helpful to the Division's understanding ~~fully of~~ the clinic's operating program.

(d) After construction requirements in Section .0200 of this Subchapter have been met and the application for certification has been received and approved, the Division shall conduct an on-site, certification survey.

(e) Each certificate must be renewed at the beginning of each calendar year. The governing authority shall file an application for renewal of certification with the Division at least 30 days

prior to the date of expiration on forms furnished by the Division. Failure to file a renewal application shall result in expiration of the certificate to operate.

Statutory Authority G.S. 14-45.1(a).

.0107 ISSUANCE OF CERTIFICATE

(a) The Division shall issue a certificate if it finds the ~~applicant and facility comply with Sections .0200, .0300 and .0400 of this Subchapter. can:~~

- (1) Comply with all requirements described in this Subchapter; and
- (2) Assure that, in the event that complications arise from the abortion procedure, an OB-GYN board certified or board eligible physician shall be available.

(b) Each certificate shall be issued only for the premises and persons or organizations named in the application and shall not be transferable ~~or assignable except with the written approval of the Division.~~

(c) The governing authority shall notify the Division in writing, within 10 working days, of any change in the name of the facility or change in the name of the administrator.

(d) The facility shall report to the Division all incidents, within 10 working days, of vandalism to the facility such as fires, explosions or other action causing disruption of services.

Statutory Authority G.S. 14-45.1(a).

.0111 INSPECTIONS

(a) The Division shall make ~~or cause to be made~~ such inspections as it may deem necessary.

(b) ~~The Division may delegate to any state officer, agent, board, bureau, division, or section of state government authority to make such inspections as the Division may designate and according to rules and regulations promulgated by the Medical Care Commission. The Division shall have authority to investigate any complaint relative to the care, treatment or complications of any patient.~~

(c) ~~The Division may revoke such delegated authority at its discretion and make its own inspections according to the powers granted hereunder. Representatives of the Division may review any records in any medium necessary to determine compliance with the rules, while maintaining the confidentiality of the complainant and the patient.~~

Statutory Authority G.S. 14-45.1(a).

SECTION .0200 - MINIMUM STANDARDS FOR CONSTRUCTION AND EQUIPMENT

.0201 BUILDING CODE REQUIREMENTS

(a) The physical plant for a clinic facility must meet or exceed minimum requirements of the North Carolina State Building Code for ~~class B-4 construction~~ Group B occupancy (business office facilities) which is incorporated by reference including subsequent amendments. Copies of The North Carolina Building Code, Volume One, General Construction, may be obtained for thirty dollars (\$30.00) from the N.C. Department of Insurance, P.O. 26487, Raleigh, NC 27611.

(b) The requirements contained in Rule .0206 of this Section shall apply only to new facilities and renovations of previously certified facilities.

Statutory Authority G.S. 14-45.1(a).

.0202 SANITATION

Abortion clinics must comply with the rules ~~and regulations~~ governing the sanitation of ~~private~~ hospitals, nursing and rest homes, sanitariums, sanatoriums and educational and other institutions, contained in ~~40 NCAC 10A 15A NCAC 18A .1300~~ 15A NCAC 18A .1300 which is hereby incorporated by reference including subsequent amendments and editions. Copies of 15A NCAC 18A .1300 may be obtained at no charge from the Environmental Health Section, Health Division, N.C. Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

Statutory Authority G.S. 14-45.1(a).

.0204 CORRIDORS

~~Minimum unobstructed width of corridors shall be six feet. The width of corridors shall be sufficient to allow for patient evacuation by stretcher, but in no case shall patient-use corridors be less than 60 inches.~~

Statutory Authority G.S. 14-45.1(a).

.0205 DOORS

Minimum width of doors to all rooms needing access for stretchers shall be three feet. No door shall swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width except doors to spaces such as small closets not subject to occupancy.

Statutory Authority G.S. 14-45.1(a).

.0206 ELEMENTS AND EQUIPMENT

The physical plant shall provide appropriate elements and equipment to carry out ~~safely and adequately~~ the functions of the ~~clinic in conformance with the current standards of medical practice.~~ facility with the following minimum requirements:

(1) Mechanical requirements

(a) Temperatures and humidities:

- (i) The mechanical systems shall be designed to provide the temperature and humidities shown below:

Area	Temperature	Relative Humidity
Procedure	70-76 degrees F.	50-60 %
Recovery	75-80 degrees F.	

- (b) All air supply and exhaust systems for the procedure suite and recovery area shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown herein shall be considered as minimum acceptable rates.

- (i) The ventilation system shall be designed and balanced to provide the pressure relationships shown herein.

- (ii) All air supplied to procedure rooms shall be delivered at or near the ceiling of the room and all exhaust or return from the area shall be removed near the floor level at not less than three inches above the floor.

- (iii) Corridors shall not be used to supply air to or exhaust air from any procedure or recovery room except to maintain required pressure relationships.

- (iv) All ventilation or air conditioning systems serving procedure rooms shall have a minimum of one filter bed with a minimum filter efficiency of 80 percent.

- (v) Ventilation systems serving the procedure or recovery rooms shall not be tied in with the soiled holding or work rooms, janitors' closets or locker rooms if the air is to be recirculated in any manner.

- (vi) Air handling duct systems shall not have duct linings in ducts serving procedure or recovery rooms.

- (vii) The following general air pressure relationships to adjacent areas and ventilation rates shall apply:

<u>Area</u>	<u>Pressure Relationship</u>	<u>Minimum</u>
<u>Air</u>		
<u>Changes/Hour</u>		
<u>Procedure</u>	<u>P</u>	<u>6</u>
<u>Recovery</u>	<u>P</u>	<u>6</u>
<u>Soiled work,</u>		
<u>janitor's closet,</u>		
<u>toilets,</u>		
<u>Soiled holding</u>	<u>N</u>	<u>10</u>
<u>Clean work or</u>		
<u>Clean holding</u>	<u>P</u>	<u>4</u>

(P= positive pressure N = negative pressure)

(2) Plumbing And Other Piping Systems

(a) Medical Gas and Vacuum Systems

(i) Piped-in medical gas and vacuum systems, if installed, shall meet the requirements of NFPA-99-1990, type one system, which is hereby incorporated by reference including subsequent amendments and editions. Copies of NFPA-99-1990 may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, for twenty eight dollars and fifty cents (\$28.50).

(ii) If inhalation anesthesia is used in any concentration, the facility must meet the requirements of NFPA 70-1993 and NFPA 99-1990, current editions relating to inhalation anesthesia, which are hereby incorporated by reference including subsequent amendments and editions. Copies of NFPA 70-1993 and NFPA 99-1990 may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, for thirty two dollars and fifty cents (\$32.50) and twenty eight dollars and fifty cents (\$28.50) respectively.

(b) Lavatories and sinks for use by medical personnel shall have the water supply spout mounted so that its discharge point is a minimum distance of five inches above the rim of the fixture with mixing type fixture valves which can be operated without the use of the hands.

(c) Hot water distribution systems shall provide hot water at hand washing and

bathing facilities at a minimum temperature of 100 degrees F. and a maximum temperature of 116 degrees F.

(d) Floor drains shall not be installed in procedure rooms.

(e) Building drainage and waste systems shall be designed to avoid installations in the ceiling directly above procedure rooms.

(3) Electrical Requirements

(a) Procedure and recovery rooms, and paths of egress from these rooms to the outside shall have at a minimum, listed battery backup lighting units of one and one-half hour capability that will automatically provide at least five foot candles of illumination at the floor in the event of a utility or local lighting circuit failure.

(b) Essential electrically operated medical equipment necessary for the safety of the patient shall have, at a minimum, battery backup.

(c) Receptacles located within six feet of sinks or lavatories shall be ground-fault protected.

(d) Provide at least one wired-in, ionization-type smoke detector within 15 feet of each procedure or recovery room entrance.

(4) Each facility and its grounds shall be maintained to minimize hazards and enhance safety for staff and patients. Buildings systems and medical equipment must have preventative maintenance conducted as recommended by the equipment manufacturers' or installers' literature to assure satisfactory operation.

(5) The requirements contained in Rule .0206 of this Section shall apply only to new facilities and renovations of previously certified facilities.

Statutory Authority G.S. 14-45.1(a).

SECTION .0300 - ADMINISTRATION

.0303 POLICIES AND PROCEDURES

The person in charge of the clinic governing authority shall prepare a manual of clinic policies and procedures for use by employees and medical staff to assist them in understanding their responsibilities within the organizational framework of the clinic. These shall include:

- (1) Patient selection and exclusion criteria, and clinical discharge criteria.
- (2) Policy and procedure for each type of abortion procedure performed at the clinic.
- (3) Protocol for determining fetal age.
- (4) Protocol for referral of patients for whom services have been declined.
- (5) Protocol for discharge instructions that informs patients who to contact for post-procedural emergencies.

Statutory Authority G.S. 14-45.1(a).

.0304 ADMISSION AND DISCHARGE

(a) There shall be on the premises throughout all hours of operation an employee authorized to receive patients and to make administrative decisions on their disposition.

(b) All patients shall be admitted only under the care of a qualified physician who is currently licensed to practice medicine in North Carolina.

(c) Any patient not discharged within 12 hours following the abortion procedure shall be transferred to a general hospital.

(d) ~~The safety and legal rights of all patients shall be insured.~~ The facility shall make available in writing to all patients upon admission the following:

- (1) A fee schedule and any extra charges routinely applied;
- (2) Instructions for post-procedure emergencies;
- (3) Grievance procedures a patient may follow if dissatisfied with the care and services rendered; and
- (4) The telephone number of the Complaints Investigation Branch of the Division.

Statutory Authority G.S. 14-45.1(a).

.0305 MEDICAL RECORDS

(a) A complete and permanent record shall be maintained for all patients including the date and time of admission and discharge, the full and true name, address, date of birth, nearest of kin, diagnoses, duration of pregnancy condition on admission and discharge, referring and attending physician, a witnessed, voluntarily-signed consent for surgery, authenticated history and physical examination including identification of pre-existing or current illnesses, drug sensitivities or other idiosyncrasies having a bearing on the operative procedure or anesthetic to be administered.

(b) All other pertinent information such as pre- and post-operative instructions, ~~counseling~~, laboratory report, drugs administered, report of operation and follow-up instruction including family planning advice shall be recorded and authenticated.

(c) If Rh is negative, the significance shall be explained to the patient and so recorded. The patient in writing may reject or accept the appropriate desensitization material. A written record of the patient's decision shall be a permanent part of her medical record.

(d) An ultrasound examination shall be performed and the results posted in the patient's medical record for any patient whose fetal age is estimated to be 12 weeks or greater and for any patient where there is determined to be a size or date discrepancy.

(e) The facility shall maintain a daily procedure log of all patients receiving abortion services. This log shall contain at least patient name, estimated length of gestation, type of procedure, name of physician, name of RN on duty, and date and time of procedure.

(f) Medical records shall be the property of the facility and shall be preserved or retained for at least 20 years regardless of change of facility ownership or administration. Such medical records shall be made available to the Division upon request and shall not be removed from the premises where they are retained except by subpoena or court order.

(g) The facility shall have a plan for destruction of medical records to identify information to be retained and the manner of destruction to ensure confidentiality of all material.

(h) Should a facility cease operation, arrangements shall be made for preservation of records for at least 20 years. The facility shall notify the Division, in writing, concerning the arrangements.

Statutory Authority G.S. 14-45.1 (a).

.0306 PERSONNEL RECORDS

(a) Application. Each prospective employee must submit an application for employment which ~~provides a sufficient outline of personal background, identification,~~ includes education, training, experience, and references.

(b) ~~Health Examinations.~~ All personnel shall be given a pre-employment physical examination including screening for communicable diseases. The physical examination is to be repeated annually on all personnel. ~~Any person who shows signs of respiratory infection, skin lesions, diarrhea, or~~

~~other communicable diseases shall be excluded from work if, in the judgment of a physician, it is necessary to do so for the protection of patients and others.~~ Job Descriptions:

- (1) The facility shall have a written description which describes the duties of every position.
- (2) Each job description shall include position title, authority, specific responsibilities and minimum qualifications. Qualifications shall include education, training, experience, special abilities and license or certification required.
- (3) The facility shall review annually and update all job descriptions, and shall provide a current copy to each employee assigned to the position.

(c) ~~Records.~~ Records of application and physical examination shall be available for review by the Division. The facility shall provide an orientation program to familiarize each new employee with the facility, its policies and the employee's job responsibilities.

(d) The governing authority shall be responsible for implementing health standards, for employees, which are consistent with recognized professional practices for the prevention and transmission of communicable diseases.

(e) Employee records for health screening, education, training and verification of professional certification shall be available for review by the Division.

Statutory Authority G.S. 14-45.1(a).

.0309 LABORATORY SERVICES

(a) Pre-operative Tests. As a minimum, there shall be performed for each patient the following laboratory tests which must be recorded in the patient's medical record prior to the abortion: ~~hematocrit, RH factor, urinalysis at least by dipstick.~~

- (1) Pregnancy testing, except when a positive diagnosis of pregnancy has been established by ultrasound;
- (2) Anemia testing (hemoglobin or hematocrit); and
- (3) Rh factor testing.

(b) Blood and Blood Products. Those patients requiring the administration of blood shall be transferred immediately to a local hospital having blood bank facilities.

(c) The facility shall have instructions for each test procedure performed, including:

- (1) Sources of reagents, standard and calibration procedures; and
- (2) Information concerning the basis for the listed "normal" ranges.
- (d) The facility shall perform and document, at least quarterly, calibration of equipment and validation of test results.

Statutory Authority G.S. 14-45.1(a).

.0310 EMERGENCY BACK-UP SERVICES

~~An abortion clinic shall provide for emergency back-up services. The facility shall provide intervention for emergency situations. These provisions~~ Provisions shall include but are not limited to:

- (1) A "code blue" (emergency) procedure for clinic personnel; Basic cardio-pulmonary life support;
- (2) Appropriate surgical, anesthetic, resuscitative and other emergency life saving equipment and medications available in the clinic; Emergency protocols for:
 - (a) Venous access supplies,
 - (b) Air-way support and oxygen,
 - (c) Bag-valve mask unit with oxygen reservoir, and
 - (d) Suction machine;
- (3) Emergency lighting available in the operating room; and
- (4) Ultrasound equipment.

Statutory Authority G.S. 14-45.1(a).

.0311 SURGICAL SERVICES

(a) Facilities. The operating room shall be maintained exclusively for surgical procedures and shall be so designed and maintained to provide an atmosphere free of contamination by pathogenic organisms. The facility shall establish procedures for infection control and universal precautions.

(b) Tissue Examination:

- (1) The physician performing the abortion is responsible for examination of all products of conception (P.O.C.) prior to patient discharge. Such examination shall note specifically the presence or absence of chorionic villi and fetal parts or the amniotic sac. The P.O.C. must be weighed and the weight and the results of the examination shall be recorded in the patient's medical record.
- (2) ~~In cases where the gestational age is estimated to be 10 weeks or less or~~

~~fetal parts and chorionic villi or the amniotic sac is not identified by gross examination, a microscopic examination by a board certified or board eligible pathologist must be done on the P.O.C. with the results recorded in the patient's medical record. The facility shall have written procedures, supplies and equipment available for gross and microscopic evaluation of abortion specimens. If placental or fetal tissue is not identified by gross examination, a microscopic examination must be done on the P.O.C. In cases where the microscopic evaluation is negative for chorionic villi and fetal parts, or the weight of the P.O.C. falls substantially below the appropriate weight range for the fetal age, a microscopic examination by a board certified or board eligible pathologist shall be done on the P.O.C.~~

- (3) ~~In cases where the gestational age is estimated to be greater than 10 weeks, the weight of the P.O.C. falls substantially below the appropriate weight range for the gestational age, and chorionic villi and fetal parts or the amniotic sac is not identified by gross examination further examination of the P.O.C., such as microscopic examination, and further evaluation of the patient are required. The results of this examination, the findings of further patient evaluation and any subsequent treatment must be recorded in the patient's medical record.~~
- (4) The facility shall establish procedures for obtaining, identifying, storing and transporting specimens.
- (5) The facility shall establish a method for follow-up of patients on whom no villi are seen.

Statutory Authority G.S. 14-45.1(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Child Day Care Commission intends to amend rules cited as 10 NCAC 3U .0712 - .0713, .2607.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 10:00 a.m. on May 5, 1994 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Action: Change in G.S. 110-91(7).

Comment Procedures: Comments may be presented in writing any time before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Margaret Guess, Division of Child Development, P.O. Box 29553, Raleigh, NC 27626-0553, (919) 733-4801.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

.0712 STAFF/CHILD RATIOS FOR SMALL CENTERS

(a) The staff/child ratios and group sizes for a small day care center are as follows:

Age of Children	No. Children	No. Staff	Group Size
0 to 5 years	6	1	12
1 to 5 years	7	1	14
2 to 5 years	10	1	20

PROPOSED RULES

3 to 5 years	15	1	25
5 years and older	20	1	25

<u>Age of Children</u>	<u>No. Children</u>	<u>No. Staff</u>	<u>Maximum Group Size</u>	<u>No. Staff</u>
0 to 12 Months	5	1	10	2
12 to 24 Months	6	1	12	2
2 to 3 Years	10	1	20	2
3 to 5 Years	15	1	25	2
5 Years and Older	25	1	25	2

(b) When only one caregiver is required to meet the staff/child ratio, and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties which are not direct child care responsibilities.

(c) When only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:

- (1) The center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) There shall be a second adult on the premises who is available to provide emergency relief.

Statutory Authority G.S. 110-91(7); 143B-168.3.

.0713 STAFF/CHILD RATIOS FOR MEDIUM AND LARGE CENTERS

(a) The staff/child ratios and group sizes for single-age groups of children in medium and large day care centers are as follows:

<u>Age of Children</u>	<u>No. Children</u>	<u>No. Staff</u>	<u>Group Size</u>
0 to 1 years	6	1	12
1 to 2 years	7	1	14
2 to 3 years	12	1	24
3 to 4 years	15	1	25
4 to 5 years	20	1	25
5 years and older	25	1	25

<u>Age of Children</u>	<u>No. Children</u>	<u>No. Staff</u>	<u>Maximum Group Size</u>	<u>No. Staff</u>
0 to 12 Months	5	1	10	2
12 to 23 Months	6	1	12	2
2 to 3 Years	10	1	20	2
3 to 4 Years	15	1	25	2
4 to 5 Years	20	1	25	2
5 Years and Older	25	1	25	2

(b) In any multi-age group situation, the staff/child ratio for the youngest child in the group shall be maintained for the entire group.

(c) Children younger than two years old may be cared for in groups with older children at the beginning and end of the operating day provided the staff/child ratio for the youngest child in the group is maintained.

(d) A child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate.

(e) When determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group.

(f) Except as provided in Paragraphs (c) and (d), children under one year of age shall be kept separate from children two years of age and over. Also, children between the ages of 12 months and 24 months shall not be routinely grouped with older children unless all children in the group are less than three years old.

(g) When only one caregiver is required to meet the staff/child ratio, and children under two years of age

are in care, that person may concurrently perform food preparation or other duties which are not direct child care responsibilities as long as supervision of the children as specified in Rule .0714(e) of this Section is maintained.

(h) When only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:

- (1) The center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) There shall be a second adult on the premises who is available to provide emergency relief.

(i) Except as provided in Paragraph (g) of this Rule, staff members and administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not concurrently perform food preparation or other duties which are not direct child care responsibilities.

Statutory Authority G.S. 110-91(7); 143B-168.3.

SECTION .2600 - REQUIREMENTS FOR LARGE DAY CARE HOMES

.2607 STAFF/CHILD RATIOS AND SUPERVISION

(a) The staff/child ratios and group sizes for a large child day care home are as follows:

<u>Age of Children</u>	<u>Number of Children</u>	<u>Number of Staff</u>	<u>Group Size</u>
0 to 4 years	6	1	12

<u>Age of Children</u>	<u>Number of Children</u>	<u>Number of Staff</u>	<u>Group Size</u>
0 to 13 years	8	1	14

~~(No more than three children may be less than 12 months old)~~

<u>Age of Children</u>	<u>Number of Children</u>	<u>Number of Staff</u>	<u>Group Size</u>
2 to 13 years	10	1	14
3 to 13 years	12	1	14
School aged	15	1	17

<u>Age of Children</u>	<u>No. Children</u>	<u>No. Staff</u>	<u>Maximum Group Size</u>	<u>No. Staff</u>
0 to 4 years	<u>5</u>	<u>1</u>	<u>10</u>	<u>2</u>

<u>Age of Children</u>	<u>No. Children</u>	<u>No. Staff</u>	<u>Maximum Group Size</u>	<u>No. Staff</u>
0 to 13 years	<u>5</u>	<u>1</u>	<u>10</u>	<u>2</u>

<u>Age of Children</u>	<u>No. Children</u>	<u>No. Staff</u>	<u>Maximum Group Size</u>	<u>No. Staff</u>
<u>2 to 13 years</u>	<u>10</u>	<u>1</u>	<u>12</u>	<u>2</u>
<u>3 to 13 years</u>	<u>12</u>	<u>1</u>	<u>12</u>	<u>2</u>
<u>All School-aged</u>	<u>15</u>	<u>1</u>	<u>15</u>	<u>2</u>

(b) When only one caregiver is required to meet the staff/child ratio, the operator shall make available to parents the name, address and phone number of an adult who is nearby and available for emergency relief.

(c) Children shall be adequately supervised at all times. All children who are not asleep or resting shall be visually supervised. Children may sleep or rest in another room so long as a caregiver can hear them and respond immediately.

Statutory Authority G.S. 110-86(3); 110-91(7); 143B-168.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 14C .0716; 18F .0312 - .0320; and adopt rules cited as 10 NCAC 14C .1148; 18F .0321 - .0323; 18J .0119, .0801 - .0805.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:30 p.m. on May 10, 1994 at the Wake County Commons Building, 4011 Cary Drive, Raleigh, N.C. 27610.

Reason for Proposed Action:

10 NCAC 14C .0716 - To allow supervisor to initiate disciplinary action when penalty is not paid.

10 NCAC 14C .1148 - To put in place a Rule to govern funds appropriated to the Division for the provision of services to Thomas S. Clients.

10 NCAC 18F .0312 - .0323 - To provide clarification of requirements for providing DWI assessments.

10 NCAC 18J .0119, .0801 - .0805 - To comply with G.S. 122C-151.4 in establishing an Area Authority Appeals Panel to resolve disputes for contracting agencies.

Comment Procedures: Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603, (919) 733-4774. Comments submitted as a written statement must be sent to the above address no later than May 9, 1994, and must state the rules to which comments are addressed. Time limits for oral remarks may be imposed. Fiscal information regarding these Rules is available from the Division, upon request.

**CHAPTER 14 - MENTAL HEALTH:
GENERAL**

SUBCHAPTER 14C - GENERAL RULES

**SECTION .0700 - RULES GOVERNING
DEPARTMENT: TRAFFIC: PARKING
AND REGISTRATION OF VEHICLES
AT DIVISION INSTITUTIONS**

.0716 VIOLATIONS

(a) Violation of the rules in this Section shall subject the offender to a civil penalty. The offender and the person to whom the vehicle is registered may be charged civil penalties for non-moving violations as follows:

(1) employees only:

- (A) failure to register a vehicle, five dollars (\$5.00);
- (B) failure of a registered vehicle owner to secure a temporary permit when using a non-registered vehicle, two dollars (\$2.00);
- (C) failure to display or improper display of parking sticker, two dollars (\$2.00); and
- (D) failure to remove expired parking sticker, two dollars (\$2.00); and

(2) all violators:

- (A) parking in a restricted area or restricted parking space, five dollars (\$5.00);
- (B) blocking a fire hydrant, five dollars (\$5.00);
- (C) parking on grass, five dollars (\$5.00);
- (D) blocking a walkway, two dollars (\$2.00);
- (E) double parking or parking in driving lane, five dollars (\$5.00);
- (F) improper use of a service zone, five dollars (\$5.00);
- (G) parking out of space, two dollars (\$2.00);
- (H) parking with rear of vehicle to curb, two dollars (\$2.00);
- (I) overtime parking, two dollars (\$2.00);
- (J) parking in "non-parking" zone, five dollars (\$5.00); and
- (K) parking in a "handicapped space," twenty-five dollars (\$25.00).

(b) Civil penalties for non-moving violations listed in (a) of this Rule shall be processed as follows:

- (1) By the fifth calendar day of the month following the citation, the face value of the penalty indicated may be paid by writing on the ticket the name of the person to whom the vehicle is registered and mailing it together with

payment to the person or office as designated on the citation by the institution director.

- (2) If the person receiving the citation feels that the citation was unjustly issued, a request for review may be made in writing to the director of the institution. The request for review shall be made within five days of the date the citation was issued and shall state the reason for review. The director shall notify the person in writing of the final decision regarding the review. If the decision sustains the issuance of the citation, the date of written notice shall become the effective date of issue of the citation and the penalty shall be paid according to the instructions in (b)(1) of this Rule. If the review determines a citation should not have been issued, no further action shall be required.
- (3) If the penalty is not paid by the fifth calendar day of the month following the citation, the institution director shall mail a notice to the person in whose name the vehicle is registered. If the offender is an institution employee, the division supervisor and the appropriate supervisor shall also be instructed to contact the registrant.
- (4) If the penalty is not paid by the last calendar day of the month following the citation, the institution director shall ~~initiate enforcement by civil action in the nature of a debt.~~

- (A) initiate enforcement by civil action in the nature of a debt;
- (B) instruct the employee's supervisor to initiate disciplinary action; or
- (C) employ both actions.

(c) Court citations shall be issued for all violations not listed in (a) of this Rule including all violations of state motor vehicle laws, all speeding violations, violations arising from failure to obey traffic control signs or devices, and violations of department and grounds control requirements. The offender shall be cited to stand trial for the alleged offense in the General Court of Justice by the officer observing the violation.

Statutory Authority G.S. 20-37.6(f); 143-116.6; 143-116.7.

.1148 THOMASS. COMMUNITY SERVICES

- (a) Funds appropriated to the Division for

members of the Thomas S. Class as identified in the Thomas S., et al. v. Britt, formerly Thomas S., et al v. Flaherty lawsuit, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

- (1) adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a State psychiatric hospital on or after March 22, 1984, and who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective class members including focus class members; or
- (2) adults with mental retardation who:
 - (A) have a documented history of State psychiatric hospital admission regardless of admission date; or
 - (B) have never been admitted to a State psychiatric hospital, but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment; and
 - (C) without funding support, have a good probability of being admitted to a State psychiatric hospital.

Expenditures for services to clients listed in Subparagraph (a)(2) of this Rule are limited by legislation and require specific approval by the Division.

(b) Programs operated by an area program or a program contracted by the area program to provide services may spend Thomas S. Services funds for the following:

- (1) facility rental;
- (2) utilities;
- (3) staffing;
- (4) supplies;
- (5) travel;
- (6) rental and purchase of administrative and program equipment according to the following provisions:
 - (A) equipment is defined as purchases costing five hundred dollars (\$500.00) or more and having a useful life of at least one year;
 - (B) all equipment purchased with Thomas S. Services funds will be inventoried and identified as Thomas S. equipment and must be used for Thomas S. Services;
 - (C) equipment may be held in the name of a contract provider with the

- stipulation that if the equipment ceases to be used to provide services to Thomas S. clients, ownership reverts to the contracting area program who must then contact the Division for disposition instructions;
- (D) the Division must be notified whenever equipment purchased with Thomas S. Services funds ceases to be used to provide services to Thomas S. clients for 45 consecutive days; and
- (E) the disposition of equipment purchased with Thomas S. Services funds requires Division approval;
- (7) administrative costs which can be clearly documented as Thomas S. administrative costs through direct assignment or Division approved cost allocation methodology;
- (8) transportation of clients;
- (9) other program costs as approved by the Division;
- (10) in accordance with G.S. 122C-147, the purchase, construction, alteration, improvement, or rehabilitation of a facility owned by the area program or county for the provision of day/night and 24-hour services by an area program or non-profit contract agency; or mortgage payments for private non-profit agencies according to the following provisions:
- (A) prior to the purchase of an existing facility, the area program or non-profit contract agency through the area program, shall submit two property appraisals, completed by licensed real estate appraisers, to the Division for approval. Approved funding will be released by the Division after approval of the appraisals;
- (B) application and approval for construction funding shall be made in accordance with Rule .1123 of this Section (Area Mental Health Center Construction Project);
- (C) a request for renovation, alteration, improvement, or rehabilitation of a facility of five thousand dollars (\$5,000) or more shall be forwarded to the Division Director's Office for approval. Each request shall be accompanied by a narrative that
- explains the need for and description of the alteration, improvement or repair of the facility. Lesser amounts do not require Division approval; and
- (D) if a facility owned by an area program or its non-profit contract agency was purchased, altered, improved, or rehabilitated using Thomas S. Services funds of five thousand dollars (\$5,000) or more ceases to be used by the area program or its non-profit contract provider for services to Thomas S. clients for 45 consecutive days, the Division shall be contacted immediately for disposition instructions. If the Division so directs, the facility shall be sold at the current fair market value in accordance with G.S. 153A-176 and 160A-266. After the sale, the Division shall be reimbursed the Division's pro rata share of the proceeds from the sale based on the percent of contribution made by the Division for the purchase, alteration, improvement or rehabilitation of the sold facility. If an area program or its non-profit contract provider wishes to maintain ownership of a facility that was purchased, altered, improved, or rehabilitated using Thomas S. Service Funds, the area program or non-profit contract provider may, if authorized by the Division, pay to the Division the Division's pro rata share of the current fair market value of the facility as determined by two certified appraisers or two independent appraisals acceptable to the Division. The contribution made by all parties shall be maintained individually on a perpetual basis in the ledger, or group of accounts in which the details relating to the general fixed assets of the area program or its non-profit contract agency are maintained; and
- (11) except as provided in Paragraph (a) of this Rule, Thomas S. operating funds shall not be used to serve other than Thomas S. clients without specific Division approval.
- (c) Funds provided by the Division for Thomas S. Services shall not be used to purchase client's personal possessions or clothing unless:

- (1) a unique situation has been documented;
- (2) this expenditure cannot be covered from another source; or
- (3) specific prior approval has been granted by the Division.

(d) Start-up funds, defined as funding provided to establish or prepare a facility or program for the provision of services, are required to be settled on an expenditure basis and may be provided to an area program or contract provider in accordance with the following provisions:

- (1) Expenditures for start-up may be approved in accordance with Paragraph (b) of this Rule with the following restrictions:

- (A) vehicles are allowable expenditures if sufficiently justified, and if at least four Thomas S. clients will receive transportation services from the vehicle; or if sufficient justification for fewer than four clients is submitted and approved by the Division; and

- (B) furnishings for residential and day services shall be limited to functional items and shall not include stereos, video cassette recorders, microwaves, or similar items unless specifically justified and approved by the Division;

- (2) Requests for start-up funds shall be made by the area program, or through the area program in the case of a contract provider, in whose catchment area the new program or program component is being established and is not required to be client specific;

- (3) Requests for start-up funding shall be made in writing to the Division Director at least 90 days prior to need and shall include a line item budget and written justification; and

- (4) Requests for start-up funding may include expenses for normal operations such as staff, utilities, and rent but is limited and may not exceed 60 days.

(e) Funds provided by the Division to support Thomas S. Services, except as noted in Paragraph (d) of this Rule, shall be discontinued if the program fails to serve any Thomas S. clients for a period of 45 consecutive days, unless an extension of time is approved in writing by the Division Director.

(f) Funds shall be awarded to the area program

by the Division in a method established by the Division. The annual budget for the programs serving Thomas S. clients shall be budgeted in a separate cost center. Such cost centers shall include all sources of revenue which support the costs of Thomas S. clients.

(g) Thomas S. Class members, as defined in Subparagraphs (a)(1) and (2) of this Rule, shall not be excluded from participating in programs or services for which they are eligible, and which are funded from other sources.

(h) The area program and contract provider shall provide financial and client data regarding Thomas S. Services to the Division according to instructions from the Division.

Statutory Authority G.S. 122C-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18F - PROGRAM SUPPORT STANDARDS

SECTION .0300 - SUBSTANCE ABUSE ASSESSMENTS FOR INDIVIDUALS CHARGED WITH OR CONVICTED OF DRIVING WHILE IMPAIRED (DWI)

.0312 PURPOSE AND SCOPE

~~The purpose of the rules of this Section is to establish specific procedures for conducting and reporting DWI substance abuse assessments. Such assessments may be sought either voluntarily on a pre trial basis or by order of the presiding judge. These rules apply to any facility licensed by the State as an alcoholism and substance abuse treatment facility or a facility which provides substance abuse services and is excluded from licensure under G.S. 122C-22 which wishes to perform DWI substance abuse assessments.~~

(a) The purpose of the rules of this Section is to establish specific procedures for conducting and reporting DWI substance abuse assessments, Alcohol and Drug Education Traffic Schools (ADETS), and treatment of DWI offenders.

(b) Assessments may be sought either voluntarily on a pre-trial basis or by order of the presiding judge.

(c) These Rules apply to any facility that wishes to perform DWI assessments.

(d) In order for a facility to perform DWI assessments, it shall:

- (1) be licensed by the State as an alcoholism and substance abuse

- (2) treatment facility; or
provide substance abuse services, and
be excluded from licensure under G.S.
122C-22.

Statutory Authority G.S. 20-179(e)(6) and (m).

.0313 DEFINITIONS

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

- (1) "Alcohol and Drug Education Traffic School (ADETS)" means ~~a prevention and intervention service which provides an educational program primarily for first offenders convicted of driving while impaired. This service is designed to reduce the recidivism rate for the offense of driving while impaired.~~ an approved curriculum which shall:
 - (a) include 10 to 13 contact hours in a classroom setting;
 - (b) be provided by area programs or their designated agencies with certified ADETS instructors; and
 - (c) be designed for persons:
 - (i) who have only one DWI conviction (lifetime);
 - (ii) whose assessment did not identify a "Substance Abuse Handicap"; and
 - (iii) whose alcohol concentration was .14 or less.
- (2) "American Society of Addiction Medicine (ASAM) Placement Criteria" means the Patient Placement Criteria for the Treatment of Psychoactive Substance Abuse Disorders, copyright 1991 by the National Association of Addiction Treatment Providers and the American Society of Addiction Medicine. For these Rules, the ASAM Level I, Outpatient Treatment, has been divided into I.A., Short-term and I.B., Longer-term Outpatient Treatment.
- (3) "Certified ADETS Instructor" means an individual who is certified by the Division in accordance with 10 NCAC 18M .0906 Instructor Certification, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1, and available at the current printing cost.
- (4) ~~(2)~~ "Clinical Interview" means the face-to-face interview with a substance abuse professional intended to gather information on the client, including, but

not limited to the following: demographics, medical history, past and present driving offense record, alcohol concentration of current offense, social and family history, substance abuse history, vocational background and mental status.

- (5) "Continuing Care" means an outpatient service designed to maximize the recovery experience begun in more intensive treatment; outpatient or inpatient. As a continuation of the treatment experience this service is expected to begin immediately upon the client's discharge from intensive treatment:
 - (a) When the continuing care follows an inpatient treatment experience, it shall:
 - (i) include a minimum of 20 contact hours of service scheduled no less than weekly, during a 30-day period; and
 - (ii) continue for a minimum period of 90 days.
 - (b) The services shall be provided according to a written continuing care plan which shall:
 - (i) address the needs of the client; and
 - (ii) utilize individual, family and group counseling as required to meet the needs of the client.
- (6) "Day treatment" means a structured, outpatient service. It may also be called intensive outpatient treatment, as defined in 10 NCAC 14N .0900 and applicable portions of 10 NCAC 14K .0300, which include ASAM Level II treatment criteria.
- (7) "Division" means the same as defined in G.S. 122C-3; and is hereafter referred to as DMH/DD/SAS.
- (8) ~~(3)~~ "DMH Form 508 (DWI Services Certificate of Completion)" means the four-part form which is used in documenting the offenders completion of the DWI substance abuse assessment; and treatment or ADETS and compliance or non-compliance of ADETS as appropriate.
- (9) "Driving record" means a person's complete North Carolina driving history, as maintained by the North Carolina Driver's License Division's history file.
- (10) "DSM" means the current edition of the Diagnostic and Statistical Manual of

- Mental Disorders of the American Psychiatric Association.
- (11) (4) "DWI" means impaired driving as described in G.S. 20-138.1.
- (12) (5) "DWI Substance Abuse Assessment" means a service provided to persons charged with or convicted of DWI to determine the presence or absence of a substance abuse handicap. The assessment involves a clinical interview as well as the use of a standardized test.
- (13) (6) "Facility" means the term as defined in G.S. 122C-3(14).
- (14) "Inpatient residential treatment services" means an array of services which may include detoxification and rehabilitation in a structured environment, as set forth in 10 NCAC 14O .0300, and contained in Licensure Rules as defined in Item (14) of this Rule. Such services will correspond with ASAM Level III and Level IV treatment criteria.
- (15) "Licensure rules" mean the rules contained in 10 NCAC 14K through 14O of the North Carolina Administrative Code and published in Division publication, Licensure Rules for MH/DD/SA Facilities, APSM 40-2.
- (16) "Longer-term outpatient treatment" means a structured program meeting the ASAM definition of Level I, Outpatient Treatment, and requiring a minimum of 40 contact hours scheduled to maintain the client in active treatment for a minimum period of 60 days, providing counseling and learning experiences which include the "Minimal Subject Content," as defined in Item (16) of this Rule. The facility must operate in compliance with Licensure Rules, 10 NCAC 14N .0700 and applicable portions of 10 NCAC 14K .0300.
- (17) "Minimal subject content" means the following list of subjects which shall be addressed in the educational portion of any treatment program serving DWI offenders:
- (a) Effects of Alcohol and Drugs on the Body/Brain;
 - (b) The Nature of Denial;
 - (c) Disease Concept of Chemical Dependency;
 - (d) Progression of Disease and Recovery (Jellinek Chart);
 - (e) Chemical Dependency and the Family;
 - (f) Introduction to Self-Help Groups/12 Step Recovery Programs;
 - (g) Relapse Prevention and Strategies for Recovery; and
 - (h) Safe Roads Act Penalties.
- (18) "Short-term outpatient treatment" means a structured program meeting the broad definition of "ASAM Level I, Outpatient Treatment," and requiring a minimum of 20 contact hours over a period of at least 30 days, including counseling and didactic experiences which include the minimal subject content. Facilities which are approved to provide this shall operate in compliance with Licensure Rules contained in 10 NCAC 14N .0700 and applicable portions of 10 NCAC 14K .0300.
- (19) "Special services plan" means a plan for persons who exhibit unusual circumstances, such as severe hearing impairment, other physical disabilities, concurrent psychiatric illness, language and communication problems, intractable problems of distance, transportation and scheduling, and chronic offenders with multiple unsuccessful treatment experiences.
- (20) (7) "Standardized Test" means an instrument ~~a written test~~ approved by the Department of Human Resources, with documented reliability and validity, which serves to assist the assessment agency or individual in determining if the client has a substance abuse handicap. A current listing of the approved standardized tests may be obtained by writing the DWI/Criminal Justice Branch, Division of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC ~~27614~~ 27603.
- (21) (8) "Substance Abuse Handicap" means a degree of dysfunction directly related to the recurring use/abuse of an impairing substance.
- Statutory Authority G.S. 20-138.1; 20-179; 122C-3.
- .0314 WRITTEN NOTICE OF INTENT**
- A facility, not operated by or contracted with an area authority, wishing to provide DWI substance abuse assessments shall send a written notice of intent to both the area authority in that particular

catchment area and the Department of Human Resources at the following address: DWI/Criminal Justice Branch, DMH/DD/SAS Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27611 27603. The notice of intent shall be documented on agency letterhead and shall include at a minimum the following:

- (1) declaration of intent to provide DWI substance abuse assessments in accordance with State laws;
- (2) statement of willingness agreement to follow rules for conducting such assessments as adopted by the Department of Human Resources;
- (3) a copy of the license number issued by the Division of Facility Services, or by licensing boards as referenced in 122C-22; and
- (4) signature of the administrator in charge; and
- (5) identification of a contact person to accept referrals and respond to inquiries.

Statutory Authority G.S. 20-179(m); 122C-22.

.0315 DWI SUBSTANCE ABUSE ASSESSMENT ELEMENTS

(a) DWI substance abuse assessments shall only be provided by a facility licensed by the State as an alcoholism and substance abuse treatment facility as specified in 10 NCAC 14K .0365 or a facility which provides substance abuse services and is excluded from licensure under G.S. 122C-22.

(b) A clinical interview shall be conducted with the individual to collect information regarding his the use of alcohol and other drugs.

(c) In addition to the clinical interview, the agency or individual performing the assessment shall administer, to the individual, a standardized test and consider the driving record, as defined in Rule .0313 of this Section, and any alcohol concentration reading available in determining whether or not a substance abuse handicap exists.

(d) The agency or individual performing the assessment shall have the individual execute the appropriate release of information form per 42 CFR, Part 2 giving the assessing agency permission to communicate with and report its findings to the DMH/DD/SAS Mental Retardation and Substance Abuse Services, the area authority, the Division of Motor Vehicles, the Court, the Department of Correction, and the agency providing the recommended treatment and

education.

Statutory Authority G.S. 20-179(m); 122C-22.

.0316 QUALIFICATIONS OF INDIVIDUALS PERFORMING ASSESSMENTS

~~Staff members of agencies or individuals in private practice~~ Individuals performing DWI substance abuse assessments shall have at least one of the following qualifications:

- (1) certification as a certified alcoholism, drug abuse or substance abuse counselor by the North Carolina Substance Abuse Professional Certification Board;
- (2) graduation from high school or equivalent and three years of supervised experience in the profession of alcohol and drug abuse counseling, graduation from a four-year college or university and two years of supervised experience in the profession of alcohol and drug abuse counseling, or graduation from a masters degree level program and one year of supervised experience in the profession of alcohol and drug abuse counseling; or
- (3) licensure by the Board of Medical Examiners of the State of North Carolina or the North Carolina ~~State Board of Examiners of Practicing Psychologists~~ Psychology Board.

Statutory Authority G.S. 20-179(m).

.0317 RESPONSIBILITIES OF ASSESSING AGENCY

(a) Following the completion of the assessment, the agency or individual performing the assessment shall inform the individual if treatment or ADETS, ~~education or both~~ is recommended.

(b) If treatment, ~~education or both~~ is recommended, the individual shall be made aware informed of the available treatment and education facilities, both private and public, which provide the type level of recommended treatment or education recommended.

(c) Any facility accepting a transferred case shall provide, at least, the level of intervention recommended by the assessor, unless there is a subsequent negotiated agreement between the assessor and the service provider. In addition, the agency or individual performing the assessment shall inform the individual of the possible consequences of failing to comply with recommended treatment, or education.

(d) Private facilities shall refer all individuals

recommended for ADETS to the area authority, or its designated agency. A DMH 508 Form shall accompany the referral.

(e) The agency or individual performing the assessment shall inform the client of the possible consequences of failing to comply with recommended treatment or ADETS.

Statutory Authority G.S. 20-179(m).

.0318 RESPONSIBILITIES OF TREATMENT OR ADETS PROVIDERS

(a) Clients shall be provided with documentation that outlines their obligation, resulting from the assessment recommendations. A written plan shall be developed by the facility providing the recommended treatment or ADETS to insure that the individual understands the requirements of the particular treatment or education service in which they are enrolled.

(b) Individuals shall not be denied the opportunity to complete the service recommended by the assessing agency. "Individuals not beginning services within nine months of the date of the initial assessment shall be re-evaluated utilizing the results of the initial assessment.

(c) The facility providing the recommended treatment or ADETS shall have the individual execute the appropriate release of information giving that facility permission to report the client's progress to the: ~~Division of Mental Health, Mental Retardation, and Substance Abuse Services, the Division of Motor Vehicles, the Court and the Department of Correction.~~

- (1) DMH/DD/SAS;
- (2) Division of Motor Vehicles;
- (3) Court;
- (4) Department of Correction; and
- (5) assessing and treatment agencies, as appropriate.

(d) Identification of a substance abuse handicap shall be considered indicative of the need for treatment, when diagnostic criteria apply. In such instances, educationally-oriented and/or support group services shall only be provided as a supplement to a more extensive treatment plan.

(e) If treatment is recommended and required per the court's judgement, such treatment shall be provided by a facility licensed by the ~~state~~ State for the provision of such services. In addition, a client record shall be opened on each client receiving treatment.

Statutory Authority G.S. 20-179(m); 122C-26; 143B-147.

.0319 REPORTING REQUIREMENTS

(a) The assessment portion of the DMH Form 508 shall be completed on each client who receives a DWI substance abuse assessment. An initial supply of this form may be obtained from the DWI/Criminal Justice Branch of the ~~Division of DMH/DD/SAS — Mental Health, Mental Retardation, and Substance Abuse Services,~~ 325 N. Salisbury Street, Raleigh, N.C. ~~27614~~ 27603.

(b) The assessment portion of DMH Form 508 shall be signed by a certified ~~alcoholism, drug abuse or~~ substance abuse counselor. The date of expiration of that professional's certification shall be indicated on the client's Certificate of Completion and no assessment shall be signed after the expiration date.

(c) The facility providing the recommended treatment or education shall have the client sign the appropriate release of information, and progress reports shall be filed with the court or the Department of Correction at intervals not to exceed six months. If treatment, education or both is recommended, all four pages of the DMH Form 508 shall be forwarded to the facility providing the recommended treatment or education.

(d) ~~In the event that no substance abuse handicap is identified and no treatment or education recommendations are made, the assessing agency shall forward the copies of DMH Form 508 as specified in part (g) of this Rule.~~

(d) Upon completion of the recommended treatment or ADETS service, the agency shall:

- (1) forward the top page of the completed DMH Form 508 to the DWI/Criminal Justice Branch, DMH/DD/SAS; and
- (2) retain, for a period of at least five years, the appropriate page of the form, and distribute the remaining pages to the offender and the court as specified on the bottom of the form.

(e) ~~The facility providing the recommended treatment or education shall have the client sign the appropriate release of information, and progress reports shall be filed with the court or the Department of Correction at intervals not to exceed six months.~~

(e) In the event that an assessment or treatment agency ceases to provide DWI-related services, the agency shall notify, in writing, the DWI Criminal Justice Branch to assure that all DMH Form 508s and other related documents specified in G.S. 20-179(m) are properly processed.

(f) ~~If treatment and ADETS have been court ordered, and the individual does not successfully complete the requirements of the ADETS, a copy~~

~~of the top sheet of DMH Form 508 showing non-compliance shall be forwarded to the DWI/Criminal Justice Branch, Division of Mental Health, Mental Retardation, and Substance Abuse Services. All four pages of the DMH Form 508 shall be retained by the facility providing the recommended treatment service until such service are completed.~~

~~(f) By February 15 of calendar each year, all assessing agencies shall forward, in writing, to the DWI/Criminal Justice Branch of the Division the following information on the previous year's activities, which shall include but need not be limited to the number of:~~

- ~~(1) pre-trial assessments conducted;~~
- ~~(2) post trial assessments conducted;~~
- ~~(3) persons referred to ADETS; and~~
- ~~(4) substance abuse handicaps identified and the recommended levels of treatment.~~

~~(g) Upon completion of the recommended treatment or education service, the top page of the completed DMH Form 508 shall be forwarded to the DWI/Criminal Justice Branch, the Division of Mental Health, Mental Retardation, and Substance Abuse Services. The agency shall also retain the appropriate page of the form and distribute the remaining pages to the offender and the court as specified on the bottom of the form. The agency providing the service(s) shall retain its copy of this form for a period of not less than five years.~~

~~(h) In the event that an assessment or treatment agency ceases providing DWI related services, it shall be the responsibility of that agency to notify the DWI Criminal Justice Branch in writing to assure that all DMH Form 508 forms and other related documents specified in G.S. 20-179(m) are properly processed.~~

Statutory Authority G.S. 20-179(m).

.0320 PRE-TRIAL ASSESSMENTS

~~(a) A DMH Form 508 shall be completed on each individual who voluntarily refers himself or herself for a DWI assessment, under the provisions of G.S. 20-179(e)(6). However, the DMH Form 508 shall not be used to report the results of the pre-trial assessment to the court or attorney. The results shall be summarized in a concise, easy to interpret fashion on agency letterhead and signed by the individual who performed the assessment. The DMH Form 508 shall be retained by the assessor and completed as specified in (b) and (e) of this Rule.~~

~~(b) The assessor shall make the individual aware~~

~~that it is the individual's responsibility to notify the agency or individual that performed the assessment of the outcome of his/her trial so that the DWI Form 508 can be forwarded to the appropriate party.~~

~~(e) In the event that the individual is found not guilty of DWI or the individual fails to notify the agency or individual that performed the assessment within 12 months of the assessment, the assessing agency shall forward the DMH Form 508 to the Division of Mental Health, Mental Retardation, and Substance Abuse Services' DWI/Criminal Justice Branch Chief at the address specified in Rule .0315 of this Section.~~

Statutory Authority G.S. 20-179(e)(6) and (m).

.0321 PLACEMENT CRITERIA FOR ASSESSED DWI CLIENTS

~~(a) Clients who have undergone a DWI substance abuse assessment shall be placed in the appropriate category as determined by its definition in Rule .0313 of this Section.~~

~~(b) Placement of clients in a specific category shall be based on the assessment outcome, diagnosis, and level of care determined to be necessary for treatment.~~

~~(c) In addition to the terms defined in Rule .0313 (1), (6), (13), (15), (17), and (18) of this Section for each of the following progressive categories, determination for placement shall be based on the criteria specified in this Paragraph.~~

~~(1) ADETS:~~

- ~~(A) the assessment did not identify a "Substance Abuse Handicap"; and~~
- ~~(B) the person has no previous DWI conviction; and~~
- ~~(C) the person had an alcohol concentration of 0.14% or less at the time of arrest.~~

~~(2) Short-term Outpatient Treatment:~~

- ~~(A) the assessment outcome suggests diagnosis of psychoactive substance abuse only;~~
- ~~(B) the client does not fit all aspects of the diagnosis, but, under certain circumstances, the clinical picture provides reason to conclude that a treatment setting would be more appropriate than ADETS. Some of these circumstances include, but are not limited to:~~
 - ~~(i) alcohol concentration is .15 or higher;~~
 - ~~(ii) refusal of breath test at time of~~

- arrest;
- (iii) problems relating to family history;
- (iv) other problems which seem to be a contributing factor to DWI behavior; such as grief, loss, etc.; and
- (v) the client meets the criteria for Level I of the ASAM Placement Criteria;
- (C) the person had an alcohol concentration of 0.14% or less at the time of arrest.
- (3) Longer-term Outpatient Treatment:
 - (A) when a client meets minimal conditions for the diagnosis of "psychoactive substance dependence"; and
 - (B) the criteria for Level I of the ASAM placement is met.
- (4) Day Treatment:
 - (A) the assessment confirms a diagnosis of psychoactive substance dependence, moderate or severe;
 - (B) the ASAM placement criteria for Level II Outpatient Treatment is met;
 - (C) program:
 - (i) includes an educational component which addresses at least the minimal subject content, as defined in Rule .0313(16) of this Section;
 - (ii) offers additional continuing care, urging voluntary participation of the client and significant others; and
 - (iii) requires a minimum of 90 contact hours and participation of the client over a period of at least 90 days, for clients referred under G.S. 20-179(m) or (e)(6);
 - (D) program may be preceded by a brief inpatient stay for detoxification or stabilization of a medical or psychiatric condition.
- (5) Inpatient Residential Treatment Services:
 - (A) the level of care requires that the client meets the same diagnostic criteria as Intensive Outpatient (dependence is moderate or severe);
 - (B) outpatient treatment of other associated problems has not been successful;
 - (C) the client meets the placement criteria

for Levels III or IV (Inpatient) of the ASAM Placement Criteria with regard to the following six "patient problems areas" as set forth in ASAM Patient Placement Criteria, Adult Crosswalk; and the client exhibits:

- (i) withdrawal risk;
- (ii) need for medical monitoring;
- (iii) emotional and behavioral problems requiring a structured setting;
- (iv) high resistance to treatment;
- (v) inability to abstain; and
- (vi) lives in a negative and destructive environment;
- (D) in order for the client to meet the required 90-day time frame for treatment, the client, upon discharge, shall enroll in an approved continuing care or other outpatient program.
- (6) Special Service Plan:
 - (A) documented need for a special program to correspond with the recommendations of the DWI assessment, which shall include documentation:
 - (i) of the special circumstances which prove that the client is unable to participate in or benefit from the recommended basic structured program; and
 - (ii) that the participation would be detrimental to the client.
 - (B) some of the conditions under which Special plans are implemented may include, but need not be limited to, the following:
 - (i) severe hearing impairment;
 - (ii) other physical disabilities;
 - (iii) concurrent psychiatric illness;
 - (iv) language and communication problems;
 - (v) intractable problems of distance, transportation and scheduling; and
 - (vi) chronic offenders with multiple unsuccessful treatment experiences.

Statutory Authority G.S. 20-179(e)(6) and (m).

.0322 CLIENT RECORD REQUIREMENTS FOR DWI ASSESSMENT/TREATMENT

- (a) When conducting an assessment to determine appropriate treatment for individuals charged with,

or convicted of, offenses related to Driving While Impaired (DWI), client record documentation shall meet or exceed the following minimum requirements for each category of service. DWI assessments, as defined in Rule .0313 of this Section shall include, but need not be limited to, the requirements set forth in:

- (1) 10 NCAC 14K .0317 CLIENT RECORDS and contained in Division publication, "licensure rules," as defined in Rule .0313 of this Section;
- (2) all items specified in the "clinical interview," as defined in Rule .0313 of this Section;
- (3) results of the administration of an approved "standardized test," as defined in Rule .0313 of this Section;
- (4) release of information as set forth in Rules .0315 and .0318 of this Section; and
- (5) release of information covering any collateral contacts, and documentation of the collateral information.

(b) Substance abuse treatment records shall be subject to the requirements contained in Division publication, Licensure Rules, as defined in Rule .0313 of this Section, and shall:

- (1) be documented according to the requirements specified in 10 NCAC 14K .0317; and
- (2) contain the information and procedures required in 10 NCAC 14K .0315 and .0317.

Statutory Authority G.S. 20-179(e)(6) and (m).

.0323 AUTHORIZATION TO PROVIDE DWI SUBSTANCE ABUSE ASSESSMENTS

Any facility that provides DWI assessments shall comply with 10 NCAC 14K .0365 DWI SUBSTANCE ABUSE ASSESSMENTS, contained in Division publication, Licensure Rules, as defined in Rule .0313 of this Section.

Statutory Authority G.S. 20-179(e)(6) and (m).

SUBCHAPTER 18J - AREA PROGRAM MANAGEMENT STANDARDS

SECTION .0100 - AREA BOARD ORGANIZATION/RESPONSIBILITIES

.0119 APPEALS PROCEDURES FOR CONTRACT PROVIDERS

- (a) Pursuant to G.S. 122C-151.3, an area

authority shall establish written procedures for the resolution of disputes regarding decisions of an area authority with the following as specified in G.S. 122C-151.4(c):

- (1) a contractor or a former contractor; or
- (2) a client or a person.

(b) Decisions may be appealed to the Area Authority Appeals Panel as set forth in Section .0800 of this Subchapter.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

SECTION .0800 - ESTABLISHMENT OF AN AREA AUTHORITY APPEALS PANEL

.0801 PURPOSE, SCOPE AND DEFINITIONS

(a) The purpose of the rules in this Section is to specify the procedures for appeals to the area authority as set forth in G.S. 122C-151.4.

(b) These Rules apply to any client, contractor, former contractor, or person as defined in G.S. 122C-151.4.

(c) The terms used in this Section shall have the same meanings as provided in G.S. 122C-151.4.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0802 AREA AUTHORITY APPEALS PANEL

(a) Pursuant to G.S. 122C-151.4(b), the Area Authority Appeals Panel, hereafter referred to as "the Panel," shall consist of three members.

(b) Under authority delegated by the Secretary, the members shall:

- (1) be appointed by the Division Director and serve at the pleasure of the Secretary; and
- (2) have education and experience relevant to the appeals process, as determined by the Division Director.

(c) The Division Director shall appoint the Chair of the Panel.

(d) Clerical support for the Panel shall be provided by the Division.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0803 APPEALS PROCEDURES

(a) Appeals of the decision of local area authorities shall be forwarded, along with all supplementary documentation considered during the local area appeals process, to the Division

Director within 14 days of the local decision being rendered.

(b) The Division Director shall forward all information to the Chair of the Panel within five working days.

(c) The Panel shall complete an administrative review and notify the appealing party and the area program of its decision, in writing, within 14 days of receipt of the appeal. Unless further appealed within 14 days of the date of this decision, this decision shall be considered final.

(d) Either party named in the appeal may request a hearing by the Panel before the Panel's administrative decision is considered to be final, by submitting a written request to the Chair of the Panel, within 14 days of the date of the administrative review decision.

(e) A hearing shall be scheduled by the Panel no more than 30 days after a written request for a hearing is received by the Chair.

(f) The hearing shall be scheduled at a time and place designated by the Chair.

(g) The appealing party and the area program shall be notified of the time and place of the hearing no less than 14 days prior to the hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0804 HEARING PROCEDURES

(a) The Chair of the Panel:

- (1) will convene the meeting at the prearranged time and place;
- (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties;
- (3) may limit the total number of persons presenting for the appellant and appellee; and
- (4) may impose time limits for presentations.

(b) The official representative of the appellant and appellee shall:

- (1) specify by name and position all individuals who will be present for the hearing;
- (2) provide the Panel with any requested information; and
- (3) if appropriate, ensure that a representative of the appellant and appellee will be available at the hearing to make a presentation.

(c) Any member of the Panel may address questions to the representatives of the appellant or of the appellee.

(d) All persons present at the appeal will address only the Chair or a specific member of the Panel who has addressed a specific question to that individual.

(e) Direct exchanges between presenters for the appellant and the appellee shall be prohibited.

(f) The Panel may obtain any form of technical assistance or consultation relevant to the appeal.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

.0805 PANEL DECISIONS

(a) The Panel shall vote in open session on each specific item being appealed.

(b) Within five working days, each decision shall be conveyed in writing to the appealing party and the area authority.

(c) Any decision may be rescheduled for a subsequent meeting if the Panel determines that it lacks sufficient information to render a decision at the initial hearing.

(d) In all cases a final decision shall be rendered within 30 days of the written request for a hearing.

Statutory Authority G.S. 122C-112(a); 122C-151.4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 14K .0103, .0365; 18M .0906; 45G .0104, .0406; and adopt rule cited as 10 NCAC 45G .0139; and repeal rule cited as 10 NCAC 18M .0712.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:30 p.m. on May 10, 1994 at the Wake County Commons Building, 4011 Cary Drive, Raleigh, N.C. 27610.

Reason for Proposed Action:

10 NCAC 14K .0103 - To provide additional specificity and clarity.

10 NCAC 14K .0365 - To provide clarification of requirements for providing DWI assessments.

10 NCAC 18M .0712 - To avoid duplicative

monitoring for required Medical Statement, already currently required as a licensing Rule by the Division of Facility Services.

10 NCAC 18M .0906 - *To more specifically set forth requirements for instructor certification.*

10 NCAC 45G .0104 - *To include definition of "Clinic" category.*

10 NCAC 45G .0139 - *To comply with statutory requirement with regard to security for registrants.*

10 NCAC 45G .0406 - *To require pharmacies not subject to DHR registration to follow the Board of Pharmacy Rules with regard to disposing of controlled substances.*

Comment Procedures: *Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603, (919) 733-4774. Comments submitted as a written statement must be sent to the above address no later than May 9, 1994, and must state the rules to which comments are addressed. Time limits for oral remarks may be imposed. Fiscal information regarding these Rules is available from the Division, upon request.*

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14K - CORE LICENSURE RULES FOR MENTAL HEALTH: MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES: AND SUBSTANCE ABUSE FACILITIES

SECTION .0100 - GENERAL INFORMATION

.0103 DEFINITIONS

(a) This Rule contains the definitions that apply to all the rules in this Subchapter and Subchapters 14L through 14O of this Chapter.

(b) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3 also apply to all the rules in this Subchapter and Subchapters 14L through 14O of this Chapter.

(c) The following terms shall have the meanings specified:

- (1) "Administering medication" means direct application of a drug to the body of a client by injection, inhalation,

ingestion, or any other means.

- (2) "Adolescent" means a minor from 13 through 17 years of age.
- (3) "Adult" means a person 18 years of age or older or a person under 18 years of age who has been married or who has been emancipated by a court of competent jurisdiction or is a member of the armed forces.
- (4) "Aftercare" means those services provided to substance abuse clients after discharge from a service which facilitates the client's integration or reintegration into society. Activities may include self-help groups, supportive work programs and staff follow-up contacts and interventions.
- (5) "Alcohol abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance. The criteria for alcohol abuse delineated in the 1987 edition of DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition, is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.
- (6) "Alcohol dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences. The criteria for alcohol dependence delineated in the 1987 edition of DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition is incorporated by reference. This incorporation by

- reference does not include subsequent amendments and editions of the referenced material.
- (7) "Applicant" means any person who intends to establish, maintain or operate a licensable facility and who applies to the department for a license to operate a facility under the provisions of G.S. 122C, Article 2.
- (8) "Approved supported employment conversion plan" means a planned approach to changing the type of services delivered from ADAP facility-based to supported employment. Approval of the conversion plan is the responsibility of the Regional Director of the Division and the Area Director or his designee if the facility is operated by a contract agency of the area program or other service provider. The Division shall request appropriate personnel from the Division of Vocational Rehabilitation to participate in the review process. The request for approval of the supported employment conversion plan shall include specific written information in the following areas:
- (A) number of clients to be moved into supported employment placements;
 - (B) types of supported employment models to be used;
 - (C) time frame for the conversion period;
 - (D) interim proposed facility staffing patterns and responsibilities; and
 - (E) proposed budget for conversion plan.
- (9) "Area program" means a legally constituted public agency providing mental health, mental retardation and substance abuse services for a catchment area designated by the commission. For purposes of these Rules, the term "area program" means the same as "area authority" as defined in G.S. 122C-3.
- (10) "Assessment" means a procedure for determining the nature and extent of the problem for which the individual is seeking service.
- (11) "Atypical development" in children means those from birth to 60 months of age who:
- (A) have autism;
 - (B) are diagnosed hyperactive;
 - (C) have an attention deficit disorder or other behavioral disorders; or
 - (D) exhibit evidence of, or are at risk for, atypical patterns of behavior and social-emotional development in one or more of the following areas:
 - (i) delays or abnormalities in achieving emotional milestones;
 - (ii) difficulties with:
 - (I) attachment and interactions with parents, other adults, peers, materials and objects;
 - (II) ability to communicate emotional needs;
 - (III) motor or sensory development;
 - (IV) ability to tolerate frustration and control behavior; or
 - (V) ability to inhibit aggression;
 - (iii) fearfulness, withdrawal, or other distress that does not respond to the comforting of caregivers;
 - (iv) indiscriminate sociability; for example, excessive familiarity with relative strangers;
 - (v) self-injurious or other aggressive behavior;
 - (vi) substantiated evidence that raises concern for the child's emotional well-being regarding:
 - (I) physical abuse;
 - (II) sexual abuse; or
 - (III) other environmental situations; as defined in G.S. 7A-517(1) and (21).
- (12) "Certified counselor" means an alcoholism, drug abuse or substance abuse counselor who is certified by the North Carolina Substance Abuse Professional Certification Board.
- (13) "Child" means a minor from birth through 12 years of age.
- (14) "Chronically mentally ill adult" means an individual 18 years of age or older who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with his capacity to remain in the community without supportive treatment or services of a long-term or indefinite duration. In these persons, mental disability is severe and persistent, resulting in long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relations, homemaking, self-care, employment and recreation.
- (15) "Client record" means a written account of all services provided a client from

the time of admission of the client by the facility until discharge from the facility.

- (16) "Clinical" means having to do with the active direct treatment/habilitation of a client.
- (17) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.
- (18) "Clinical/professional supervision" means regularly scheduled assistance by a qualified mental health professional, a qualified substance abuse professional or a qualified developmental disabilities professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- (19) "Contested case" means an administrative proceeding under G.S. 150B, Article 3, in which the rights, privileges, or duties of a party are required by law to be determined.
- (20) "Contract agency" means a legally constituted entity with which the area program contracts for a service exclusive of intermittent purchase of service for an individually identified client.
- (21) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.
- (22) "Declaratory ruling" means a formal and binding interpretation as to:
 - (A) the validity of a rule; or
 - (B) the applicability to a given state of facts of a statute administered by the Department of Human Resources, or a rule or order of the Department of Human Resources.
- (23) "Detoxification" means the physical withdrawal of an individual from alcohol or other drugs in order that the individual can participate in rehabilitation activities.
- (24) "Developmentally delayed children" means those whose development is

delayed in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication, social and emotional; and adaptive skills. The specific level of delay must be:

- (A) for children from birth to 36 months of age, documented by scores one and one-half standard deviations below the mean on standardized tests in at least one of the above areas of development. Or, it may be documented by a 20 percent delay on assessment instruments that yield scores in months; and
- (B) for children from 36 to 60 months of age, documented by test performance two standard deviations below the mean on standardized tests in one area of development or by performance that is one standard deviation below the norm in two areas of development. Or, it may be documented by a 25 percent delay in two areas on assessment instruments that yield scores in months.
- (25) "DFS" means the Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.
- (26) "Direct care staff" means an individual who provides active direct care, treatment, rehabilitation or habilitation services to clients.
- (27) "Dispensing medication" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by state and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a client is "dispensing." Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing."
- (28) "DMH/DD/SAS" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27603.
- (29) "Documentation" means provision of written, dated and authenticated evidence of the delivery of client services or compliance with statutes or rules, e.g., entries in the client record, policies and procedures, minutes of

- meetings, memoranda, reports, schedules, notices and announcements.
- (30) "Drug abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance. The criteria for drug abuse delineated in the 1987 edition of DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.
- (31) "Drug dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences. The criteria for drug dependence delineated in the 1987 edition of DSM-III-R published by the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of twenty-nine dollars and ninety-five cents (\$29.95) for the soft cover edition and thirty-nine dollars and ninety-five cents (\$39.95) for the hard cover edition is incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.
- (32) "DWI" means driving while impaired, as defined in G.S. 20-138.1.
- (33) "DWI substance abuse assessment" means a service provided to persons charged with or convicted of DWI to determine the presence of chemical dependency. The "assessment" involves a face-to-face interview with a substance abuse professional.
- (34) "Early Intervention Services" means those services provided for infants and toddlers specified in Section 303.12 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations, published 1/1/92 and incorporated by reference. This adoption by reference includes subsequent amendments and editions of the referenced material.
- (A) For the purposes of these services, however, transportation means assistance in the travel to and from the multidisciplinary evaluation, specified early intervention services provided by certified developmental day centers or other center-based services designed specifically for children with or at risk for disabilities; and speech, physical or occupational therapy, or other early intervention services if provided in a specialized setting away from the child's residence.
- (B) Transportation assistance may be provided by staff, existing public or private services, or by the family, who shall be reimbursed for their expenses, in accordance with applicable fee provisions. ~~This incorporation by reference does not include subsequent amendments and editions of the referenced material.~~
- (C) For the purposes of these services, special instruction means individually designed education and training in the strengths and needs of the child and family as identified in the multidisciplinary evaluation, in which the focus is on the major developmental areas and individual family needs. It occurs in two primary types of settings: home and mainstreamed center-based:
- (i) The mainstreamed center-based settings can be those designed primarily for children with or at risk for disabilities, such as developmental day centers or therapeutic preschools, if they allow for planned and ongoing contact with children without disabilities.
- (ii) Mainstreamed center-based settings also include those established primarily for children without disabilities, such as preschools, family day care homes, licensed child care centers:
- (1) when provided in these pro-

grams, special instruction also includes consultation and training for staff on curriculum design, teaching and behavior management strategies, and approaches to modification of the environment to promote learning; and

(II) service coordination activities, including assistance to the family in identifying such programs must be provided with special instruction, if requested by the family.

- (35) "Evaluation" means an assessment service which identifies the nature and extent of an individual's problem through a systematic appraisal, for the purposes of diagnosis and determination of the disability of the individual and the most appropriate plan, if any, for services.
- (36) "First aid" means emergency treatment for injury or sudden illness before regular medical care is available. First aid includes artificial respiration, the Heimlich maneuver, or other Red Cross first aid techniques for relieving airway obstruction, care of wounds and burns, and temporary administering of splints.
- (37) "Governing body" means, in the case of a corporation, the board of directors; in the case of an area authority, the area board; and in all other cases, the owner of the facility.
- (38) "Health Services" means those services provided for infants and toddlers specified in Section 303.13 of Subpart A of Part 303 of Title 34 of the Code of Federal Regulations, published 6/22/89 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material.
- (39) "Hearing" means, unless otherwise specified, a contested case hearing under G.S. 150B, Article 3.
- (40) "High risk children" means those from birth to 36 months of age for whom there is clinical evidence of conditions which have a high probability of resulting in developmental delay or atypical development and for whom there is clinical evidence that developmental or therapeutic intervention may be neces-

sary. There are two categories of high risk children. These are:

- (A) High Risk-Established: Diagnosed or documented physical or mental conditions which are known to result in developmental delay or atypical development as the child matures. Such conditions include, but need not be limited to are limited to the following:
 - (i) chromosomal anomaly or genetic disorders associated with developmental deficits;
 - (ii) metabolic disorders associated with developmental deficits;
 - (iii) infectious diseases associated with developmental deficits;
 - (iv) neurologic disorders;
 - (v) congenital malformations;
 - (vi) sensory disorders; or
 - (vii) toxic exposure; or
 - (viii) severe attachment disorders.
- (B) High Risk-Potential: Documented presence of indicators which are associated with patterns of development and which have a high probability of meeting the criteria for developmental delay or atypical development as the child matures. There shall be documentation of at least three of the parental or family, neonatal, or post-neonatal risk conditions as defined on page 12 in the 1990 publication, "NORTH CAROLINA CHILD SERVICE COORDINATION PROGRAM" available from the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687 and incorporated by reference. This incorporation by reference does not include subsequent amendments and editions of the referenced material. These conditions are as follows:
 - (i) maternal age less than 15 years;
 - (ii) maternal PKU;
 - (iii) mother HIV positive;
 - (iv) maternal use of anticonvulsant, antineoplastic or anticoagulant drugs;
 - (v) parental blindness;
 - (vi) parental substance abuse;
 - (vii) parental mental retardation;
 - (viii) parental mental illness;
 - (ix) difficulty in parental or infant

- bonding;
- (x) difficulty in providing basic parenting;
- (xi) lack of stable housing;
- (xii) lack of familial and social support;
- (xiii) family history of childhood deafness;
- (xiv) maternal hepatitis B;
- (xv) birth weight less than 1500 grams;
- (xvi) gestational age less than 32 weeks;
- (xvii) respiratory distress (mechanical ventilator greater than six hours);
- (xviii) asphyxia;
- (xix) hypoglycemia (less than 25 mg/dl);
- (xx) hyperbilirubinemia (greater than 20 mg/dl);
- (xxi) intracranial hemorrhage;
- (xxii) neonatal seizures;
- (xxiii) major congenital anomalies;
- (xxiv) CNS infection or trauma;
- (xxv) congenitally acquired infection;
- (xxvi) suspected visual impairment;
- (xxvii) suspected hearing impairment;
- (xxviii) no well child care by age six months;
- (xxix) failure on standard developmental or sensory screening test;
- (xxx) significant parental concern; and
- (xxxi) suspected abuse or neglect.
- (41) "Hours of operation" means an indication of the minimum operational hours that a service is expected to be available to clients, but not prohibiting the typical closing of a service to accommodate holidays, vacations, staff development activities and weather and facility-related conditions but taking into consideration the type of service being provided.
- (42) "ICF/MR" (Intermediate Care Facility/Mentally Retarded) means a facility certified as having met federal ICF/MR requirements and which provides 24-hour personal care, habilitation, developmental and supportive services to persons with mental retardation or related conditions.
- (43) "Incident" means any happening which is not consistent with the routine operation of the facility or the routine care of a client and that is likely to lead to adverse effects upon a client.
- (44) "Infant" means an individual from birth to one year of age through two years of age.
- (45) "Legend drug" means a drug that cannot be dispensed without a prescription.
- (46) "License" means a permit to operate a facility which is issued by DFS under G.S. 122C, Article 2.
- (47) "Medication" means a substance recognized in the official "United States Pharmacopoeia" or "National Formulary" intended for use in the diagnosis, mitigation, treatment or prevention of disease.
- (48) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (49) "Neighborhood" - See "residential setting".
- (50) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (51) "Operator" means the designated agent of the governing body who is responsible for the management of a licensable facility.
- (52) "Outpatient" or "Outpatient service" means the same as periodic service.
- (53) "Parent" means the legally responsible person unless otherwise clear from the context.
- (54) "Periodic service" means a service provided through short, recurring visits for persons who are mentally ill, developmentally disabled or substance abusers.
- (55) "Personal assistance" means providing assistance to a client who is mentally ill, has a developmental disability or disabilities, or is a substance abuser, in order that the client can engage in activities and interactions from which the client would otherwise be limited or excluded because of the disability or disabilities. The assistance shall include, but need not be limited to:
 - (A) assistance in personal or regular living activities in the client's home;
 - (B) support in skill development; or
 - (C) support and accompaniment of the client in regular community activities

- or in specialized treatment, habilitation or rehabilitation service programs.
- (56) "Physical examination" means the procedures used by a physician or physician extender on behalf of a physician to determine the physiological and anatomical condition of the client. Physical examination also means medical examination.
- (57) "Physician extender" means a nurse practitioner or a physician assistant approved to perform medical acts by the Board of Medical Examiners of the State of North Carolina.
- (58) "Preschool age child" means a child from three through five years of age.
- (59) "Private facility" means a facility not operated by or under contract with an area program.
- (60) "Program evaluation" means the systematic documented assessment of program activity to determine the effectiveness, efficiency and scope of the system under investigation, to define its strengths and weaknesses and thereby to provide a basis for informed decision-making.
- (61) "Provider" means an individual, agency or organization that provides mental health, mental retardation or substance abuse services.
- (62) "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.
- (63) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience.
- (64) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.
- (65) "Psychotherapy" means a form of treatment of mental illness or emotional disorders which is based primarily upon verbal or non-verbal communication with the patient. Treatment is provided by a trained professional for the purpose of removing or modifying existing symptoms, of attenuating or reversing disturbed patterns of behavior, and of promoting positive personality growth and development.
- (66) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. These medications include, but are not limited to, antipsychotics, antidepressants, neuroleptics, lithium and minor tranquilizers.
- (67) "Qualified alcoholism professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.
- (68) "Qualified developmental disabilities professional" means an individual holding at least a baccalaureate degree in a discipline related to developmental disabilities, and at least two years of supervised habilitative experience in working with the mentally retarded or otherwise developmentally disabled or holding a baccalaureate degree in a field other than one related to developmental disabilities and having three years of supervised experience in working with the mentally retarded or otherwise developmentally disabled.
- (69) "Qualified drug abuse professional" means an individual who is certified by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of drug abuse counseling.
- (70) "Qualified mental health professional" means any one of the following:

- psychiatrist, psychiatric nurse, practicing psychologist, psychiatric social worker, an individual with at least a master's degree in a related human service field and two years of supervised clinical experience in mental health services or an individual with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.
- (71) "Qualified nutritionist" means an individual who has a Master's degree in nutrition, nutrition education or public health nutrition and who may or may not be a registered dietitian.
- (72) "Qualified substance abuse professional" means an individual who is:
- (A) certified by the North Carolina Substance Abuse Professional Certification Board; or
 - (B) a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.
- (73) "Registered dietitian" means an individual who has successfully completed a national examination for the Commission on Dietetic Registration and maintains registration with that commission through approved continuing education activities and events.
- (74) "Rehabilitation" means training, care and specialized therapies undertaken to assist a client to reacquire or maximize any or all lost skills or functional abilities.
- (75) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove a hypothesis, or to explicate some principle or effect. The term "research" as used in this document means research which is not standard or conventional; involves a trial or special observation which would place the subject at risk for injury (physical, psychological or social injury), or increase the chance of disclosure of treatment; utilizes elements or steps not ordinarily employed by qualified professionals treating similar disorders of this population; or is a type of procedure that serves the purpose of the research only and does not include treatment designed primarily to benefit the individual.
- (76) "Residential setting" means a living area or zone in which the primary purpose is family residential living and which may be located in an area zoned either urban residential or rural.
- (77) "Respite discharge" means that point in time when no additional incidents of respite services are anticipated.
- (78) "Respite episode" means an uninterrupted period of time during which a client receives respite services.
- (79) "Screening" means an assessment service which provides for a brief appraisal of each individual who presents himself for services, in order to determine the nature of the individual's problem and his need for services. Screening may also include referral to other appropriate community resources.
- (80) "Secretary" means the Secretary of the Department of Human Resources or designee.
- (81) "Service" means an activity or interaction intended to benefit another, with, or in behalf of, an individual who is in need of assistance, care, habilitation, intervention, rehabilitation or treatment.
- (82) "Severely physically disabled person" means for the purpose of ADAP (Adult Developmental Activity Program) a person:
- (A) who has a severe physical disability which seriously limits his functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills);
 - (B) who has one or more physical disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including

- stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia and end stage renal disease; and
- (C) whose habilitation or rehabilitation can be expected to require multiple habilitation or rehabilitation services over an extended period of time.
- (83) "Sheltered employment" means a facility's provision of work and work training by:
- (A) subcontracting from industries in the community and bringing work to the facility to be performed; or
- (B) manufacturing its own products in the facility. Clients served in a sheltered employment model are those who consistently achieve earning levels exceeding one-half of the minimum wage but who are not ready for independent employment activities.
- (84) "Staff member" means any individual who is employed by the facility.
- (85) "Substantially mentally retarded person" means for the purpose of ADAP a person who is mentally retarded to the degree of seriously limiting his functional capabilities, whose habilitation or rehabilitation can be expected to extend over a period of time, and including:
- (A) moderately mentally retarded persons;
- (B) severely mentally retarded persons;
- (C) profoundly mentally retarded persons; or
- (D) mentally retarded persons with a handicapping condition so severe as to lack the potential for employment at this time, either in a sheltered or competitive setting. In addition, such individuals must have a deficit in self-help, communication, socialization or occupational skills and be recommended by the vocational rehabilitation counselor for consideration of placement in an ADAP.
- (86) "Support services" means services provided to enhance an individual's progress in his primary treatment/habilitation program.
- (87) "Supported employment" means a day/night service which involves paid work in a job which would otherwise be done by a non-disabled worker.

- Supported employment is carried out in an integrated work site where a small number of people with disabilities work together and where the work site is not immediately adjacent to another program serving persons with disabilities. It includes intensive involvement of staff working with the individuals in these integrated settings.
- (88) "Toddler" means an individual from one through two three years of age.
- (89) "Treatment" means the process of providing for the physical, emotional, psychological and social needs of clients through services.
- (90) "Treatment/habilitation plan" means a plan in which one or more professionals, privileged in accordance with 10 NCAC 14K .0319, working with the client and, in some cases, family members or other service providers, document which interventions will be provided and the goals, objectives and strategies that will be followed in providing services to the client.
- (91) "Twenty-four hour facility in which medical care is an integral component" means a facility in which:
- (A) the medication needs of clients may be evaluated, medication prescribed and laboratory tests ordered to assist in the diagnosis, treatment and monitoring of problems associated with the mental health, mental retardation or other developmental disabilities or substance abuse disorder of clients; and
- (B) proper referral of the client is made to medical specialists when needed.
- (92) "Twenty-four hour service" means a service which is provided to a client on a 24-hour continuous basis.

Statutory Authority G.S. 122C-3; 133C-26; 143B-147.

SECTION .0300 - FACILITY AND PROGRAM MANAGEMENT

.0365 DWI SUBSTANCE ABUSE ASSESSMENTS

(a) Any facility licensed as an alcoholism and substance treatment facility in accordance with the requirements of 10 NCAC 14N .0100 through

.0500 and 14N .0700, may provide DWI assessments.

(b) If the facility provides DWI assessments, it shall follow the rules set forth in 10 NCAC 18F .0312 through .0323.

Any facility licensed as an alcoholism and substance abuse treatment facility in accordance with the provisions of 10 NCAC 14N .0100 through .0500 and 10 NCAC 14N .0700 may provide DWI assessments. If the facility wishes to provide DWI assessments, the assessments shall be carried out in accordance with the provisions of 10 NCAC 18F .0312 through .0320.

Statutory Authority G.S. 20-179(m); 122C-26; 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18M - REQUIRED SERVICES

SECTION .0700 - DEVELOPMENTAL DAY SERVICES FOR PRESCHOOL CHILDREN WITH DEVELOPMENTAL DISABILITIES OR DELAYS OR AT HIGH RISK FOR MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES OR DELAYS

.0712 MEDICAL STATEMENT

Each staff member, student intern regular volunteer, substitute staff member or other individual who works directly and on a continuous basis with children shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed physician. The medical statement may be in any written form but shall be signed by the physician and indicate the general good physical and mental health of the individual and the lack of evidence of active tuberculosis and communicable diseases. The program shall keep the most recent medical statement on file.

Statutory Authority G.S. 122C-51; 143B-147.

SECTION .0900 - ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS)

.0906 INSTRUCTION CERTIFICATION

(a) Each class shall have a designated instructor who is certified by the Division.

(b) An individual seeking initial certification as

an instructor shall:

- (1) be a high school graduate or its equivalent;
- (2) have a working knowledge of alcohol, other drugs, and traffic safety issues;
- (3) complete the application required by the Division;
- (4) submit the original and one copy to the DWI/Criminal Justice Branch of the Division;
- (5) complete an initial in-service training program provided by the Division; and
- (6) demonstrate skills by teaching all classes.

(c) The Division shall notify the applicant of the decision regarding initial certification within 60 days after receipt of the application.

(d) The duration of full certification shall be for a maximum period of two years.

(e) An applicant who does not obtain initial certification may be issued a provisional certification, and shall be:

- (1) informed as to the specific reasons why full certification was denied;
- (2) provided with eligibility requirements necessary to reapply for full certification; and
- (3) informed regarding the right to appeal the certification decision.

(f) Recertification:

- (1) Individuals seeking recertification shall submit documentation of having received a minimum of 48 clock hours of training in alcohol and drug education traffic subjects during the two years. This training shall be provided or subject to approval by the Division. Documentation of having received this training shall be submitted to the DWI/Criminal Justice Branch at least 30 days prior to expiration prior the existing certification.
- (2) An individual seeking recertification for each subsequent two-year cycle shall submit documentation of having received 30 clock hours of training in alcohol and drug education traffic subjects during the preceding two years;
- (3) The training shall be provided or approved by the Division; and
- (4) Documentation of this training shall be submitted to the DWI/Criminal Justice Branch of the Division at least 90 days prior to expiration of the existing certification.

(g) Revocation or suspension of certification may be issued for failure to:

- (1) cover the required subjects outlined in the prescribed curriculum;
- (2) maintain accurate student records;
- (3) comply with certification requirements;

(4) report to the Division in a timely manner, all students who complete the prescribed course.

Statutory Authority G.S. 20-179; 20-179.2; 143B-147.

CHAPTER 45 - COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

SUBCHAPTER 45G - MANUFACTURERS: DISTRIBUTORS: DISPENSERS AND RESEARCHERS OF CONTROLLED SUBSTANCES

SECTION .0100 - REGISTRATION OF MANUFACTURERS: DISTRIBUTORS: AND DISPENSERS OF CONTROLLED SUBSTANCES

.0104 PERSONS REQUIRED TO REGISTER

(a) Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance in this state shall obtain annually a registration unless exempted by law or pursuant to Rules .0107 through .0109 of this Section.

(b) Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration).

(c) When two or more practitioners dispense controlled substances from a common stock, they shall be deemed a clinic and required to register as specified in Paragraphs (a), (b) and (d) of this Rule.

(d) (e) Any person applying for registration or re-registration shall file, annually, an application for registration with the Department of Human Resources and submit the required nonrefundable fee with the application. Categories of applicants and the annual fee for each category are as follows:

CATEGORY	FEE
(1) Clinic	\$125.00
(2) Hospital	300.00
(3) Nursing Home	100.00
(4) Teaching Institution	100.00
(5) Researcher	125.00
(6) Analytical Laboratory	100.00
(7) Distributor	500.00
(8) Manufacturer	600.00

For any person who applies for registration at least six months or less prior to the end of the fiscal year, the required annual fee submitted with the application should be reduced by one-half of the above listed fee for each category.

Statutory Authority G.S. 90-100; 90-101; 143B-147.

.0139 SECURITY REQUIREMENTS GENERALLY

Compliance with the security requirements of federal law, including the requirements presented in Part 1301 of Title 21 of the Code of Federal Regulations, shall be deemed compliance under G.S. 90, Article 5.

Statutory Authority G.S. 90-100; 143B-147.

SECTION .0400 - MISCELLANEOUS

.0406 PROCEDURE FOR DISPOSING OF CONTROLLED SUBSTANCES

(a) Any person in possession of any controlled substance and desiring or required to dispose of such substance (e.g., upon discontinuance or transfer of business) shall be in compliance with the ~~state~~ State

requirements as long as ~~he follows~~ the requirements of federal law are met, including the requirements prescribed in Part 1307 of Title 21 of the Code of Federal Regulations, as amended.

(b) Any pharmacy, as defined in G.S. 90-87, licensed by the North Carolina Board of Pharmacy and not subject to registration by the Department, as defined in G.S. 122C-3, shall be in compliance with State requirements set forth in 21 NCAC 46 .3001(c).

Statutory Authority G.S. 90-100; 143B-147.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse intends to adopt rules cited as 10 NCAC 16A .0401 - .0403, with changes from the proposed text noticed in the Register, Volume 8, Issue 19, pages 1854 - 1856.

The proposed effective date of this action is July 1, 1994.

Reason for Proposed Action: To provide public notice of substantive changes made at the February 8, 1994 public hearing regarding Single Portal of Entry and Exit Rules.

Comment Procedures: Written comments may be submitted to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Albemarle Building, 325 N. Salisbury Street, Raleigh, N.C. 27603. These comments will be accepted from April 4, 1994 through May 9, 1994.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

CHAPTER 16 - MENTAL HEALTH: MR CENTERS

SUBCHAPTER 16A - GENERAL RULES FOR MR CENTERS

SECTION .0400 - SINGLE PORTAL OF ENTRY AND EXIT DESIGNATION

.0401 SCOPE

(a) The rules in this Section apply to single portal of entry and exit policy for public and private services for individuals with developmental disabilities as set forth in G.S. 122C-132.1.

(b) Day/night and 24-hour services for individuals with developmental disabilities, provided under the following authorities shall be subject to the rules of this Section:

- (1) G.S. 122C and 131D-2;
- (2) G.S. 131E, Part A of Article 6;
- (3) G.S. 110, Article 7;
- (4) Rules of the Division of Vocational Rehabilitation Services, when funded jointly by the area authority and the Division of Vocational Rehabilitation;
- (5) Rules of the Department of Public Instruction, when funded jointly by the area authority and the Department of Public Instruction; and
- (6) Rules of the Social Social Services Commission set forth in:
 - (A) 10 NCAC 41J Foster Care Services for Children;
 - (B) 10 NCAC 42A Foster Care Services for Adults (covers domiciliary home placement);
 - (C) 10 NCAC 42J Health Support Services (covers nursing home placement);
 - (D) 10 NCAC 42S Day Care Services for Adults; and
 - (E) 10 NCAC 42X Problem Pregnancy Services (covers maternity home placement).

(c) The criteria and procedures shall be based on a person-centered services model, and be followed by:

- (1) staff of the local area mental health authority; and
- (2) public and private providers of day/-night and 24-hour services for persons with mental retardation and developmental disabilities.

Statutory Authority G.S. 143B-147.

.0402 EXPLANATION OF TERMS

For the purposes of the rules in this Section, the

following terms shall have the meanings indicated:

- (1) "Client" means the term as defined in G.S. 122C-3.
- (2) "Community Interagency Council" means a group of human service professionals from various agencies and organizations; a consumer of a developmental disability service; and a family member of a consumer of a developmental disability service, who:
 - (a) function under the guidance of the area mental health, developmental disabilities and substance abuse authority;
 - (b) assist in planning for the needs of individuals with developmental disabilities; and
 - (c) provide general information and education to the community in:
 - (i) screening individuals for services;
 - (ii) identifying client needs;
 - (iii) identifying available resources and alternatives; and
 - (iv) determining a client's appropriateness for services within various agencies in the community.
- (3) "Day/night and 24-hour service" means the term as defined in 10 NCAC 14K .0103(c) and contained in Division publication, Licensure Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities, APSM 40-2, and available, upon request, from the Division at the current printing cost.
- (4) "Developmental disabilities" means the term as defined in G.S. 122C-3.
- (5) "Emergency entry and exit" means screening and evaluation for placement which is provided on an immediate non-scheduled basis to individuals with developmental disabilities.
- (6) "Funded jointly" means funding from two or more sources or agencies.
- (7) "Notification procedures for provision of services" means notification from one area program to another that it plans to operate or contract for services in that area program's catchment area, as specified in 10 NCAC 18A .0605.
- (8) "Person-centered services model" means an approach to planning services for a client with developmental disabilities based on the client's needs, in order to help a client make choices and decisions, and respect those decisions.
- (9) "Review" means an organized protocol to

assess the needs of individuals for day/night and 24-hour services to ensure appropriate referrals.

- (10) "Single portal of entry and exit policy" means the term as defined in G.S. 122C-3, amended effective January 1, 1994.
- (11) "Waiting list" means a listing of persons who are in need of day/night and 24-hour services.

The material referenced in this Rule includes subsequent amendments or editions to the referenced material.

Statutory Authority G.S. 143B-147.

.0403 DESIGNATION PROCEDURES

(a) Each area authority shall develop a single portal of entry and exit plan that shall include, but not be limited to:

- (1) a specific listing of day/night and residential services to be covered by the plan;
- (2) procedures for:
 - (A) review of individuals to be admitted to or discharged from services;
 - (B) emergency entry and exit from services, which shall include, but not be limited to:
 - (i) notification to the area program within 24 hours of the entry or exit; and
 - (ii) exit review, as required by single portal mechanism.
 - (C) shared responsibility when individuals are admitted directly to a State facility;
 - (D) facility and citizen complaints;
 - (E) specific grievance process, as specified in:
 - (i) 10 NCAC 14Q .0200, contained in Division publication, Client Rights in Community Mental Health, Developmental Disabilities and Substance Abuse Facilities, APSM 95-2; and
 - (ii) G.S. 122C-151.4, Appeals to Area Authority Appeals Panel.
 - (F) residential facilities located in an area mental health program serving state-wide and regional clients; and
 - (G) placement of clients outside their county of residence;
- (3) provisions for:
 - (A) services funded jointly by area author-

- ities and local education agencies;
- (B) services funded jointly by area authorities and the Division of Vocational Rehabilitation;
- (C) decision-making within the community interagency mechanism with details regarding the authority of the area program for input and final decision on the plan;
- (D) composition of the membership of the Community Interagency Council, which shall include but not be limited to:
 - (i) a consumer of a developmental disability service;
 - (ii) a family member of a consumer of a developmental disability service; and
 - (iii) a representative from the following:
 - (I) Department of Social Services;
 - (II) Regional Mental Retardation Center;
 - (III) Public Schools;
 - (IV) Division of Vocational Rehabilitation;
 - (V) Public Health Department;
 - (VI) Area mh/dd/sa programs;
 - (VII) Advocacy groups; and
 - (VIII) Residential and Day Service providers.
- (E) person-centered services as defined in Rule .0402 of this Section;
- (4) a process for maintaining a waiting list which shall contain, but not be limited to, the following documentation for each potential client:
 - (A) name and identifying information;
 - (B) referral date;
 - (C) eligibility status;
 - (D) identified disability;
 - (E) requested type of service which shall include, but not be limited to:
 - (i) name and location of service referred to;
 - (ii) date of need for service;
 - (iii) service availability; and
 - (F) status of referral which includes the following:
 - (i) slot availability;
 - (ii) acceptance of referral;
 - (iii) date of enrollment;
 - (iv) rejection of referral; and
- (b) The area authority shall ensure:
 - (1) adherence to notification procedures as

- set forth in 10 NCAC 18A .0605 NOTIFICATION PROCEDURES FOR PROVISION OF SERVICES;
- (2) compliance with P.L. 99-457 regarding 45-day waiting list;
- (3) that annual summary reports for waiting lists are submitted to the Division by January 30 of each year which shall include, but need not be limited to:
 - (A) the information as specified in Subparagraph (a)(4) of this Rule;
 - (B) types of services (all clients referred to each service including date, status, and number of days waiting by service type code);
 - (C) providers of services (providers in provider code order);
 - (D) provider statistics on referrals (providers with number of referrals and length of waiting period);
 - (E) service type statistics (service types with number of referrals and length of waiting period); and
 - (F) frequency report (providers, service types and age groups with the number of referrals for each and the percent of the total it represents).
- (4) review of the plan by the Community Interagency Council for approval by the Area Board. Written comments of the Interagency Council shall accompany the area plan for consideration by the area board and the Division.
- (5) that the plan is forwarded to the Division to be reviewed by the Secretary for approval;
- (6) that any changes in the plan are reviewed and approved by the Secretary, once the area is designated as single portal; and
- (7) that the approved plan is made available to local service providers, agencies and consumers.

Statutory Authority G.S. 143B-147.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10D .0002, with changes from the

proposed text noticed in the Register, Volume 8, Issue 15, pages 1413 - 1416 and Issue 17, pages 1631 - 1633.

The proposed effective date of this action is July 1, 1994.

Reason for Proposed Action: Changes and revision to the rule made in response to public comment.

Comment Procedures: The record will be open for receipt of written comments from April 4, 1994 to May 5, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0002 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting

is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.

- (3) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.
- (4) Establishment of Archery and Restricted Zones. The Commission will conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments will be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar,

wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License:

(1) Hunting and Trapping:

(A) Requirement. Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities must have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(B) Exceptions:

- (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (ii) The resident and nonresident sportsman's licenses include game lands use privileges.
- (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Subsection (e) of this Rule may do so without the game lands license.
- (iv) On the game lands listed in Rule .0003(d)(1) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick

Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence.

Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by a check for the facility use fee computed at the rate of fifty dollars (\$50.00) for each scheduled day of the trial. The total facility use fee will cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee must be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained.

The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during

some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 must submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1.

Dogs may not be trained or permitted to run unleashed ~~from between~~ April 1 ~~through~~ and August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (7) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or

designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed and maintained for vehicular travel and those trails posted for vehicular travel; unless such person:

is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or

(2) ~~is a disabled license holder pursuant to G.S. 113-270.2 and G.S. 113-271 and the underlying basis for obtaining such license was limited physical mobility. Persons meeting this criteria may operate electric wheelchairs and All Terrain Vehicles on those game lands owned by the Wildlife Resources Commission. For purposes of this Rule, the term "wheelchair" is defined as a device that is designed solely to be used by mobility impaired individuals for locomotion. The term "All Terrain Vehicle" is defined as those vehicles having three or four wheels, tire pressure of no more than five pounds per square inch and a gross vehicle weight of no more than 600 pounds. Notwithstanding this Rule, no person shall operate an electric wheelchair, an All Terrain Vehicle, or any other motorized vehicle on wildlife plantings, high risk areas of erosion, dedicated nature preserves, other areas in which no access is permitted or in streams except at ford crossings.~~

(2) holds a special vehicular access identification card and permit issued by the Commission based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands

where this special rule applies will be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all time in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision must prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsman listed in 15A NCAC 10D .0003 an individual must have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant must provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury, or defect confining the person to a wheelchair, walker, or crutches; or
- (5) legal deafness.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession

the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals. It is unlawful to release pen-raised animals or birds, or wild animals or birds on Game Lands without written authorization.

Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10I .0001, with changes from the proposed text noticed in the Register, Volume 8, Issue 20, pages 1959 - 1960.

The proposed effective date of this action is July 1, 1994.

Reason for Proposed Action: To establish definitions, criteria and procedures for designation of critical habitat.

Comment Procedures: The record of hearing will be open for receipt of written comments from April 4, 1994 to May 4, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

.0001 DEFINITIONS AND PROCEDURES

For the purposes of this Subchapter, the following definition shall apply: "Species" means any taxonomic grouping of wildlife the adult members of which interbreed and reproduce their kind.

(a) For the purposes of this Subchapter, the following definitions shall apply:

- (1) "Best available scientific evidence" is the existing biological, chemical, and physical data on the distribution, status, abundance, and population dynamics of a wild animal species and on the sufficiency or insufficiency of the biological and physical features of a critical habitat that have been collected and analyzed by competent biologists using objective, scientific methods.
- (2) "Biological and physical features" are the known parameters and characteristics of a critical habitat necessary to sustain essential life processes of a wild animal species.
- (3) "Conservation of a protected animal species" is defined by G.S. 113-331(1).
- (4) "Conservation plan" shall be a written plan developed by the Wildlife Resources Commission using its resources and expertise in the biological and ecological sciences with input from other agencies that documents problems in the biological and physical features of a critical habitat and identifies possible remedies.
 - (A) The conservation plan shall contain the best available scientific evidence that forms the basis for designation of the critical habitat and may contain recommended actions to be taken for special conservation, protection, and management of the critical habitat.
 - (B) The conservation plan may contain more than one critical habitat if the threats to the habitats and the endangered and threatened wild animal species occupying them are similar.
 - (C) The conservation plan shall be available for public review and comment.
- (5) "Critical habitat" means any habitat essential to the conservation of a protected animal species listed as endangered or threatened in Rule .0003 or .0004 of this Subchapter.
 - (A) Critical habitat shall include areas within the occupied or potential geographical range of a protected animal species or other critical areas that contain or impact the biological and physical features essential to the conservation of a protected animal species and for which special conservation, protection, and management actions may be required.
 - (B) Critical habitat shall not include the entire occupied or potential geographical range of a protected animal species or all areas that impact upon a protected animal species unless the best available scientific evidence indicates that special conservation, protection, and management of the area or the entire range is essential to the conservation of a protected animal species.
 - (C) Critical habitats designations shall be listed in this Subchapter and shall include an accurate description of the habitats and their boundaries, the endangered and threatened wild animal species occupying the habitats, and the reason and basis for designation.
- (6) "Life processes" are those biological functions of a wild animal species essential to the health and survival of individual organisms and perpetuation of a wild animal species.
- (7) "Protected animal" is defined in G.S. 113-331(5).
- (8) "Special conservation, protection, and management" are measures that may be taken and restrictions that may be imposed necessary to preserve or restore the essential biological and physical features of a critical habitat.
- (9) "Species" means the taxonomic grouping of wildlife, the sexually mature members of which interbreed and reproduce their own kind.
- (10) "Wild animal" is defined in G.S. 113-331(10).
 - (b) For the purposes of this Subchapter, the following procedures applies for the designation of critical habitat.
 - (1) The Wildlife Resources Commission shall undertake designation of critical habitat with the advice and upon the recommendation of the Nongame Wildlife Advisory Committee and shall base any decision to list critical habitat upon the best available scientific evidence.
 - (2) Upon finding that designation of critical habitat is essential to the conservation of a protected animal species listed as endangered or threatened pursuant to Rule .0003 or .0004 of this Subchapter,

the Wildlife Resources Commission shall publish in the North Carolina Register notice of hearing and intent to designate the area as critical habitat and shall invite representatives of interested agencies with jurisdiction over measures and restrictions that could effect special conservation, protection, and management of the critical habitat to participate in development of a conservation plan for the critical habitat.

(3) Prior to the public hearing on designation of critical habitat, the conservation plan shall be complete and available for public review and shall be provided to other appropriate agencies.

(4) The Wildlife Resources Commission shall base its decision to list or not list a critical habitat solely upon the determination of whether or not the critical habitat is essential for the conservation of a protected animal species. Considerations related to the appropriateness or implementation of special conservation, protection, and management actions recommended in the conservation plan shall not bear upon the decision to list or not list a critical habitat.

Statutory Authority G.S. 113-132; 113-134; 113-331; 113-333; 113-334; 113-336; 143-239.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 1 - NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Acupuncture Licensing Board intends to adopt rules cited as 21 NCAC 1 .0101 - .0103.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 4:00 p.m. on May 5, 1994 at the Pack Memorial Library, 67 Haywood St., Asheville, NC 28801.

Reason for Proposed Action: The North Carolina Legislature created the North Carolina Acupunc-

ture Licensing Board to regulate the practice of acupuncture.

Comment Procedures: *Written comments may be sent directly to the North Carolina Acupuncture Licensing Board. All written comments should be received by 5:00 p.m. on May 5, 1994. Send to: North Carolina Acupuncture Licensing Board, P.O. Box 25171, Asheville, NC 28803.*

Editor's Note: *These Rules were filed as temporary rules effective March 18, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

SECTION .0100 - LICENSURE

.0101 QUALIFICATIONS FOR LICENSURE

In addition to and for the purposes of meeting the requirements of G.S. 90-455 an applicant for licensure shall:

- (1) Submit an application as required by the Board.
- (2) Submit fees as required by Rule .0103 of this Section.
- (3) Submit proof of a passing score on the National Commission for the Certification of Acupuncturists' (NCCA) certifying examination or a passing score from any state utilizing the NCCA examination.
- (4) Submit affidavit of completion of a three-year postgraduate acupuncture college (NACSCAOM).
- (5) Successfully complete the Clean Needle Technique course offered by the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM).
- (6) Submit any documentation, in a language other than English, accompanied by a translation into English by a translator other than the applicant, which translated documents must bear the affidavit of the translator certifying that he is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original, and be sworn to before a notary public. Translation of any document relative to a person's application shall be at the expense of the applicant.
- (7) Submit all correspondence to North

Carolina Acupuncture Licensing Board,
P.O. Box 25171, Asheville, NC 28803.

Statutory Authority G.S. 90-455.

.0102 QUALIFICATIONS FOR GRANDFATHERING

An applicant for grandfathering shall:

- (1) Submit an application as required by the Board before December 31, 1994.
- (2) Submit fees as required by Rule .0103 of this Section.
- (3) Provide proof of residency in North Carolina as of January 1, 1993.
- (4) Fulfill one of the following:
 - (a) Submit an affidavit of completion of training from an approved acupuncture college; or
 - (b) Successfully complete the Clean Needle Technique (CNT) course and score 15 points as outlined in this Sub-item to qualify under a Board approved training program.
- (i) Proof of a passing score on the National Commission for the Certification of Acupuncturists' certifying examination is equal to 15 points.
- (ii) Training: Whether formal or through an apprenticeship, an applicant must accrue at least 5 points in any combination of the categories in Sub-items (4)(b)(ii)(A) and (B) if Sub-item (4)(b)(i) is not met.
 - (A) Apprenticeship - One point for each 150 documented hours with an acupuncturist.
 - (B) Formal Education - One point for each 100 documented hours in a formal training program.
- (iii) Experience: An applicant shall accrue a minimum of five points in the experience category if Sub-item (4)(b)(i) is not met.
 - (A) Applicant's practice must consist of at least 90% acupuncture. Treatments for smoking cessation and weight loss shall not be considered if they comprise more than 40% of the practice.
 - (B) Five points are awarded for 2,000 patient hours within the last three years prior to application for licensure. A minimum of 100 different patients must have been treated.

(C) Ten points will be awarded for 4,000 patient hours within the last three years prior to application for licensure. A minimum of 100 different patients must have been treated.

- (5) Submit all correspondence to the North Carolina Acupuncture Licensing Board, P.O. Box 25171, Asheville, NC 28803.

Statutory Authority 1993 S.L., c. 303, s. 3.

.0103 FEES

The following fees shall apply:

- (1) Acupuncturists:
 - (a) Application fee for initial license \$100.00
This fee shall be non-refundable whether the application is approved or denied.
 - (b) Initial Biennial Licensing Fee \$500.00
 - (c) Renewal of Biennial License \$300.00
- (2) License Fees:
 - (a) Duplicate license fee \$25.00
Duplicate wall certificate fee \$50.00
 - (b) Late fee for reinstatement of a license which remains lapsed for more than 60 days \$50.00
 - (c) Fee for providing a roster of licensed acupuncturists \$10.00
 - (d) Returned check fee \$20.00
 - (e) Fee for verification of North Carolina licensure to another state \$25.00
 - (f) Name change \$5.00
 - (g) Tutorial application fee \$200.00
 - (h) Annual tutorial application renewal fee \$100.00
 - (i) Continuing education program approval fee \$50.00
 - (j) Continuing education provider approval fee \$50.00
 - (k) Initial school application fee \$750.00
 - (l) Renewal school application fee \$500.00
 - (m) Photocopy fee (per page) \$0.25
Facsimile fee (per page) \$3.00

Statutory Authority G.S. 90-457.

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S.

150B-21.2 that the North Carolina Board of Nursing intends to amend rules cited as 21 NCAC 36 .0211, .0213, .0218 and .0219.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:00 p.m. on April 21, 1994 at the Brownstone Hotel, 1707 Hillsborough Street, Raleigh, NC 27605.

Reason for Proposed Action:

21 NCAC 36 .0211 and .0213 - To be consistent with changes in the Board policies and National Council requirements with the implementation of Computer Adaptive Testing.

21 NCAC 36 .0218 - To be consistent with Board Policy and to be consistent with G.S. 90-171.33(c) - Nursing Practice Act (effective June 1993).

21 NCAC 36 .0219 - To be consistent with G.S. 90-171.33(b) (Nursing Practice Act) in relation to implementation of Computer Adaptive Testing (effective June 1993).

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning these amendments must be submitted by May 4, 1994, to Jean Stanley, CPS, APA Coordinator, N.C. Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129.

SECTION .0200 - LICENSURE

.0211 EXAMINATION

(a) An applicant meets the educational qualifications to ~~write~~ take the examination for licensure to practice as a registered nurse by:

- (1) graduating from a Board approved nursing program designed to prepare a person for registered nurse licensure;
- (2) graduating from a nursing program outside the United States or Canada that is designed to provide graduates with comparable preparation for licensure as a registered nurse, and submitting the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications.

(b) An applicant meets the educational qualifications to ~~write~~ take the examination for licensure to practice as a licensed practical nurse by:

- (1) graduating from a Board approved nursing program designed to prepare a person for practical nurse licensure;
- (2) graduating from a nursing program outside the United States or Canada that is designed to provide graduates with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from a Board approved evaluation agency of the required educational qualifications and evidence of English proficiency from a Board approved agency or service;
- (3) graduating from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure;
- (4) graduating from a nursing program outside the United States and Canada that is designed to prepare graduates for registered nurse licensure, submitting evidence of English proficiency from a Board approved agency or service, and failing to pass the examination for registered nurse licensure in any jurisdiction; or
- (5) completing a Board approved course of study such as offered by the military service branches for Hospital Corpsman. The Board approved course of study ~~includes~~ shall include:
 - (A) ~~a course equivalent to the U.S. Navy Hospital Corpsman Basic (Class "A") military service branch basic hospital corpsman course;~~
 - (B) ~~Advancement Examination for Navy Hospital Corpsman Third Class or an equivalent examination; advanced training in clinical nursing practice;~~
 - (C) ~~a college level human lifespan growth and development course; and~~
 - (D) ~~a nursing course provided by the Navy or another an approved agency that includes maternal-child nursing theory and clinical, the legal role of the LPN, the nursing process and nutrition.~~

(c) An application to ~~the Board of Nursing for examination~~ shall be submitted to the Board of Nursing and a registration form to the testing service. The applicant must meet all requirements

~~of at least 60 days prior to the examination. Pursuant to The Americans with Disabilities Act and guidelines established by the National Council of State Boards of Nursing, Inc., the Board cannot accept applications received after the established deadline date. An admission card with specific information as to time, date and place of examination will be mailed to the applicant approximately 14 days prior to the date of the examination.~~

(d) The initial application will be held active until the applicant passes the examination or one year, whichever occurs first. The time begins on the date the applicant is determined to be eligible for the licensure examination. The Authorization to Test document issued by the testing service will be valid until the applicant takes the examination or 180 days, whichever occurs first. The applicant must submit a fee to re-establish eligibility for an expired Authorization to Test document.

~~(e)(d)~~ The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.

- (1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.
- (2) The examinations for licensure shall be administered at least twice a year.
- (3) ~~Scores on Results for~~ the examination shall be reported, by mail only, to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.
- (4) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination is 350. For the examination offered in July 1982 and through July 1988, the passing score is 1600. Beginning February 1989, the results for registered nurse licensure is reported as "PASS" or "FAIL".
- (5) The passing score for the examination for practical nurse licensure, up to and including the April 1988 is 350. Beginning October 1988, the results for practical nurse licensure is reported as "PASS" or "FAIL".

~~(f)(e)~~ Applicants who meet the qualifications for

licensure will be issued a certificate of registration and a license to practice nursing for the remainder of the year biennial period.

~~(g)(f)~~ Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in another any member jurisdiction of the United States, providing: Council.

- ~~(1) the Board of Nursing in that jurisdiction consents to proctor the applicant;~~
- ~~(2) arrangements are made through the North Carolina Board of Nursing sufficiently in advance of the examination date to meet application requirements in both jurisdictions; and~~
- ~~(3) the applicant pays any service fee charged by the proctoring Board.~~

~~(g) The North Carolina Board of Nursing may proctor an examination upon request of another state Board of Nursing at the regularly scheduled examination sessions if space is available. The applicant shall submit a service fee for such proctoring.~~

Statutory Authority G.S. 90-171.23(15); 90-171.29; 90-171.30.

.0213 REEXAMINATION

An applicant who fails an examination and is eligible to take retake a subsequent examination must submit a completed Board of Nursing application, ~~and the current examination fee by the published deadline date for that examination session. That applicant is not considered a first-time writer of the examination a completed testing service registration form, and related fees. The applicant is eligible to retake the examination no more frequently than every 90 days.~~

Statutory Authority G. S. 90-171.31; 90-171.33; 90-171.38.

.0218 LICENSURE WITHOUT EXAMINATION (BY ENDORSEMENT)

(a) The Board will provide an application form which the applicant who wishes to apply for licensure without examination (by endorsement) must complete in its entirety.

- (1) The applicant for licensure by endorsement as a registered nurse is required to show evidence of:
 - (A) completion of a nursing program approved by the jurisdiction of original licensure;

- (B) attainment of a standard score equal to or exceeding 350 on each test in the State Board Test Pool Examination administered prior to July 1982; or a standard score of 1600 on the licensing examination developed by the National Council of State Boards of Nursing, Inc. beginning in July 1982 and up to and including the July 1988 examination; or beginning in February 1989, a result of "PASS". An exception to this requirement is made for the applicant who was registered in the original state prior to April 1964. Such applicant must have attained the score, on each test in the series, which was required by the state issuing the original certificate of registration;
 - (C) mental and physical health necessary to competently practice nursing;
 - (D) unencumbered license in all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and
 - (E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).
- (2) The applicant for licensure by endorsement as a licensed practical nurse is required to show evidence of:
- (A) completion of:
 - (i) a program in practical nursing approved by the jurisdiction of original licensure; or
 - (ii) course(s) of study within an approved program(s) which is(are) comparable to that required of practical nurse graduates in North Carolina; or
 - (iii) approved course of study for military hospital corpsman which is(are) comparable to that required of practical nurse graduates in North Carolina.

The applicant who was graduated prior to July 1956 will be considered on an individual basis in light of licensure requirements in North Carolina at the

time of original licensure;

- (B) achievement of a passing score on the State Board Test Pool Examination or the licensing examination developed by the National Council of State Boards of Nursing, Inc. If originally licensed on or after September 1, 1957, and up to and including the April 1988 examination, an applicant for a North Carolina license as a practical nurse on the basis of examination in another state must have attained a standard score equal to or exceeding 350 on the licensure examination. Beginning in October 1988, an applicant must have received a result of "PASS" on the licensure examination. The applicant who was licensed prior to September 1, 1957 must have attained the score which was required by the jurisdiction issuing the original certificate of registration;
- (C) mental and physical health necessary to competently practice nursing;
- (D) unencumbered license in all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G. S. 90-171.35 and 90-171.36; and
- (E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).
 - (b) The North Carolina Board of Nursing will require applicants for licensure by endorsement to provide proof of secondary education achievement only if deemed necessary for identification, or other just cause.
 - (c) Graduates of Canadian nursing programs who have been licensed in Canada on the basis of the Canadian Nurses' Association Test Service Examination (CNATS) written in the English language are eligible to apply for registration by endorsement provided the applicant has not failed the examination developed by the National Council of State Boards of Nursing, Inc.—in North Carolina.
 - (d) A nurse educated and licensed outside the United States is eligible for North Carolina licensure by endorsement if the nurse has:
 - (1) proof of education as required by the

Board or a certificate issued by the Commission on Graduates of Foreign Nursing Schools; and

- (2) proof of passing the licensing examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction. An exception to this requirement is made for the applicant who was registered by Canadian province examination written in the English language prior to CNATS or SBTPE, and has worked in nursing within the past five years or has completed a Board-approved refresher course.

(e) When completed application, evidence of current license in another jurisdiction, and fee are received in the Board office, a temporary license is may be issued to the applicant. Employer references may be requested to validate competent behavior to practice nursing.

(f) Facts provided by the applicant and the Board of Nursing of original licensure are compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure is verified. When eligibility is determined, a certificate of registration and a current license for the remainder of the calendar year biennial period are issued.

Statutory Authority G. S. 90-171.23(b); 90-171.33; 90-171.37.

.0219 TEMPORARY LICENSE

~~(a) The Board of Nursing may issue a Status A nonrenewable temporary license under the following circumstances:~~

- ~~(1) A person is eligible for a Status A nonrenewable temporary license if that person:~~

~~(A) has graduated from an approved nursing program, filed a completed examination application form with correct fee, meets all qualifications for licensure by examination in North Carolina, and is scheduled for the licensure examination at the first opportunity after graduation; or~~

~~(B) has filed an application for licensure without examination with correct fee and provided verification of awaiting the results of the first writing of the examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction.~~

~~(2) The Status A nonrenewable temporary license expires on the lesser of nine months or the date a full license is issued or notice of failure of the examination is received.~~

~~(3) Status A temporary license authorizes the holder to:~~

~~(A) practice only in nursing situations where direct supervision by a registered nurse is available and at a standard of care of a fully licensed nurse; and~~

~~(B) perform direct patient care only, i.e., may not accept authority for nor assume responsibility to assign, supervise, or direct other nursing personnel; and~~

~~(C) participate in such orientation and continuing education activities as the employer offers to prepare the holder of a Status A temporary license for the employment position.~~

~~(4) Holders of valid Status A temporary license shall identify themselves as R.N. Applicant (R.N.A.) or L.P.N. Applicant (L.P.N.A.), as the case may be, after signatures on records.~~

~~(5) Upon expiration, revocation, or return of the Status A temporary license, the individual is ineligible to practice nursing as described in Paragraph (a)(3) of this Rule.~~

(b) The Board may issue a Status P nonrenewable temporary license to persons who have filed a completed application for licensure without examination with correct fee and provided validation of an active license in another jurisdiction.

(1) The Status P nonrenewable temporary license expires on the lesser of six months or the date a full license is issued or when it is determined the applicant is not qualified to practice nursing in North Carolina.

(2) Status P temporary license authorizes the holder to practice nursing in the same manner as a fully licensed R.N. or L.P.N., whichever the case may be.

(3) Holders of valid Status P temporary license shall identify themselves as R.N. Petitioner (R.N.P.) or L.P.N. petitioner (L.P.N.P.), as the case may be, after signatures on records.

(4) Upon expiration, revocation, or return of the Status P temporary license, the individual is ineligible to practice nursing

as described in ~~Paragraph (b)~~ Item (2) of this Rule.

Statutory Authority G.S. 90-171.33.

CHAPTER 53 - BOARD OF PROFESSIONAL COUNSELORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Licensed Professional Counselors intends to amend rules cited as 21 NCAC 53 .0101 - .0104, .0201, .0301, .0303 - .0304, .0401, .0501 - .0503; adopt rules cited as 21 NCAC 53 .0204, .0305, .0402; and repeal rules cited as 21 NCAC 53 .0105, .0203.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:00 p.m. on April 21, 1994 at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, North Carolina.

Reason for Proposed Action: These Rules have been written in order to comply with Article 24 of the North Carolina General Statutes 90-329-343 and Section 2 G.S. 8-53.8 and Section 3 G.S. 7A-551 as enacted by the General Assembly in their 1993 session.

Comment Procedures: Interested persons may present written or oral statements relevant to the actions proposed at the hearing to be held as indicated above. Written statements not presented at the hearing should be submitted before May 4, 1994 to the following address: NCB LPC, P.O. Box 21005, Raleigh, North Carolina 27619-1005.

SECTION .0100 - GENERAL INFORMATION

.0101 ORGANIZATION

The North Carolina Board of ~~Registered Practicing~~ Licensed Professional Counselors is composed, by law, of seven members appointed by the Governor to staggered terms of three years. The composition of the Board shall include five registered licensed counselors (~~three practicing counselors,~~

~~and two counselor educators at least one counselor primarily engaged in counselor education, at least one counselor primarily engaged in the public sector, at least one counselor primarily engaged in the private sector, and two counselors at large~~). The remaining two members shall be public-at-large members appointed from the general public.

Statutory Authority G.S. 90-328.

.0102 PROFESSIONAL ETHICS

The Board of ~~Registered Practicing~~ Licensed Professional Counselors has adopted the ~~Code of Ethics of~~ Ethical Standards promulgated by the American Association for Counseling and Development Counseling Association, March 1988, and any subsequent revisions of or amendments to the standards published by the American Counseling Association.

Statutory Authority G.S. 90-334.

.0103 PURPOSE OF ORGANIZATION

The Board is charged by law with the responsibility for the regulation of the practice of counseling and of the title "Registered Practicing Licensed Professional Counselor" in the State of North Carolina. This includes establishing reasonable standards for licensure, examining the qualifications of the applicants, and approving each for ~~registration~~ licensure, as well as revoking, suspending, and renewing licenses.

Statutory Authority G.S. 90-334.

.0104 ORGANIZATION OF THE BOARD

The Board shall elect a chairperson, vice-chairperson, and a secretary-treasurer from its members to serve for terms of one year and until their successors be elected and qualified. The Board shall hold at least two meetings each year and four members shall at all times constitute a quorum. Additional meetings may be held at the discretion of the chairperson or upon written request of any three members of the Board.

Statutory Authority G.S. 90-334.

.0105 MEETINGS

~~Meetings of the Board, formal or informal, shall be open to the public. Dates, times, and places of meeting shall be furnished to anyone requesting the information and made available to the press.~~

Statutory Authority G.S. 90-334.

SECTION .0200 - DEFINITIONS AND CLARIFICATION OF TERMS

.0201 SUPERVISION

"Supervision" means supervision by a Registered Practicing Licensed Professional Counselor whose registration license is current and who is in good standing with the Board or, when one is inaccessible, an equivalently credentialed mental health professional with a minimum of five years of counseling experience established by the Board as deemed acceptable by the Board. ~~To be acceptable to the Board, supervision must be arranged by the candidate and approved in writing by the Board.~~

Statutory Authority G.S. 90-336(b)(3).

.0203 STATEMENT OF PROFESSIONAL INTENT

~~A statement of professional intent refers to a typed statement from the applicant for registration on file with the Board, describing the intended use of the registration, the public with whom the applicant will work, and the counseling approaches the applicant plans to use (including techniques and tools).~~

Statutory Authority G.S. 90-336.

.0204 PROFESSIONAL DISCLOSURE STATEMENT

A professional disclosure statement refers to a printed statement that includes the licensee's professional credentials, the services offered, and the fee schedule. A current copy of this statement must be filed with and approved by the Board and a copy must be provided to each client prior to the performance of professional counseling services. Any changes in the disclosure statement must be submitted to and approved by the Board. The counselor must retain a file copy of the disclosure statement signed by each client.

Statutory Authority G.S. 90-343.

SECTION .0300 - HOW TO OBTAIN LICENSURE

.0301 APPLICATIONS

Inquiries are to be directed to, and applications and forms are to be obtained from and returned to the ~~Executive Director~~ Administrator of the Board, Box 12023, Raleigh, N.C. 27605.

Statutory Authority G.S. 90-334; 90-336.

.0303 WORK EXPERIENCES

The applicant will have no less than two years of master's or post-master's counseling experience, or a combination of both, in a professional setting, including a minimum of 2,000 hours of supervised professional practice as defined by the Board. In addition, the applicant will have a minimum of three references. Current members of the Board or relatives of the applicant may not submit references for an applicant. The three references shall be from persons in counseling or related professional areas, one of whom should have been or currently should be a supervisor of the applicant.

Statutory Authority G.S. 90-334; 90-336.

.0304 RECIPROCITY

If a candidate is licensed or certified to practice counseling by a similar Board in another state, the North Carolina Board may, at its discretion, waive the formal examination requirements of a candidate, provided the North Carolina Board accepts the standards and qualifications required for the practice of counseling in the candidate's ~~licensing~~ credentialing state as ~~equal to~~ substantially similar to or exceeding those required by North Carolina.

Statutory Authority G.S. 90-337.

.0305 EXEMPTION FROM ACADEMIC QUALIFICATIONS

Applicants who were engaged in the practice of counseling in North Carolina before July 1, 1993 shall be exempt from the academic qualifications required for licensure provided they make application for licensure no later than July 1, 1995. Such applicants must meet the examination and experience requirements of the Board.

Statutory Authority G.S. 90-338.

SECTION .0400 - PRACTICE WITHOUT LICENSURE PROHIBITION

.0401 RULE OF PROCEDURE

When the Board is made aware of an individual who is engaging in the practice of counseling who is not credentialed by the North Carolina Board of Licensed Professional Counselors, the North Carolina Board of Examiners of Practicing Psychologists, the North Carolina Certification Board for Social Work, or the North Carolina Marital

and Family Therapy Certification Board, or other North Carolina Boards with statutory authority to regulate the practice of counseling, or who is not otherwise exempt from the provisions of G.S. 90, Article 24, or who is using the designation "Registered Practicing Licensed Professional Counselor" without being certified licensed by the North Carolina Board of Licensed Professional Counselors, a registered letter with return receipt, showing delivery to addressee only, shall be mailed to the last known address of the person in question. The letter will direct attention to pertinent aspects of the law and the rules of the Board. If this does not induce said person to cease violating the law and to desist from practicing counseling, and and/or using the title "Registered Practicing Licensed Professional Counselor," the information shall be forwarded to the appropriate law enforcement authorities. ~~This violation is deemed a misdemeanor. The violator upon conviction may be punished by a fine and the violator may be imprisoned. Violation of any provision of Article 24 is a misdemeanor and, upon conviction, the violator may be punished by fine, by imprisonment, or by both fine and imprisonment.~~

Statutory Authority G.S. 90-331; 90-341.

.0402 GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE

When an individual who is licensed pursuant to G.S. 90, Article 24 is charged with violating any of the provisions of G.S. 90-340, the Board shall conduct proceedings to investigate the complaint. In appropriate cases, the Board shall conduct hearings in accordance with Board procedures to determine if grounds for denial, suspension, or revocation of a license have occurred. The Board shall then impose appropriate sanctions.

Statutory Authority G.S. 90-334.

SECTION .0500 - FEES

.0501 APPLICATION FEE

An application fee of ~~seventy five dollars (\$75.00)~~ one hundred dollars (\$100.00) will be assessed for processing each application.

Statutory Authority G.S. 90-334.

.0502 EXAMINATION FEE

An examination fee of ~~seventy five dollars (\$75.00)~~ one hundred dollars (\$100.00) will be

assessed for administration and processing of the written examination.

Statutory Authority G.S. 90-334.

.0503 RENEWAL FEE

The ~~biannual~~ biennial renewal fee of ~~fifty dollars (\$50.00)~~ not to exceed one hundred dollars (\$100.00) is due and payable by June 20 of the renewal year. Checks should be made payable to the North Carolina Board of ~~Registered Practicing Licensed Professional Counselors~~. Failure to pay the ~~biannual~~ biennial renewal fee within the time stated shall automatically suspend the right of any ~~registrant~~ licensee to practice while delinquent. Such lapsed ~~registration~~ licensure may be renewed within a period of one year after expiration upon payment of all fees in arrears, in addition to the renewal fee plus a late renewal fee not to exceed twenty-five dollars (\$25.00) fifteen dollars (\$15.00) late renewal fee. Failure to apply for renewal within one year of the license's expiration date will require that a license be reissued only upon application as for an original license.

Statutory Authority G.S. 90-334; 90-339.

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation = Title, Chapter, Subchapter and Rule(s)
AD = Adopt
AM = Amend
RP = Repeal
With Chgs = Final text differs from proposed text
Corr = Typographical errors or changes that requires no rulemaking
Eff. Date = Date rule becomes effective
Temp. Expires = Rule was filed as a temporary rule and expires on this date or 180 days

NORTH CAROLINA ADMINISTRATIVE CODE

FEBRUARY 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	21	Occupational Licensing Boards
2	Agriculture	14 -	Cosmetic Art Examiners
4	Commerce	26 -	Landscape Architects
10	Human Resources	32 -	Medical Examiners
15A	Environment, Health and	63 -	Social Work
	Natural Resources	25	State Personnel
18	Secretary of State		

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	4G	.0212		✓				03/01/94	
2	NCAC	48B	.0101		✓				03/01/94	
4	NCAC	3F	.0202	✓			✓		03/01/94	
		6C	.1401	✓			✓		03/01/94	
		13E	.0901		✓				03/01/94	
		16	TOC					✓		
10	NCAC	22T	.0101	✓			✓		03/01/94	
			.0201	✓					03/01/94	
		22U	.0101	✓			✓		03/01/94	
		22W	.0102	✓			✓		03/01/94	
			.0201 - .0203	✓			✓		03/01/94	
		26H	.0105	✓			✓		03/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	3H	.0001		✓		✓		03/01/94	
			.0003		✓				03/01/94	
		3I	.0001		✓		✓		03/01/94	
			.0010		✓		✓		03/01/94	
			.0014	✓			✓		03/01/94	
		3J	.0103 - .0104		✓		✓		03/01/94	
			.0107		✓		✓		03/01/94	
			.0301		✓		✓		03/01/94	
			.0303		✓				03/01/94	
		3K	.0103		✓		✓		03/01/94	
			.0105		✓				03/01/94	
			.0203			✓			03/01/94	
			.0301		✓		✓		03/01/94	
		3L	.0102		✓				03/01/94	
			.0202		✓		✓		03/01/94	
		3M	.0201		✓		✓		03/01/94	
			.0507		✓				03/01/94	
			.0511	✓			✓		03/01/94	
		3O	.0101 - .0102		✓		✓		03/01/94	
			.0108		✓				03/01/94	
			.0201		✓				03/01/94	
			.0203 - .0206		✓		✓		03/01/94	
			.0208 - .0209		✓				03/01/94	
		3R	.0002		✓				03/01/94	
			.0004 - .0005		✓				03/01/94	
			.0006		✓		✓		03/01/94	
			.0007		✓				03/01/94	
		6F	.0001 - .0005	✓			✓		03/01/94	
18	NCAC	8	.1201 - .1204	✓					03/01/94	
			.1205	✓			✓		03/01/94	
			.1206	✓					03/01/94	
			.1207	✓			✓		03/01/94	
18	NCAC	8	.1208 - .1211	✓					03/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
			.1212	✓			✓		03/01/94	
			.1213	✓					0301/94	
21	NCAC	14H	.0019		✓				03/01/94	
		14J	.0303		✓		✓		03/01/94	
		26	.0209 - .0211		✓		✓		03/01/94	
		32M	.0006		✓				03/01/94	
			.0009		✓				03/01/94	
		63	.0501		✓				03/01/94	
			.0502			✓			03/01/94	
			.0503	✓					03/01/94	
			.0504	✓			✓		03/01/94	
			.0505 - .0506	✓					03/01/94	
			.0507	✓			✓		03/01/94	
			.0508 - .0509	✓					03/01/94	
			.0801 - .0802	✓			✓		03/01/94	
			.0803 - .0809	✓					03/01/94	
			.0820	✓					03/01/94	
25	NCAC	1D	.0205		✓		✓		03/01/94	
			.0211 - .0212		✓		✓		03/01/94	
			.0401		✓		✓		03/01/94	
			.0403		✓				03/01/94	
			.0405		✓				03/01/94	
			.0504		✓		✓		03/01/94	
			.0510		✓				03/01/94	
			.0611		✓		✓		03/01/94	
			.1928		✓		✓		03/01/94	
		1H	.0624 - .0625		✓				03/01/94	
			.0628		✓				03/01/94	
		1J	.0603		✓				03/01/94	
			.0604		✓		✓		03/01/94	
			.0608		✓				03/01/94	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

COMMERCE

Banking Commission

4 NCAC 3F .0202 - Permissible Investments

Agency Responded

Agency Revised Rule

RRC Objection 12/16/93

Obj. Cont'd 01/20/94

Obj. Removed 02/17/94

Credit Union

4 NCAC 6C .1401 - Signature Guarantee

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Marine Fisheries

15A NCAC 3I .0010 - Military Prohibited and Restricted Areas

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 3J .0107 - Pound Nets

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 3K .0301 - Size and Harvest Limit

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 3O .0102 - Procedure and Requirements to Purchase License

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 3O .0204 - Marking Shellfish Leases and Franchises

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 3O .0205 - Lease Renewal

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

Soil and Water Conservation Commission

15A NCAC 6F .0001 - Purpose

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 6F .0003 - Requirements for Certification of Waste Mgmt Plans

Agency Revised Rule

RRC Objection 02/17/94

Obj. Removed 02/17/94

15A NCAC 6F .0004 - Approved Best Management Practices (BMPs)

Agency Revised Rule

RRC Objection 01/20/94

Obj. Removed 02/17/94

15A NCAC 6F .0005 - Technical Specialist Designation Procedure

Agency Revised Rule

RRC Objection 01/20/94

Obj. Removed 02/17/94

Wildlife Resources and Water Safety

15A NCAC 10D .0002 - General Regulations Regarding Use

Agency Withdrew Rule

03/17/94

HUMAN RESOURCES

Aging

<i>10 NCAC 22T .0101 - Scope of Health Screening Services</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>10 NCAC 22T .0201 - Provision of Health Screening Services</i>	<i>RRC Objection</i>	<i>01/20/94</i>
	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>10 NCAC 22U .0101 - Scope of Senior Companion</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>10 NCAC 22W .0101 - Scope of Home Care Services</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>

Medical Assistance

<i>10 NCAC 26I .0304 - Hearing Procedures</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>

INSURANCE

Financial Evaluation Division

<i>11 NCAC 11C .0308 - Foreign HMO: Successful Operation</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>11 NCAC 11F .0207 - Specific Standards for Morbidity, Interest and Mortality</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>11 NCAC 11F .0208 - Reserves for Waiver of Premium</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>

LICENSING BOARDS AND COMMISSIONS

Certified Public Accountant Examiners

<i>21 NCAC 8A .0105 - Purposes and Responsibilities</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>21 NCAC 8F .0103 - Filing of Examination Applications and Fees</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>21 NCAC 8F .0112 - Candidate's Request to Sit in Another Jurisdiction</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>21 NCAC 8G .0409 - Computation of CPE Credits</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>21 NCAC 8J .0008 - Firm Registration</i>	<i>RRC Objection</i>	<i>03/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/17/94</i>
<i>21 NCAC 8N .0103 - CPAs Outside North Carolina</i>		
<i>Agency Withdrew Rule</i>		<i>03/17/94</i>

Landscape Architects

<i>21 NCAC 26 .0209 - Unprofessional Conduct</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>21 NCAC 26 .0210 - Dishonest Practice</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>21 NCAC 26 .0211 - Incompetence</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>

Medical Examiners

21 NCAC 32B .0402 - Fee	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 32B .0706 - Fee	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 32M .0006 - Prescribing Privileges	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	02/17/94

REAL ESTATE APPRAISAL BOARD

21 NCAC 57A .0210 - Temporary Practice	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57B .0207 - Administration	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57B .0306 - Instructor Requirements	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57B .0603 - Criteria For Course Approval	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57C .0104 - Petition to Reopen Proceeding	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

REVENUE**Individual Income Tax Division**

17 NCAC 6B .0612 - Tax Credit for Qualified Business Investments	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

STATE PERSONNEL**Office of State Personnel**

25 NCAC 1D .0211 - Salary Rate	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	02/17/94
25 NCAC 1D .0512 - Policy Making/Confidential Exempt Priority Consideration	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	03/17/94

STATE TREASURER**Collateralization of Deposits**

20 NCAC 7 .0202 - Amount of Collateral Required to be Pledged	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
20 NCAC 7 .0603 - Acceleration of Maturities	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
<i>Environmental Health</i>				
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
HUMAN RESOURCES				
<i>Division of Child Development</i>				
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
<i>Facility Services</i>				
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
<i>Division of Medical Assistance</i>				
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
<i>Division of Social Services</i>				
<i>Child Enforcement Section</i>				
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Nash Andrew Newsome v. Department of Human Resources	93 CSE 1170	Mann	03/17/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
JUSTICE				
<i>Alarm Systems Licensing Board</i>				
Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94	
<i>Training and Standards Division</i>				
Glenn Travis Stout v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1409	Gray	03/03/94	
STATE PERSONNEL				
<i>Agricultural and Technical State University</i>				
Juanita D. Murphy v. Agricultural and Technical State University	93 OSP 0708	Morrison	03/16/94	
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 64
<i>Department of Crime Control and Public Safety</i>				
Fred L. Kearney v. Department of Crime Control & Public Safety	91 OSP 0401	West	03/18/94	
Sylvia Nance v. Department of Crime Control & Public Safety	92 OSP 1463	Reilly	03/21/94	
<i>Department of Human Resources</i>				
Charla S. Davis v. Department of Human Resources	93 OSP 1762	Gray	03/03/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Department of Transportation</i>				
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0297 nd	Morrison	03/10/94	9:1 NCR 61
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0500 nd	Morrison	03/10/94	9:1 NCR 61
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
STATE TREASURER				
<i>Retirement Systems Division</i>				
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 69

nd Consolidated cases.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

93 OSP 0500

93 OSP 0297

GLENN I. HODGE JR.,
Petitioner,

v.

SAM HUNT, SECRETARY, DEPARTMENT OF
TRANSPORTATION,
Respondent.

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RECOMMENDED DECISION

BACKGROUND

This matter was heard in Raleigh, North Carolina, on November 9 and 10, 1993, by Senior Administrative Law Judge Fred G. Morrison Jr. The Petitioner initiated these contested cases in March and May of 1993 in order to appeal the decision of the Respondent Department of Transportation designating his position as policymaking exempt.

Upon Respondent's Motion to Consolidate, on July 12, 1993, the cases were consolidated by Order of the Chief Administrative Law Judge. At the hearing, Petitioner was represented by Attorney John C. Hunter of Raleigh. Assistant Attorney General Patsy Smith Morgan appeared for the Respondent.

ISSUE

Whether the decision to designate Petitioner's position as policymaking exempt should be reversed or affirmed.

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. §126-5(b)
N.C. Gen. Stat. §126-5(c)
N.C. Gen. Stat. §126-5(d)(1) and (6)

Based on a preponderance of the substantial evidence admitted into the record of this case, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Governor James G. Martin, a Republican, served as Governor of North Carolina from January of 1985 to January of 1993. During those years the position of Chief-Internal Audit Section of the Department of Transportation was not exempted from the provisions of the State Personnel Act.
2. Petitioner Glenn I. Hodge Jr., a Republican, began his employment with the State of North Carolina on January 1, 1990, at Pay Grade 71, in the Department of Human Resources. He transferred to the Respondent on January 1, 1992, as an internal auditor at Pay Grade 71. On May 23, 1992, Petitioner was promoted to the position of Chief-Internal Audit Section at Pay Grade 78.

3. As Chief of the Internal Audit Section, the Petitioner exercised broad flexibility and independence. In addition to supervising other auditors, he could decide who, what, when, how, and why to audit within the Department. While he could not order implementation of any recommendations, he was free to contact the State Bureau of Investigation concerning his findings.
4. Governor James B. Hunt Jr., a Democrat, was elected in 1992 and began serving in January of 1993. He had previously served as Governor from January of 1977 until January of 1985, during which time the subject position was designated as exempt from the provisions of the State Personnel Act.
5. During the early part of 1993, Respondent's officials recommended that the Petitioner's position be designated as exempt because of the nature and duties of the job. They thought it met the statutory definition of policymaking. No finding was made that a political confidant of the Governor was needed for the effective performance of this office. Upon being notified of the Governor's designation of his position as exempt, the Petitioner requested an investigation by the Office of State Personnel after which he filed petitions for contested case hearings pursuant to G.S. §126-5(h). The designation of Petitioner's position as policymaking exempt was the substantial equivalent of his being dismissed by Respondent.
6. Under various agreements and arrangements with the United States Department of Transportation, Petitioner's responsibilities include the auditing of federally funded transportation programs and activities. Applicable federal rules and audit standards require that auditors of federally funded activities be free from organizational, external or other impairments to assure individual objectivity and operational independence in presenting opinions, conclusions, judgments and recommendations. The standards provide that auditors should be "sufficiently removed from political pressures to insure that they conduct their audits objectively and can report their findings, opinions and conclusions objectively without fear of political repercussion. Wherever feasible, they should be under a personnel system in which compensation, training, job tenure and advancement are based on merit."

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. G.S. 126-5(d)(1) allows the Governor to designate certain positions as exempt policymaking. The purpose is to allow the Governor to make partisan personnel decisions in order to have loyal supporters who will carry out administration policies. G.S. 126-5(c) and (h) allow employees in these positions to challenge such designations. The North Carolina Supreme Court reiterated in Abels v. Renfro Corp., 335 N.C. 209, 218 (1993), that "it would look to federal decisions for guidance in establishing evidentiary standards and principles of law to be applied in discrimination cases." Dept. of Correction v. Gibson, 308 N.C. 131.
2. The Supreme Court of the United States ruled in Branti v. Finkel, 445 U.S. 507, that when employees challenge these political decisions, ". . . the ultimate inquiry is not whether the label "policymaker" or "confidential" fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." It is my conclusion that this standard must be followed when positions are declared policymaking exempt from the State Personnel Act, which was not done in this case. Respondent has not shown why a political confidant is a necessary requirement in this position. Branti states "it is equally clear that party affiliation is not necessarily relevant to every policymaking or confidential position."
3. Reversal of the designation of this position is in order pursuant to G.S. 126-5(d)(6) which states: "Subsequent to the designation of a policymaking position as exempt . . . the status of the position may be reversed . . . by the Governor . . . in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate."

Based on the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

The designation of the position as exempt be reversed.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 10th day of March, 1994.

Fred G. Morrison Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 OSP 0725

RUTH DANIEL-PERRY,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
COMMERCE,
Respondent.

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RECOMMENDED DECISION

BACKGROUND

This matter was heard on November 30, 1993, in Raleigh, North Carolina by Administrative Law Judge Sammie Chess, Jr. The Petitioner initiated the case on July 8, 1993 in order to appeal her dismissal from the Respondent agency. The record closed when the parties filed their proposed findings of fact and conclusions of law.

APPEARANCES

For Petitioner: Marvin Schiller
SCHILLER LAW OFFICES
Attorney at Law
UCB Plaza, Suite 220
Raleigh, NC 27612

For Respondent: Charles J. Murray
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

ISSUES

1. Whether Petitioner was terminated from employment in accordance with the requisites of N.C. Admin. Code t25: 01D .0519?
2. If the answer to issue 1. is "yes", the Respondent is entitled to a recommended decision in its favor.
3. If the answer to issue 1. is "no", the Petitioner is entitled to a recommended decision in her favor and is entitled to a recommended factual finding and conclusion of law that Petitioner was not dismissed for just cause.

The parties entered the following:

STIPULATIONS

1. All parties are properly before the Administrative Law Judge of the Office of Administrative Hearings, the Office of Administrative Hearings has jurisdiction of the parties and of the subject matter, and jurisdiction is conferred by N.C. Gen. Statute 126-37.

2. The Petitioner, Ms. Ruth Daniel-Perry, was a permanent state employee within the meaning of N.C. Gen. Stat. 126-39 at the time of her discharge from employment from the Respondent by letter dated January 20, 1993.

3. The Petitioner's salary at the time of her discharge was \$36,583.00. Since the date of her discharge, Petitioner has taken all reasonable steps in seeking employment and was unemployed as of the date of this hearing.

4. The Petitioner, in a telephone conversation on January 19, 1993, was told by Dr. J.E. Bryant on January 19, 1993 that he would send, by facsimile transmission, a letter to Respondent concerning Petitioner's medical condition. It is Petitioner's understanding that Dr. Bryant did send to Respondent a letter dated January 19, 1993 on that date. Respondent's position is that it never received that letter from Dr. Bryant. Dr. Bryant's letter states, in essence, that Petitioner was disabled at that time.

Based on a preponderance of the evidence admitted into the record of this case, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner, Ruth Daniel-Perry, was a permanent employee within the meaning of N.C. Gen. Stat. 126-39 at the time of her discharge from the Respondent agency by letter dated January 20, 1993.

2. N.C. Admin. Code t25: 01D .0519 provides as follows:

".0519 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED

(a) An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include, but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints, etc. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed.

(b) Prior to separation, the employing agency shall meet with or at least notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in this meeting or in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this.

(c) Involuntary separation pursuant to this Rule may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations.

(d) Agencies should make efforts to place an employee so separated pursuant to this Rule when the employee becomes available, if the employee desires, consistent with other employment priorities and rights. However, there is no mandatory requirement placed on an agency to secure an employee, separated under this Rule, a position in any agency."

3. Respondent's discharge letter dated January 20, 1993, states as follows:

"In our letter of January 13, 1993, we made our position clear. You were directed to return to work or provide the Banking Commission with a certified letter, from your current treating physician, detailing the reason(s) you could not return to work and the expected duration of his treatment/release. You failed to comply with either of these directions. We have given you numerous opportunities to provide us with any information that you had a debilitating illness or illness of any kind this you too failed to provide. Consequently, you leave us no alternative but to separate you due to unavailability. This separation is effective immediately.

We have informed you that you received wages and benefits you were not entitled to because of your excess leave status. You were paid for part of November and all of December 1992. You need to remit a check in the amount of \$4,409.55, for overpayment of wages. Additionally, you were provided with an annual advance of \$500.00 which also must be remitted. Total amount owed to the Banking Commission is \$4,909.55. Please make remittance immediately, payable to the Department of Commerce."

4. The discharge letter does not state either what efforts were undertaken by Respondent to avoid separation or why those efforts were unsuccessful.

5. The discharge letter does not provide the Petitioner with the opportunity to propose alternative methods of accommodation. Nor does the discharge letter state why alternative accommodations are not possible and provide a proposed date of separation.

6. Prior to separation, the Respondent did not either meet with or state to the employee in writing, of the proposed separation, the efforts taken to avoid separation and why the efforts were unsuccessful, as required by N.C. Admin. Code t25: 01D .0519.

7. Respondent neither informed Petitioner of a proposed date of separation nor was Petitioner given the opportunity at any meeting or in writing to propose alternative accommodations after the Respondent notified Petitioner of its intent to separate or discharge Petitioner, as required by N.C. Admin. Code t25: 01D .0519.

8. Respondent's letter to Petitioner dated January 13, 1993 states, in pertinent part, as follows: "In the event that you do not report to your assigned location as specified [on January 19, 1993] you will be separated due to unavailability." ***** "If it is determined that you cannot return to work within the framework of our mission and we cannot accommodate you, then separation will ensue."

9. Neither the discharge letter of January 20, 1993, nor the January 13, 1993 letter nor any other communication between Respondent and Petitioner meet either any or all of the requisites of N.C. Admin. Code T25: 01D .0519.

10. On January 5, 1993, Petitioner by letter to Commissioner William T. Graham requested leave without pay due to her illness.

11. Petitioner had previously provided the Respondent with medical reports from Dr. James O'Rourke, Jr., dated December 15, 1992, specifying Petitioner's medical problems (which indicated she would be able to return to work on December 21, 1992), and Dr. John T. Avant, dated December 22, 1992, specifying Petitioner's medical problems (which does not specifically indicate when Petitioner would be able to return to work).

12. Respondent was not satisfied with the medical reports of Dr. O'Rourke and Dr. Avant, as well as other physicians, concerning Petitioner's various medical problems.

13. N.C. Admin. Code t25: 01D .0519 governs the separation of a permanent employee from employment due to unavailability when leave is exhausted.

14. The Respondent did not discharge or separate Petitioner from employment in accordance with either any or all of the requisites of N.C. Admin. Code t25: 01D .0519.

15. The Respondent has the burden of proving that its discharge or separation from employment of the Petitioner was done in accordance with N.C. Admin. Code t25: 01D .0519.

16. The Respondent did not meet its burden of proof.

17. The Petitioner was not dismissed with just cause.

18. The Petitioner was unable to work due to her medical problems until March 8, 1993.

19. The Petitioner was paid overpayments of wages and annual advance by the Respondent in the amount of \$4,909.55.

Based on the foregoing Stipulations and Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Respondent has the burden of proving that its termination, discharge or separation of Petitioner from employment due to unavailability was done in accordance with the requisites of N.C. Admin. Code t25: 01D .0519.

2. Respondent failed to meet its burden of proving it terminated, discharged or separated Petitioner in accordance with N.C. Admin. Code t25: 01D .0519.

3. The Petitioner was not terminated, discharged or separated from employment in accordance with the requisites of N.C. Admin. Code t25: 01D .0519.

4. The provisions of N.C. Admin. Code t25: 01D .0519 have the force and effect of law and must be strictly followed. Harding v. N.C. Dept. of Correction, 106 N.C. App. 350, 416 S.E.2d 587, 590 (1992).

5. Petitioner is entitled to reinstatement, backpay beginning on March 8, 1992 until reinstated with the State of North Carolina at a salary equal to at least her final salary with Respondent and any legislative pay increases (minus Respondent's overpayments to her), attorneys fees, and all other benefits of continuous state employment.

Based on the foregoing Stipulations, Findings of Facts, Conclusions of Law, and a preponderance of the substantial evidence in the record, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

Petitioner is entitled to reinstatement, backpay beginning on March 8, 1992 until reinstated with the State of North Carolina at a salary equal to at least her final salary with Respondent and any legislative pay increases (minus Respondent's overpayments to her), and all attendant benefits of continuous employment with the State of North Carolina from the date of her termination until the date of her reinstatement. Attorney fees and costs should also be awarded Ms. Ruth Daniel-Perry. In addition, her personnel file should be

appropriately rectified so as to reflect that she was terminated, discharged or separated from employment improperly and without just cause. Any and all documents in her personnel file which indicated to any degree a contrary fact should be removed.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 4th day of March, 1994.

Sammie Chess, Jr.
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 DST 0785

ROBERT A. SLADE,
Petitioner,

v.

THE BOARD OF TRUSTEES OF THE NORTH
CAROLINA LOCAL GOVERNMENTAL
EMPLOYEES' RETIREMENT SYSTEM,
Respondent.

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RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on December 14, 1993, in Raleigh, North Carolina. At the conclusion of the hearing, the parties were afforded an opportunity to file written post-hearing submissions.

APPEARANCES

Petitioner: Pro se.

Respondent: Alexander McC. Peters, Assistant Attorney
General, N.C. Department of Justice, Raleigh, North Carolina.

ISSUE

Whether a contractual agreement between the Petitioner and the Town of Wake Forest providing that the Petitioner would retain active membership in the North Carolina Local Governmental Employees' Retirement System is binding upon the Retirement System even though it was not a party to the agreement.

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. §128-21(7a), (13), and (10)
N.C. Gen. Stat. §128-24
N.C. Gen. Stat. §128-30
N.C. Gen. Stat. §§160A-147 to -152
20 NCAC 2C .0802

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. The Petitioner is the former Town Administrator of the Town of Wake Forest.
2. As Town Administrator, the Petitioner was employed by the Town of Wake Forest pursuant to the Town Charter and Chapter 160A, Article 7, Part 2 of the North Carolina General Statutes. Specifically, he was subject to the provisions of sections 160A-147 through 152 of the General Statutes.

3. The Town of Wake Forest is a participating employer in the North Carolina Local Governmental Employees' Retirement System.
4. As the Town Administrator, the Petitioner was not employed in a capacity which provided regular hours or any additional compensation for hours worked beyond those normally observed by employees at Town Hall. He was exempt from the federal Fair Labor Standards Act and served only at the direction and pleasure of the Board of Commissioners of the Town of Wake Forest ("the Board") regardless of the hours necessary. It was common for the Petitioner to work substantially more than the customary forty hours per week and to have contact with the Board members at their homes, his home, at local business establishments and by telephone and fax machine, both day and night.
5. On January 29, 1993, following the resignation of the Mayor and a non-electoral change in the membership of the Board, the Petitioner submitted a letter of resignation to the Board.
6. The Petitioner's letter of resignation was the culmination of personal negotiations by the Petitioner with the Mayor and the Board. The only other party present during these negotiations was the Town Attorney.
7. On February 16, 1993, the Petitioner and the Board entered into a "Separation of Service Agreement," with an effective date of January 29, 1993.
8. The agreement provided, *inter alia*, that the Petitioner would continue to receive his usual salary and all fringe benefits until August 2, 1993. The Petitioner was to be available to provide services when needed to the Board, the Mayor, and the administrative staff.
9. The agreement also provided that the Petitioner would continue to work for one month on site at Town Hall.
10. Pursuant to the Separation of Service Agreement, the Petitioner was to appoint an "Acting Town Administrator."
11. During the severance period, the Petitioner provided services to the Board, the Mayor, and the administrative staff, performing many of the duties he had performed as Town Administrator. He acted as a resource on a number of new matters both during normal working hours and beyond.
12. During the severance period, the Petitioner did not direct and supervise the administration of departments, agencies, or employees of the Town; he did not have responsibility for the hiring or firing of Town employees; and he was not responsible for preparing the budget or financial report for the Town, although he assisted in the preparation of these items.
13. The Petitioner did not keep records of the amount of time that he spent performing work for the Town during the severance period.
14. The work performed by the Petitioner during the severance period was performed only if and when requested by the Town, and the Petitioner would have been paid the full severance amount even if he had performed no work for the Town during that severance period.
15. In early May, 1993, the Petitioner approached Ms. Marie P. Hinton, a benefits counselor with the North Carolina Local Governmental Employees' Retirement System, about matters regarding his retirement status. At that meeting, the Petitioner mentioned his agreement with the Town and Ms. Hinton questioned him about it.
16. As a result of the Ms. Hinton's conversation with the Petitioner and a subsequent conversation with Dennis Ducker, Director of the Retirement System, the Petitioner was informed that he was not eligible for active membership in the Retirement System during the period of time covered by the

severance agreement.

17. The Respondent informed the Petitioner and the Board that no further contributions should be made to the Retirement System on the Petitioner's behalf and the Town should recover all contributions made after March 2, 1993, and should refund to the Petitioner the employee contributions for that period.
18. On June 3, 1993, the Petitioner wrote to Mr. Ducker, asking that the Respondent reconsider its decision.
19. On June 11, 1993, Mr. Ducker responded by letter denying the Petitioner's appeal. Mr. Ducker informed the Petitioner that the basis for determining that he was ineligible to participate in the Retirement System was that the severance agreement did not provide for duties which "require not less than 1,000 hours of service per year."

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. This matter and the parties are properly before this Administrative Law Judge.
2. The Petitioner bears the burden of proof of showing that the actions of the Respondent about which he complains were erroneous, improper, deprived him of property, or otherwise prejudiced his rights.
3. North Carolina General Statutes section 128-24(1) provides that the membership of the North Carolina Local Governmental Employees' Retirement System is composed of "employees" of participating local governmental entities.
4. An "employee" is defined in North Carolina General Statutes section 128-21(10) as "any person who is regularly employed in the service of and whose salary or compensation is paid by [a participating local governmental employer]. . . ."
5. Regularly employed is further defined as employment "in a regular position, the duties of which require not less than 1,000 hours of service per year." 20 NCAC 2C .0802. One thousand hours of service per year is the equivalent of 20 hours per week, or half-time.
6. North Carolina General Statutes section 160A-147 and the Charter of the Town of Wake Forest give broad authority to the Board in dealing with the employment relationship they have with a Town Administrator. This authority includes setting the terms and conditions of employment (or separation) by means of a contractual agreement.
7. Pursuant to the latitude granted to it under the provisions of section 160A-47 of the General Statutes, the Board entered into a severance agreement with the Petitioner which provided that he would retain all the fringe benefits and salary of the Town Administrator while providing the Town of Wake Forest with valuable expertise during the severance period.
8. Since the agreement provided that the Petitioner was to appoint an Acting Town Administrator, it is clear that the Board did not consider that the Town Administrator position was vacant. Had that been the case, the Board could have appointed an "Interim Town Administrator." See, N.C. Gen. Stat. §160A-150.
9. Pursuant to North Carolina Statutes section 160A-149, an "Acting Town Administrator" is only appointed by the "Town Administrator" when the Administrator is either absent or disabled.

10. While the Board, pursuant to its authority under §160A-147, changed the terms and conditions of the Petitioner's employment, the Petitioner still occupied the Town Administrator position until August 2, 1993.
11. The position of Town Administrator is one which is a "regular position, the duties of which require not less than 1,000 hours of service per year."
12. North Carolina General Statutes section 128-30 provides that contributions made by employers and employees to the Retirement System are based upon the employees' compensation. Compensation is defined as

all salaries and wages . . . derived from public funds which are earned as an employee in the unit of the Retirement System for which he is performing full-time work.

N.C. Gen. Stat. 128-21(7a).

13. Although the Petitioner did not keep any time records, he testified that he performed work both during and after normal work hours during the severance period. In addition, the Petitioner testified that in his opinion, he performed many of the same services that he performed prior to the parties entering into the severance agreement. The Respondent did not offer any evidence that would refute the Petitioner's contention that he was still performing full-time work during the severance period. The statute does not require that one work a full-time schedule, only that one perform full-time work. Therefore, the Petitioner has shown by the greater weight of the evidence that he was receiving compensation for performing full-time work.
14. The compensation paid to the Petitioner was compensation within the meaning of §128-30.
15. The Petitioner was an employee of a local governmental entity earning compensation through August 2, 1993 and, as such, he was entitled to membership in the Local Governmental Employees' Retirement System up through August 2, 1993.
16. The five months of service credit denied to the Petitioner should be reinstated to his account upon payment of the appropriate amounts by him and the Town of Wake Forest for the period March 2 - August 2, 1993.

RECOMMENDED DECISION

The Board of Trustees of the North Carolina Local Governmental Employees' Retirement System will make the Final Decision in this contested case. It is recommended that the Board of Trustees adopt the Findings of Fact and Conclusions of Law set forth above and rescind its decision denying the Petitioner five months of service credit for the period March 2, 1993 - August 2, 1993.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the Board of Trustees makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

CONTESTED CASE DECISIONS

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 18th day of March, 1994.

Brenda B. Becton
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
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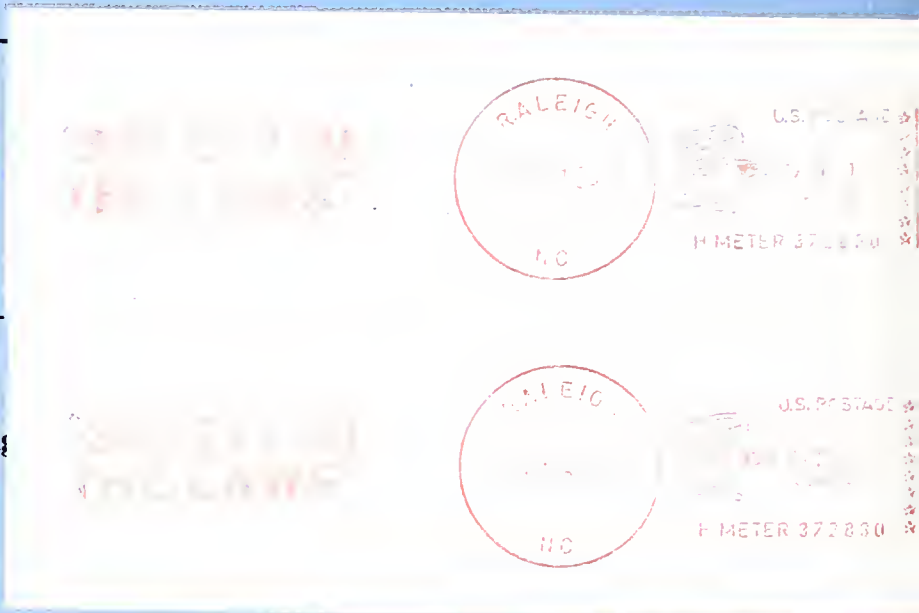
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