

# ***NORTH CAROLINA REGISTER***

**VOLUME 23 • ISSUE 06 • Pages 564 - 616**

**September 15, 2008**

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

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

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

Joint Legislative Administrative Procedure Oversight Committee  
545 Legislative Office Building  
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Raleigh, North Carolina 27611  
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Raleigh, North Carolina 27603  
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Raleigh, North Carolina 27603  
(919) 715-4000

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

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
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23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

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

### **GENERAL**

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

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

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

### **FILING DEADLINES**

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

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

### **NOTICE OF TEXT**

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

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

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

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

**STATE BOARD OF ELECTIONS**

6400 Mail Service Center ( Raleigh, North Carolina 27699-6400

GARY O. BARTLETT  
EXECUTIVE DIRECTOR

**MAILING ADDRESS:**  
**P.O. BOX 27255**  
**RALEIGH, NC 27611-7255**

August 19, 2008

Mr. Marshall Hurley  
2400 Freeman Mill Road  
Greensboro, North Carolina 27406

Dear Mr. Hurley:

In your letters of June 18, 2008 and July 30, 2008, you asked several questions on behalf of your client, Bob Crumley, a candidate for statewide office in the November 2008 elections. The questions concern the applicability of statutes concerning "electioneering communications" and "candidate-specific communications" to expenditures made by a law firm, Crumley & Associates, with which Bob Crumley is associated, for television advertisements. You provide samples of the advertisements, many of which include the name "Bob Crumley" or his image or both.

You ask, first, whether the advertisements, if they were aired within 60 days of the election, would constitute "electioneering communications" within the meaning of G.S. 163-278.80(2). That statute provides:

The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
- b. Is made within one of the following time periods:
  - 1. 60 days before a general or special election for the office sought by the candidate, or
  - 2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
- c. Is targeted to the relevant electorate.

Specifically, you ask whether the appearance of Mr. Crumley in the advertisements constitutes a reference "to a clearly identified candidate" within the meaning of the statute.

LOCATION: 506 NORTH HARRINGTON STREET ( RALEIGH, NORTH CAROLINA 27603 ((919) 733-7173

Mr. Marshall Hurley  
August 19, 2008

The answer to this question is Yes. Mr. Crumley is a candidate for statewide office and he is clearly identified in the advertisements. If, on the other hand, the advertisements named only the business entity and contained neither the name of the candidate nor his picture, they might be thought not to refer to a clearly identified candidate and not to meet the definition of "electioneering communication."

You ask, second, whether the advertisements, if they were aired within 60 days of the election, would be prohibited by G.S. 163-278.82. That statute prohibits certain entities from providing the resources to cover the costs of electioneering communications. Among the entities prohibited are professional associations, such as Crumley & Associates. The statute, as amended by the 2008 session of the General Assembly, provides an exception to the prohibition, however, in new paragraph (d). By new paragraph (d), the prohibition does not apply "unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." Almost all of the advertisements that you submitted contain solicitations for legal services and thus appear to qualify for the exception under new paragraph (d). Therefore, the answer to your second question, with respect to such advertisements, is No, the advertisements, although constituting electioneering communications, would not be prohibited by G.S. 163-278.82.

You must take notice, however, that the advertisements may, although not prohibited by G.S. 163-278.82, constitute unlawful contributions under G.S. 63-278.15, which prohibits candidates from accepting contributions from professional associations. G.S. 163-278.6(6) provides that the term "contribution" includes disbursements for electioneering communications that are coordinated with a candidate. Given Mr. Crumley's role in the law firm, it may be that disbursements for the communication are coordinated with Mr. Crumley, and, if so, the advertisements would constitute unlawful contributions by the firm.

You refer, third, to G.S. 163-278.100, a statute in the set of statutes governing "candidate-specific communications." As defined in G.S. 163-278.100, the term "candidate-specific communication" has exactly the same meaning as the term "electioneering communication," except that a candidate-specific communication occurs more than 60 days before a general election. You posit that the application of these statutes to the advertisements at issue might impermissibly burden and chill the constitutional rights of Mr. Crumley and his law firm with respect to commercial speech. It is not within the province or power of this agency to make such a judgment with respect to statutes enacted by the General Assembly. It is our task only to interpret the application of the statutes to particular conduct.

You note, finally, the reporting requirements of G.S. 163-278.101(b)(5) with respect to candidate-specific communications. That statute requires the disclosure of:

The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars (\$1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

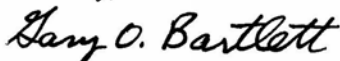
Mr. Marshall Hurley  
August 19, 2008

You ask whether, as applied to a law firm, this statute would require the disclosure of the identities of all clients of the law firm who have provided payment to the law firm of \$1,000 or more.

The answer to this final question is No. For guidance, we look to interpretation by the Federal Election Commission (FEC) of the electioneering communication provisions of the Federal Election Campaign Act of 1971 and its subsequent amendments, provisions substantially similar to our North Carolina provisions. In its interpretation published in the Federal Register, Vol. 72, No. 246, December 26, 2007, at pages 72910 and 72911, the FEC decided to require the disclosure only of "persons who made donations for the purpose of funding [electioneering communications]," not sources of funds that make up the "general treasury funds" of the entity paying for electioneering communications. In the case of Crumley & Associates, it would appear that clients have not paid funds into the firm for the purpose of funding candidate-specific communications, and therefore their identities need not be disclosed.

This opinion is based upon the information provided in your letters of June 18, 2008 and July 30, 2008. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett

cc: Julian Mann, III, Codifier of Rules

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

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

## TITLE 02 –DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rules cited as 02 NCAC 38 .0203, 0701.

**Proposed Effective Date:** January 1, 2009

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than September 30, 2008, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Reason for Proposed Action:** Changes the reference from National Institute of Standards and Technology to National Conference of Weights and Measures in 02 NCAC 38 .0203 reflects the entity that actually issues the certificate of conformance. The other proposed changes show the correct reference to the Director of the Standards Division and add NIST Handbook 44 as the method for approving Devices. The changes in 02 NCAC 38 .0701 are proposed to correct an error in the referenced codes for inspections of LP-Gas dispensers at refueling stations, update references to the LP-Gas Code, and update information about purchasing copies of various codes. These changes will not result in a change in cost to those being inspected unless they need to purchase an additional standard for information on how to install a certain type of LP-Gas dispenser.

**Procedure by which a person can object to the agency on a proposed rule:** Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Comments may be submitted to:** David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 x 238, fax (919) 716-0090, email david.mcleod@ncmail.net

**Comment period ends:** November 14, 2008

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S.

150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

## CHAPTER 38 – STANDARDS DIVISION

### SECTION .0200 – APPROVAL OF WEIGHING AND MEASURING DEVICES

#### 02 NCAC 38 .0203 TYPE APPROVAL OF WEIGHING AND MEASURING DEVICES

(a) Each ~~and every~~ type or model or pattern or design of weight or measure or weighing or measuring device intended for use in trade in this state, generally known as commercial use, shall first and ~~before such use~~ be submitted ~~and/or~~ or demonstrated by the manufacturer for the purpose of approval, and be approved by the Director of ~~Weights and Measures~~ the Standards Division at Raleigh, North Carolina, or such other place as agreed upon, in accordance with National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices". ~~and the~~ The expense incurred in obtaining such approval shall be borne by the manufacturer in accordance with G.S. 81A-10.

(b) ~~However, the~~ The Director may accept in lieu of the requirement in (a) of this Rule, a Certificate of Conformance issued by the National ~~Institute of Standards and Technology~~. Conference of Weights and Measures.

Authority G.S. 81A-1; 81A-15.

### SECTION .0700 - STANDARDS FOR STORAGE, HANDLING AND INSTALLATION OF LP GAS

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

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



- (1) National Fire Protection Association, Pamphlet No. ~~58~~, 58 (NFPA 58), "Liquefied Petroleum Gas Code," with the following additions and exceptions:
  - (a) All cut-off valves and regulating equipment exposed to rain, sleet, or snow shall be protected against such elements either by design or by a hood;
  - (b) "Firm Foundation" as used in ~~Chapter 3 of Pamphlet 58~~ NFPA 58 means that the foundation material has a level top surface, rests on solid ground, is constructed of a masonry material or wood treated to prevent decay by moisture rot and will not settle, careen or deteriorate;
  - (c) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air in spray guns or other pressure operated equipment;
  - (d) Piping, tubing or regulators shall be considered well supported when they are rigidly fastened in their intended position;
  - (e) At bulk storage installations, the bulkhead and the plant piping on the hose side of the bulkhead shall be designed and constructed so that an application of force from the hose side will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the bulkhead shall incorporate a ~~mechanical means~~ means, for instance, mechanical or pneumatic, to automatically close emergency valves in the event of a pull away;
  - (f) As an alternative to the requirement for a fire safety analysis (~~Section 3.10 of NFPA 58, 2001 Edition, or equivalent provisions in later editions~~), the owner, or his designee, of an LP-gas facility which utilizes individual storage containers in excess of ~~2,000~~ 4,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons, shall, for ~~new~~ all installations of containers of such capacity or for additions to an existing LP-gas facility which result

in containers of such capacity, meet with fire officials for the jurisdiction in which the facility is located in order to:

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

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

- ~~(g) As an alternative to the requirement for a fire safety analysis (Section 3.10 of NFPA 58, 2001 Edition, or equivalent provisions in later editions), the owner, or his designee, of an LP-gas facility existing on July 1, 2001, which utilizes individual storage containers in excess of 2,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons shall meet with fire officials for the jurisdiction in which the facility is located in order to:~~
  - ~~(i) review potential exposure to fire hazards to or from real property which is adjacent to such facility;~~

- ~~(ii) identify emergency access routes to such facility; and~~
- ~~(iii) review the equipment and emergency shut-down procedures for the facility.~~

~~The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record. This documentation shall be made available to the Department not later than July 1, 2005. Compliance with the availability requirement shall be met by having a copy of the documentation kept on-site or at the owner's office and immediately available for review by NCDA&CS inspection personnel. This meeting, review, and documentation shall be repeated when NCDA&CS determines that the plant design has changed or that potential exposures have significantly changed. Compliance with Sub item (1)(f) of this Rule for additions to an existing LP-gas facility shall be deemed to be in compliance with Sub item (1)(g) of this Rule;~~

- ~~(h)(g)~~ An LP-gas facility which utilizes storage containers that are interconnected through the vapor withdrawal outlets of the containers only with an aggregate water capacity in excess of 4,000 gallons, but not in excess of 6,000 gallons, shall be exempt from the requirements of a fire safety analysis; ~~and~~

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

safety analysis constitutes the practice of ~~engineering~~; and

- ~~(i) Section 1.3.2 (11) of NFPA 58 (2008 Edition), or equivalent provisions in later editions, shall not apply.~~
- (2) National Fire Protection Association, Pamphlet No. 54, "National Fuel Gas Code," with the addition that underground service piping shall rise above ground immediately before entering a building.
- (3) National Fire Protection Association, Pamphlet No. 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages," Chapter 12 (in 2008 Edition) as it applies to LP-Gas dispensers for motor vehicle fuel along with dispensers for other motor vehicle fuels.

Copies of Pamphlet No. ~~54~~ and 54, Pamphlet No. 58 and Pamphlet No. 30A are available for inspection in the Office of the Director of the Standards Division. They may be obtained at a cost of ~~thirty-three dollars and twenty-five cents (\$33.25)~~ fourty-four dollars (\$44.00) each ~~(November 2001 price)~~, for Pamphlet Nos. 54 and 58 and for \$34.50 for Pamphlet 30A (August 2008 price), plus shipping, by contacting National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02269, by calling them at 800-344-3555, or by accessing them on the Internet at [www.nfpacatalog.org](http://www.nfpacatalog.org). ~~Copies may also be available through the North Carolina Propane Gas Association, 5112 Bur Oak Circle, Raleigh, NC 27612 or by calling them at 919-787-8485.~~

Authority G.S. 119-55; 150B-21.6.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – Division of Medical Assistance intends to amend the rule cited as 10A NCAC 22O .0106.*

**Proposed Effective Date:** January 1, 2009

**Public Hearing:**

**Date:** October 1, 2008

**Time:** 10:00 am

**Location:** 1985 Umstead Drive, Raleigh, NC, NC Kirby Building, Room 132

**Reason for Proposed Action:** *This Rule is being amended to reflect policy changes regarding requirements for the confirmation of treatment by physical examination and/or by one set of x-rays taken within six months of the initial date of service. The Rule is also being revised to indicate required documentation for the treatment plan and to clarify the educational requirements for chiropractic providers.*

**Procedure by which a person can object to the agency on a proposed rule:** *Should you desire to object to a proposed rule(s) please respond to DMA with the objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains. This must be submitted in writing to Teresa Smith, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 – 2501 Mail Service Center, Director's Office, Kirby Building.*

**Comments may be submitted to:** *Teresa Smith, 1985 Umstead Drive, Raleigh, NC 27603 2501 Mail Service Center, Kirby Building, Raleigh, NC 27699-2501, fax (919) 733-6608.*

**Comment period ends:** *November 14, 2008*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

**CHAPTER 22 – MEDICAL ASSISTANCE ELIGIBILITY**

**SUBCHAPTER 22O - MEDICAL ASSISTANCE PROVIDED**

**SECTION .0100 – GENERAL**

**10A NCAC 22O .0106 CHIROPRACTIC SERVICES**

(a) No reimbursement from North Carolina Medicaid shall be made for x-rays or other diagnostic or therapeutic services provided by a chiropractor except as provided in this ~~Section~~ Rule.

(b) Medicaid coverage of chiropractic services is limited to manual manipulation of the spine to correct a subluxation.

(c) Subluxation shall be confirmed by physical examination or by one set of x-rays taken within six months of the initial date of service.

(d) The treatment plan shall document:

- (1) the symptoms or diagnosis treated;  
 (2) diagnostic procedures and treatment modalities used;

- (3) results of diagnostic procedures and treatments; and  
 (4) anticipated length of treatments.

(e) Medical documentation shall support continued treatment.

(f) Chiropractic providers shall meet the educational requirements as outlined in 42 CFR 410.21(a).

*Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.60.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0203, .0707, .0806-.0807, .0904.*

**Proposed Effective Date:** *January 1, 2009*

**Public Hearing:**

**Date:** *September 30, 2008*

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

**Location:** *PPSB Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC 27609*

**Reason for Proposed Action:**

*12 NCAC 07D .0203 - The Board is proposing a technical change to requirements for criminal record checks.*

*12 NCAC 07D .0707 - The Board has determined that computer interactive training is acceptable if certain conditions are met. The rule sets forth the standards to allow interactive training.*

*12 NCAC 07D .0806 - The Board has determined that an armed security guard should have to provide certification that they are 21 years of age prior to being issued an armed registration permit.*

*12 NCAC 07 .0807, .0904 - The Board has determined that the firearms certification course should remain valid for 180 days after completion of the training.*

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

*The Board will accept written comments on the above-referenced rules on or before the end of the public comment period. Written comments shall be mailed to the Board at the following address: Terry Wright, Director, NC PPSB, 104 Midtown Place, Raleigh, NC 27601.*

**Comments may be submitted to:** *Terry Wright, Director, NC PPSB, 104 Midtown Place, Raleigh, NC 27601.*

**Comment period ends:** *November 14, 2008*

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

**CHAPTER 07 – PRIVATE PROTECTIVE SERVICES  
BOARD**

**SUBCHAPTER 07D - PRIVATE PROTECTIVE  
SERVICES BOARD**

**SECTION .0200 - LICENSES: TRAINEE PERMITS**

**12 NCAC 07D .0203 RENEWAL OR RE-ISSUE OF  
LICENSES AND TRAINEE PERMITS**

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of a renewal form. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) a head and shoulders color photograph of the applicant of a quality sufficient for identification, one inch by one inch in size and taken within six months of the application;
- (2) ~~statements of the result of a local criminal history records search by the city county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months; and~~ certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee in good standing with the Board has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within three years of the expiration date and the following documentation is submitted to the Board:

- (1) an Application For Reinstatement of an Expired License;
- (2) one set of classifiable fingerprints on an applicant fingerprint card;
- (3) one head and shoulders photograph(s) of the applicant of a quality sufficient for

- identification, one inch by one inch in size and taken within six months of the application;
- (4) ~~statements of the result of a local criminal history records search by the city county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;~~ certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;
- (5) the applicant's non-refundable application fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e); and
- (7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

*Authority G.S. 74C-5; 74C-8; 74C-9.*

**SECTION .0700 - SECURITY GUARD REGISTRATION  
(UNARMED)**

**12 NCAC 07D .0707 TRAINING REQUIREMENTS  
FOR UNARMED SECURITY GUARDS**

(a) Applicants for an unarmed security guard registration shall complete a basic training course for unarmed security guards within 30 days from the date of permanent hire. The course shall consist of a minimum of 16 hours of classroom instruction including:

- (1) The Security Officer in North Carolina -- (minimum of one hour);
- (2) Legal Issues for Security Officers -- (minimum of three hours);
- (3) Emergency Response -- (minimum of three hours);
- (4) Communications -- (minimum of two hours);
- (5) Patrol Procedures -- (minimum of three hours);
- (6) Note Taking and Report Writing -- (minimum of three hours);
- (7) Deportment -- (minimum of one hour).

A minimum of four hours of classroom instruction shall be completed within 20 calendar days of a probationary or regular security guard being placed on a duty station. These four hours shall include The Security Officer in North Carolina and Legal Issues for Security Officers.

(b) Licensees shall submit the name and resume for a proposed certified unarmed security guard trainer to the Director for Board Approval.

(c) Training shall be conducted by a Board certified unarmed security guard trainer. A Board approved lesson plan covering the training requirements in 12 NCAC 07D .0707(a) shall be made available to each trainer. The Board shall approve other media training materials that deliver the training requirements of 12 NCAC 07D .0707(a).

(d) The above 16 hours of training may be delivered interactively under the following conditions:

- (1) The training is being presented by a PPS certified unarmed security officer trainer.
- (2) Each student is given a copy of the PPS unarmed security officer training manual to use for the duration of the 16 hour training course.
- (3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the training.
- (4) All students in each classroom must be able to clearly see and read the screen or monitor, and they must be able to clearly hear and understand the audio presentation. All monitors used in each classroom must be at least 32 inches wide.
- (5) The technology used must be of sufficient quality so that the training audio and video is done smoothly and without interruption.
- (6) Each student is taught to use the audio and video equipment in their classroom prior to the start of the 16 hour unarmed security officer training course.
- (7) The total number of students receiving the interactive training at one time can not exceed 35 students.
- (8) All training not included in the NC Private Protective Services unarmed security officer training manual must be done either before or after the 16 hour unarmed security officer training.
- (9) The Director of Private Protective Services must be notified five days prior to training of the location of each classroom, name and location of the certified trainer, and the number of students who will be present.
- (10) The sponsoring agency must allow the Director or designee access via computer of the training during the time that it is taking place.

*Authority G.S. 74C-5; 74C-11; 74C-13.*

## **SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

### **12 NCAC 07D .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor less than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable

quality for identification, one inch by one inch in size;

- (2) statements of any criminal record obtained from the appropriate area where the applicant has resided within the immediate preceding 12 months;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services ~~Board~~ Board; and
- (5) a certification by the applicant that he or she is at least 21 years of age.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0807.

*Authority G.S. 74C-5; 74C-11; 74C-13.*

### **12 NCAC 07D .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS**

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in 12 NCAC 07D .0707. Private Investigator Licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in 12 NCAC 07D .0707(a). Private Investigator Licensees applying for an armed security guard firearm registration permit shall not be required to complete the following training blocks found in the basic training course referenced in 12 NCAC 07D .0707(a): "Emergency Response", "Communications", "Patrol Procedures", "Note Taking and Report Writing", and "Deportment". A Private Investigator Licensee applying for an armed security guard firearm registration permit shall be required to meet all additional training requirements set forth in 12 NCAC 07D .0707 as well as the training requirements set forth in this Rule.

(b) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including but not limited to, familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including but not limited to, range firing procedures (minimum of one hour);

- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(c) In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule and prior to being issued a permit, applicants shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

(d) All armed security guard training required by 12 NCAC 07D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(e) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of this Section using their duty weapon and their duty ammunition.

(f) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards which consists of at least four hours of classroom instruction and shall be a review of the requirements set forth in Paragraphs (b)(1)-(b)(5) of this Rule. Said recertification course shall be valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including but not limited to, range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraphs (h)(1)-(h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

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

## **SECTION .0900 – TRAINER CERTIFICATE**

### **12 NCAC 07D .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board. This form should be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Attorney General consisting of a minimum of eight hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, control and safety procedures, and methods of handgun and shotgun firing. This training shall have been completed within ~~60~~ 180 days of the submission of the renewal application;
- (2) ~~statements of the result of a local criminal history records search by the city county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 24 months;~~ certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each area where the applicant has resided within the immediate preceding 48 months;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

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

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .0103, .0202-.0205, .0304-.0305, .0406, .0703-.0704, .0708-.0709, .0911-.0912, .0919-.0920, .2004-.2005, .2007-.2008.*

**Proposed Effective Date:** *January 1, 2009*

**Public Hearing:**

**Date:** *November 17, 2008*

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

**Location:** *Room G41; Old Education Bldg; 114 W. Edenton Street, Raleigh, NC*

**Reason for Proposed Action:**

**12 NCAC 10B .0103, .0703 and .0708** - Description: Define the term "Qualified Assistant" and provide for school directors to designate a qualified assistant to assist them in their administrative duties.

Purpose: School directors requested this change in order to alleviate the workload for those whose training institutions are delivering many Commission-mandated courses and who have satellite delivery sites.

**12 NCAC 10B .0704 and .0709** – Description: Revision in .0704(a)(1)(A) clarifies that 40 hours of instruction in each is not required during weeks where there are regularly scheduled holidays. In addition, revisions in both rules broaden who can evaluate instructors teaching in these courses. Purpose: School directors requested this change in order to avoid having to contract with additional Detention and Telecommunicator instructors in order to perform required evaluations. There are many more General Instructors certified in the State and already on staff at training institutions who would be allowed by this rule change to perform those evaluations.

**12 NCAC 10B .0202, .0203, .0911, .0912, .0919 and .0920** – Description: The revisions were recommended by an ad hoc committee of school directors in order to more clearly set out the sanctions against training agencies/schools and instructors/school directors when non-performance or other types misconduct occur. Purpose: Under the current rules, even minor administrative oversights would technically require sanctions, which has not been the practice of the Commission and its staff. The rules changes will allow staff to continue to resolve minor issues, and only potentially sanction for less than minor issues.

**12 NCAC 10B .0204 and .0205** – Description: Revision would allow for decertification action when a veteran officer produces a non-justifiable drug screen result on an in-service drug screen required by the hiring agency, and further adds that a positive drug screen produced in connection with an application for the Department of Corrections will also be a basis for denial or revocation. Purpose: More hiring agencies are performing random in-service drug screens in recent years, since the Drug Screening Implementation Guide sets out how to properly require such drug screens in compliance with federal law; the Commission wants to be able to decertify an officer who produces a non-justifiable drug screen result.

**12 NCAC 10B .0304** – Description: Revision would allow physicians in the US Armed Forces, as well as other licensed independent practitioners as set out in N.C.G.S. 90-18.3, to perform Commission-mandated physical examinations. Purpose: To bring rule into compliance with other state law, and allow for easier transfer of military veterans into the criminal justice field.

**12 NCAC 10B .0305** – Description: Revision of requirements for background investigations. Purpose: Since this rule went through its last major revision in August of 2002, it has become apparent that not all states retain or maintain records of criminal history and or driver's history in the same manner. Obtaining the records checks required under the current rule has frustrated the local hiring agencies. Change proposed to paragraph (e)(4) will narrow the requirement to submit a

driver's history records check to ten years. Change proposed to paragraph (f) will broaden the range of acceptable types of records checks. Change proposed to paragraph (h) will also exempt individuals from obtaining records checks from each jurisdiction and for every name used, provided documentation of an official name change is provided. The only increased requirement is the change proposed in paragraph (g), but was deemed necessary in light of recent increase in military deployments and the fact that military personnel are issued DD214s after each period of deployment.

**12 NCAC 10B .0406** – Description: Revision would exempt individuals who qualify as Lateral Transfers from having to repeat a fingerprint records check as set out in .0303. Purpose: In order to have earned General Certification, the Commission must have received a fingerprint records check for the individual. This revision would alleviate a currently redundant rule requirement.

**12 NCAC 10B .2004** – Description: Revision sets out that: Professional Lecturers may also teach in-service training topics covering medical or legal topics; Topics requiring specific expertise which are limited to individuals holding specific instructor certifications; The use of guest participants to supplement the primary certified instructor is permissible. Purpose: The existing rule needs to be brought into compliance with similar rules in the basic training courses.

**12 NCAC 10B .2005 and .2007** – Description: The revisions set out what will be required for in-service training in 2009. These in-service training programs began in 2005 with Deputies completing 4 hours of Domestic Violence; then since 2006 Deputies are required to complete 24 hrs of in-service. Since 2007 Detention Officers and Telecommunicators are required to complete 16 hours. In the year of 2009, Deputies must likewise complete 24 hours, and Detention Officers and Telecommunicators must complete 16 hours. The only changes are in the topical areas. Purpose: To improve performance, reduce errors and reduce the number of lawsuits, and protect the public health, safety and welfare by ensuring each officer remains knowledgeable in their areas of enforcement, corrections, or communications.

**12 NCAC 10B .2008** – Description: The revision lengthens the amount of time an individual has to make-up in-service training. Purpose: Due to the length of time it takes Division staff to process the end of year in-service training compliance reports, some individuals are not suspended until after it is already too late to qualify for reinstatement under the current rule. Where this has occurred the Commission has allowed reinstatement to length of time specified in the revised rule.

**Procedure by which a person can object to the agency on a proposed rule:** Objections shall be submitted in writing explaining the reasons for objection and specifying the portion of the rule to which the objection is being made. Such objection should be sent to: Julia Lohman, Sheriffs' Standards Division, Dept. of Justice, P.O. Box 629, Raleigh, NC 27602.

**Comments may be submitted to:** Julia Lohman, Sheriffs' Standards Division, Dept. of Justice, P.O. Box 629, Raleigh, NC 27602, phone (919)716-6460, fax (919)716-6753, email jlohman@ncdoj.gov.

**Comment period ends:** *November 14, 2008*

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

**Fiscal Note posted at** <http://www.osbm.state.nc.us/files/pdf-files/DOJ08122008.pdf>

**CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES**

**12 NCAC 10B .0103 DEFINITIONS**

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout this Chapter, unless the context requires otherwise:

- (1) "Appointment" as it applies to a deputy sheriff means the date the deputy's oath of office is administered; and as it applies to a detention officer means either the date the detention officer's oath of office was administered, if applicable, or the detention officer's actual date of employment as reported on the Report of Appointment (Form F-4) by the employing agency, whichever is earlier; and as it applies to a telecommunicator, the telecommunicator's actual date of employment as reported on the Report of Appointment (Form F-4T).
- (2) "Convicted" or "Conviction" means for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or

- (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Department Head" means the chief administrator of any criminal justice agency or communications center. Department head includes the sheriff or a designee appointed in writing by the Department head.
- (4) "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (5) "Division" means the Sheriffs' Standards Division.
- (6) "High School Graduation" means successful completion of all requirements for either public or non-public schools, including passing any required competency tests, established by the State Board of Education or other entity having jurisdiction where the student graduated at the time the student finished high school. A certificate or diploma reflecting the person accomplished some but not all graduation requirements is not sufficient. The high school must meet the compulsory attendance requirements in the jurisdiction in which the school is located.
- (7) "Enrolled" means that an individual is currently participating in an on-going presentation of a commission-certified basic training course which has not been concluded on the day probationary certification expires.
- (8) "Essential Job Functions" means those tasks deemed by the agency head to be necessary for the proper performance of a justice officer.
- (9) "Lateral Transfer" means certification of a justice officer when the applicant for certification has previously held general or grandfather certification as a justice officer or a criminal justice officer as defined in G.S. 17C-2(c), excluding state correctional officers, state probation/parole officers, and state youth services officers, provided the applicant has been separated from a sworn law enforcement position for no more than one year, or has had no break in service.
- (10) "Misdemeanor" means those criminal offenses not classified by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the Commission as follows:
  - (a) "Class A Misdemeanor" means:
    - (i) an act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (10)(b) of this Rule. Also



specifically included herein as a Class A Misdemeanor is the offense of driving while impaired, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. All other traffic offenses under Chapter 20 (motor vehicles) are not classified as Class A Misdemeanors.

(ii) acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

Also specifically included herein as a Class A Misdemeanor is the offense of driving while impaired, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. All other traffic offenses under Chapter 20 (motor vehicles) are not classified as Class A Misdemeanors.

(iii) any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as

misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of driving while impaired which is expressly included herein as a class A misdemeanor, if the offender could have been sentenced for a term of not more than six months.

(b) "Class B Misdemeanor" means:

(i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule.

(ii) acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years. Specifically excluded from the grouping of "Class B misdemeanors" committed or omitted in North Carolina prior to October 1, 1994 are motor vehicle or traffic offenses designated as being misdemeanors under G.S. 20 (motor vehicles), with the

- following exceptions: "Class B misdemeanors" committed or omitted in North Carolina prior to October 1, 1994 expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-166 (duty to stop in the event of an accident), G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense, and shall also include a violation of G.S. 20-28(b) [driving while license permanently revoked or suspended].
- (iii) any act committed or omitted in violation of any common law, duly enacted ordinance, or criminal statute of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended.
- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "Dual Certification" means that a justice officer holds probationary, general, or grandfather certification in two or more of the following positions with the same agency:
- (a) deputy sheriff;
  - (b) detention officer;
  - (c) telecommunicator.
- (13) "Detention Officer" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, which includes the control, care, and supervision of any inmates incarcerated in a county jail or other confinement facility under the direct supervision and management of the sheriff. "Detention Officer" shall also mean the administrator and the other custodial personnel of district confinement facilities as defined in G.S. 153A-219.
- (14) "Deputy Sheriff" means any person who has been duly appointed and sworn by the sheriff and who is authorized to exercise the powers of arrest in accordance with the laws of North Carolina.
- (15) "Telecommunicator" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, for communication functions to include receiving calls or dispatching for emergency and law enforcement services.
- (16) "Commission" as it pertains to criminal offenses means a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (17) "Sworn Law Enforcement Position" means a position with a criminal justice agency of the United States, any state, or a political subdivision of any state which, by law, has general power of arrest and requires each of the following:
- (a) successful completion of the Basic Law Enforcement Training curriculum offered by the respective state or federal entity; and
  - (b) an independent oath of office providing for the execution of the laws of the respective state or federal jurisdiction.
- (18) "General Powers of Arrest" means the authority to enforce the state or federal laws within the officer's territorial and subject matter jurisdiction to include the authority to arrest and cite offenders under the laws of the

jurisdiction. These powers must be conferred on the officer by virtue of occupying a sworn law enforcement position. General powers of arrest means those powers, even though limited by subject matter jurisdiction, which may be exercised as a routine responsibility of the office. General powers of arrest does not mean those powers of arrest conferred by virtue of a special appointment or those granted as an incidental, as opposed to a primary, function of the office.

- (19) "In-Service Training Coordinator" means the person designated by the Department Head to administer the agency's in-service training program.
- (20) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when justification of demonstrated need has been provided to the Division.

Authority G.S. 17E-7.

## SECTION .0200 - ENFORCEMENT RULES

### 12 NCAC 10B .0202      SANCTIONS FOR VIOLATIONS BY AGENCIES OR SCHOOLS

If the Commission finds that a violation has been committed by an agency or school, the Commission may:

- (1) issue an oral warning and request for compliance;
- (2) issue a written warning and request for compliance;
- (3) issue an official written reprimand;
- (4) summarily suspend, revoke, or deny accreditation to any school or program or course of instruction until corrective measures have been taken to bring the agency or school into compliance with these Rules and verification of such compliance has been made by the Commission; or
- (5) ~~suspend~~, revoke, or deny accreditation to any school or program or course of instruction for a specific period of time to be determined by the Commission's Probable Cause Committee; however, not to exceed one year.

Authority G.S. 17E-4.

### 12 NCAC 10B .0203      SANCTIONS FOR VIOLATIONS BY INDIVIDUALS

When any person certified by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not re-occur, including:

- (1) issuing an oral warning and request for compliance;

- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) summarily suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the ~~individual~~; individual upon a specific finding that allowing the individual to work poses a danger to the public health, safety and welfare; or
- (5) ~~revoking or denying the individual's certification.~~ Where action is being taken against an instructor or school director the Probable Cause Committee shall specify a period of time for the revocation or denial not to exceed five years. Where action is being taken against an applicant for justice officer certification or a certified justice officer, the sanctions set out in 12 NCAC 10B .0205 shall apply.

Authority G.S. 17E-4; 17E-7.

### 12 NCAC 10B .0204      SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony; or
- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a one year time period as specified by the rules in this Subchapter;
- (2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300;
- (3) fails to satisfactorily complete the in-service training requirements as presented in 12 NCAC 10B .2000 and .2100 or 12 NCAC 09E .0100;
- (4) has refused to submit to the drug screen as required by these Rules or the rules of the Criminal Justice Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the agency through which the officer is certified; in 12 NCAC 10B .0301(a)(6) or .0410(a) in connection with an application for certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6);

(5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a corrections officer as defined in 12 NCAC 09G .0102 or a criminal justice officer as defined in 12 NCAC 09A .0103(6), unless the positive result is due to a medically indicated cause.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Subparagraph also applies to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100;
- (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Subparagraph also applies to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100;
- (3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Subparagraph also applies to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100;
- (4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230; or
- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, or a similar North Carolina, out-of-state or federal approving, certifying or licensing agency.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that

the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of ~~appointment; initial certification;~~
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment;
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction;
- (4) an accumulation of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, regardless of the date of commission or conviction except the applicant shall be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
- (5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked shall not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of G.S. 17E, a person who has been denied certification revoked shall not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

(g) If the Commission does revoke, suspend, or deny the certification of a justice officer pursuant to this Rule, the period of such sanction shall be as set out in 12 NCAC 10B .0205.

*Authority G.S. 17E-7.*

**12 NCAC 10B .0205 PERIOD OF SUSPENSION:  
REVOCATION: OR DENIAL**

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
  - (a) commission or conviction of a felony;
  - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
  - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.

- (2) not less than five years where the cause of sanction is:
- (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1);
  - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission;
  - (c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission;
  - (d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Sub-Item also applies to obtaining or attempting to obtain credit for in-service training as required by 12 NCAC 10B .1700, .1800, .2000, or .2100;
  - (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7);
  - (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
  - (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by these Rules or the rules of the Criminal Justice Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the agency through which the officer is certified, both pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in connection with an application for certification as a criminal justice officer as defined in 12 NCAC 09A .0103(6).

The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to

reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
  - (a) failure to meet or satisfy relevant basic training requirements;
  - (b) failure to meet or maintain the minimum standards of employment or certification;
  - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .2000 or .2100 or 12 NCAC 09E .0100;
  - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (4) and (5); or
  - (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon Subparagraphs .0204(d)(3), (d)(4), and (d)(5) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.

*Authority G.S. 17E-4; 17E-7.*

### **SECTION .0300 – MINIMUM STANDARDS FPR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER**

#### **12 NCAC 10B .0304 MEDICAL EXAMINATION**

(a) Each applicant for certification or enrollee in a Commission-accredited basic training course shall complete, sign and date the Commission's Medical History Statement Form (F-1) and shall be examined by a either a physician, surgeon, physician's assistant or nurse practitioner or other licensed independent practitioner who is licensed in North Carolina or who is authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine his/her fitness in carrying out the physical requirements of the position of justice officer.

- (b) Prior to conducting the examination, the physician shall:
  - (1) read the "Medical Screening Guidelines Implementation Manual for Certification of

Justice Officers" in the State of North Carolina as published by the North Carolina Department of Justice. Copies of this publication may be obtained at no cost at the time of the adoption of this Rule by contacting the North Carolina Department of Justice, Sheriffs' Standards Division, PO Box 629, Raleigh, North Carolina 27602; and

- (2) read, sign, and date the Medical History Statement Form (F-1); and
- (3) read the F-2A Form attached to the Medical Examination Report Form (F-2).

(c) The examining physician, surgeon, physician's assistant or nurse practitioner shall record the results of the examination on the Medical Examination Report Form (F-2) and sign and date the form.

(d) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid one year from the date the examination was conducted and shall be completed prior to:

- (1) the applicant's beginning the Detention Officer Certification Course, the Basic Law Enforcement Training Course, or the Telecommunicator Certification Course; and
- (2) the applicant's applying to the Commission for Certification.

Note: Although not presently required by these Rules, it is recommended by the Commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, to determine his/her suitability to perform the essential job functions of a justice officer.

*Authority G.S. 17E-7.*

## **12 NCAC 10B .0305 BACKGROUND INVESTIGATION**

(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.

(c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal History Statement (F-3); and shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the opportunity to update the F-3 prior to submission to the Division.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the

applicant is of good moral character as defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator.

(e) The Background Investigation Form (F-8) shall include records checks from:

- (1) a state-wide search of the Administrative Office of the Courts (AOC) computerized system;
- (2) the national criminal record database accessible through the Division of Criminal Information (DCI) network;
- (3) the North Carolina Department of Motor Vehicles, if the applicant has ever possessed a driver's license issued in North Carolina; and
- (4) out-of-state motor vehicles check obtained through the Division of Criminal Information or obtained through the State's Department of Motor Vehicles if the applicant held a license in that State(s) within the 10 year period prior to the date of appointment. from the appropriate agency, if the applicant has ever been issued a driver's license by a state other than North Carolina.

(f) The Background Investigation must also ~~include, if available, county wide and certified records checks from each jurisdiction where the applicant has resided for the past 10 years and from the jurisdiction where the applicant attended high school. These records shall be performed on each name by which the applicant for certification has ever been known.~~ include records checks from jurisdictions in which the applicant resided within the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:

- (1) Where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks are acceptable;
- (2) Where the applicant resided in another country, an Interpol records check is acceptable provided the country is a member of Interpol; or if the applicant was in the United States military, a military records check is acceptable; or if neither, efforts should be made and documented to attempt to obtain a records check from the country and submitted if available;
- (3) Where the applicant resided in a State other than North Carolina, a records check through the Division of Criminal Information using the IQ inquiry submitted to both the municipality, city or town where the applicant resided and the county-wide Sheriff's Office or Police Department is acceptable provided those agencies will respond to this type of inquiry; or if not, then either a records check response from those agencies obtained through traditional correspondence; or a records check

from the appropriate county-wide or state-wide record holding agency is acceptable.

(g) If the applicant had prior military ~~service, service within the 10 year period prior to the date of appointment, then~~ the Background Investigation must also include a copy of the applicant's DD214 which shows the characterization of discharge for each discharge which occurred and military discipline received, if any. If the DD214 indicates a discharge characterization of any type other than Honorable, then a military records check is also required.

(h) All records checks shall be performed on each name by which the applicant for certification has ever been known since the age of 12. If the applicant has had an official name change which occurred after the applicant had reached the age of 12 years of age, then documentation of that name change is required.

~~(h)(i)~~ (i) The employing agency shall also forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency or listed on the applicant's Personal History Statement (F-3) or both. The employing agency shall explain to the satisfaction of Division staff that charges or other violations which may result from the records checks required in Paragraph (e) of this Section do not pertain to the applicant for certification. This documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

~~(h)(j)~~ (j) The employing agency shall include a signed and notarized Release Authorization Form which authorizes the Division staff to obtain documents and records pertaining to the applicant for certification which may be required in order to determine whether certification can be granted.

*Authority G.S. 17E-7.*

## **SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS**

### **12 NCAC 10B .0406 LATERAL TRANSFER/REINSTATEMENTS**

(a) The General or Grandfather Certification of an officer meeting the requirements of 12 NCAC 10B .0103(9) may laterally transfer to an agency and be certified upon compliance with this Rule, without having to repeat the requirements set out in 12 NCAC 10B .0303. Rule.

(b) The employing agency shall verify the applicant's certification status with the Division prior to submission of the application for certification as a justice officer.

(c) In order for an officer to be certified pursuant to, Paragraph (a) of this Rule, the employing agency shall submit to the Division, along with the Report of Appointment (F-4 or F-4T), the documents required in 12 NCAC 10B .0408.

(d) An officer whose certification has been suspended pursuant to 12 NCAC 10B .0204(b)(1) may have that certification reinstated provided that:

- (1) the period of suspension has been six months or less; and
- (2) the employing agency submits to the Division, along with a Report of Appointment, the documents required in 12 NCAC 10B .0305.

- (3) the officer has successfully completed the basic training requirements as prescribed in 12 NCAC 10B .0500 or .0600 or .1300.

(e) An officer for whom a Report of Separation (Form F-5) has been submitted to the Division, and who is re-appointed in the same agency, may be reinstated provided that:

- (1) the period of separation has been six-months or less; and
- (2) the employing agency submits to the Division, along with a Report of Appointment, the documents required in 12 NCAC 10B .0305.

(f) Requirements of Paragraph (c) of this Rule are waived for officers whose certifications are reinstated pursuant to Paragraphs (d) and (e) of this Rule.

(g) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

*Authority G.S. 17E-4; 17E-7.*

## **SECTION .0700 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

### **12 NCAC 10B .0703 ADMINISTRATION OF DETENTION OFFICER CERTIFICATION COURSE**

(a) The executive officer or officers of the institution or agency sponsoring a Detention Officer Certification Course shall have primary responsibility for implementation of the rules in this Section and for administration of the school.

(b) The executive officers shall designate a compensated staff member who may apply to the Commission to be the school director. No more than two school directors shall be designated at each certified institution/agency to deliver a Detention Officer Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored detention officer certification course and shall be readily available at all times during course delivery as specified in 12 NCAC 10B .0704(b). The School Director may designate a Qualified Assistant to assist in the administration of the Detention Officer Certification Course, where the School Director has provided justification for the need to include, but not limited to, overlapping or simultaneous Commission-mandated courses, satellite delivery locations, responsibility for multiple courses. This person must be selected by the School Director, approved by the Division, attend a course orientation conducted by Division staff, and attend the Annual School Directors' Conference.

(c) The executive officers of the institution or agency sponsoring the Detention Officer Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;

- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Detention Officer Certification Course Management Guide" and specifically including the following:
    - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees;
    - (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
    - (C) a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access; and
    - (D) an area designated for instruction of subject control techniques which enables the safe execution of the basic detention officer subject control techniques topic area, with the following specifications:
      - (i) 30 square feet of floor space per student during the practical exercise portion of this topic area and while testing trainees' proficiency in performing the required maneuvers;
      - (ii) one instructor for every 10 students during the practical exercise portion of this topic area and while testing trainees' proficiency in performing the required maneuvers;
      - (iii) restrooms and drinking water within 100 yards of the training site; and
      - (iv) telephone or radio communication immediately available on site.
    - (E) an area designated for use as a jail cell for performing the practical exercises in the topic area entitled "Contraband Searches". If a county jail cell is unavailable, a simulated jail cell is acceptable provided it is built to the same specifications required by the Department of Human Resources with regards to size;
    - (F) an area designated for fire emergencies instruction which enables the safe execution of the lesson plan as follows:
      - (i) a well-ventilated, open area which allows for the setting and putting out of a fire;
      - (ii) restrooms and drinking water within 100 yards of the training site; and
      - (iii) telephone or radio communication immediately available on site.
  - (G) an area designated for physical fitness for detention officer trainees to include:
    - (i) an area for running, weight lifting and other exercises performed during the physical fitness topic area which provides a minimum of 20 square feet per trainee during the performance of the exercises required in the physical fitness topic area;
    - (ii) restrooms and drinking water within 100 yards of the training site;
    - (iii) telephone or radio communication immediately available on site;
    - (iv) shower facilities, if physical fitness is performed prior to classroom training; and
    - (v) one instructor for every 10 students during the physical assessment portion of this block of instruction;
    - (vi) sufficient instructors as needed to maintain visual contact with students while performing any physical exercise.
  - (H) an area designated for instruction in first aid and CPR techniques which provides a minimum of 20 square feet per trainee during the practical exercise portion and testing for proficiency in administering CPR. There must also be one instructor for every 10 students during the practical exercise portion and proficiency testing in administering CPR.
- (d) In the event that an institution or agency does not own a facility as required in this Section, written agreements with other entities must be made to assure use of and timely access to such facilities. A copy of such agreement must accompany the originating institution or agency "Pre-Delivery Report" (Form F7-A) when submitted to the Division.

*Authority G.S. 17E-4.*



**12 NCAC 10B .0704 RESPONSIBILITIES: SCHOOL DIRECTORS, DETENTION OFFICER COURSE**

(a) In planning, developing, coordinating, and delivering each commission-certified Detention Officer Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter.
  - (A) The Detention Officer Certification Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed, with the exception of weeks in which there are regularly scheduled holidays, completed.
  - (B) In the event of exceptional or emergency circumstances, the Director shall upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule instructors who are properly certified by the Commission. The selecting and scheduling of instructors is subject to special requirements as follows:
  - (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery except as set forth in Part (a)(2)(B) of this Rule.
  - (B) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is properly certified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Division shall grant written approval for the expansion of the individual instructional limitation.
  - (C) The appropriate number of instructors for specific topic areas shall be scheduled as required in 12 NCAC 10B .0703.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter.
- (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the

"Detention Officer Certification Course Management Guide".

- (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
  - (A) Effective course delivery;
  - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
  - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.
- (7) If appropriate, recommend housing and dining facilities for trainees.
- (8) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
  - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
  - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval shall be withheld until all matters are in compliance with the Commissions' rules.
- (9) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible.
- (10) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. A person holding General Instructor Certification under the Criminal

- Justice Commission is permitted to evaluate instructors teaching any lecture portion of the course. However, if a Limited Lecturer is evaluated during the practical portion of a block of instruction, he/she must be evaluated by either the School Director or another instructor holding the equivalent type of certification. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Detention Officer Instructor Certification, Limited Lecturer Certification or Professional Lecturer Certification. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Development model, as taught in Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan. For each topic area, the school director's or designee's evaluation shall be based on the course delivery observations, the instructor's use of the approved lesson plan, and the results of the students evaluations of the instructor.
- (11) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. A person holding General Instructor Certification under the Criminal Justice Commission is permitted to evaluate instructors teaching any lecture portion of the course. However, if a Limited Lecturer is evaluated during the practical portion of a block of instruction, he/she must be evaluated by either the School Director or another instructor holding the equivalent type of certification. Instructor evaluations shall be prepared on commission forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Development model, as taught in Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan. For each topic area, the school director's or designee's evaluation shall be based on the course delivery observations, the instructor's use of the approved lesson plan, and the results of the students evaluations of the instructor.
- (12) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall hold certification in the same instructional topic area as that being taught.
- (13) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (15) During a delivery of the Detention Officer Certification Course, make available to authorized representatives of the Commission three hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (16) Not more than ten days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B).
- (b) In addition to the requirements in 12 NCAC 10B .0704(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the commission-certified training delivery site and the Division prior to the beginning of a scheduled course delivery.

*Authority G.S. 17E-4.*

#### **12 NCAC 10B .0708 ADMINISTRATION OF TELECOMMUNICATOR CERTIFICATION COURSE**

- (a) The executive officer or officers of the institution or agency sponsoring a Telecommunicator Certification Course shall have primary responsibility for implementation of these Rules and standards and for administration of the school.
- (b) The executive officers shall designate a compensated staff member to be the school director. No more than two school directors shall be designated at each accredited institution/agency to deliver a Telecommunicator Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored telecommunicator certification course and shall be readily available at all times during course delivery as specified in 12 NCAC 10B .0709(b). The School Director may designate a Qualified Assistant to assist in the administration of the Telecommunicator Certification Course, where the School Director has provided justification for the need to include, but not limited to, overlapping or simultaneous Commission-mandated courses, satellite delivery locations, responsibility for multiple courses. This person must be selected by the School

Director and must attend a course orientation conducted by Division staff and attend the Annual School Directors' Conference.

(c) The executive officers of the institution or agency sponsoring the Telecommunicator Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide secretarial, clerical, and other supportive staff assistance as required by the school director; and
- (3) provide or make available facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Telecommunicator Certification Course Management Guide."

*Authority G.S. 17E-4.*

**12 NCAC 10B .0709 RESPONSIBILITIES: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE**

(a) In planning, developing, coordinating, and delivering each commission-certified Telecommunicator Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter;
- (2) Select and schedule instructors who are properly certified by the Commission;
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter;
- (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the "Telecommunicator Certification Course Management Guide";
- (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
  - (A) Effective course delivery;
  - (B) Instruction on the responsibilities and obligations of agencies or departments employing course trainees; and
  - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A-T. A copy of such rules shall also be given to each trainee and to the sheriff or agency head of each trainee's employing agency at the time the trainee enrolls in the course;

(7) If appropriate, recommend housing and dining facilities for trainees;

(8) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A-T) along with the following attachments:

(A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;

(B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval shall be withheld until all matters are in compliance with the Commissions' rules;

(9) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible;

(10) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. A person holding General Instructor Certification under the Criminal Justice Commission is permitted to evaluate instructors teaching any lecture portion of the course. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Telecommunicator Instructor Certification or Professional Lecturer Certification; The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Development model as taught in Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based,

- documented by and consistent with a Commission-approved lesson plan. For each topic area, the school director's or designee's evaluation shall be based on the course delivery observations, the instructor's use of the approved lesson plan, and the results of the students evaluations of the instructor;
- (11) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. A person holding General Instructor Certification under the Criminal Justice Commission is permitted to evaluate instructors teaching any lecture portion of the course. Instructor evaluations shall be prepared on commission-approved forms in accordance with the rules in this Chapter. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Development model as taught in Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan. For each topic area, the school director's or designee's evaluation shall be based on the course delivery observations, the instructor's use of the approved lesson plan, and the results of the students evaluations of the instructor. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request;
- (12) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall hold certification in the same instructional topic area as that being taught;
- (13) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery;
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated;
- (15) During a delivery of the Telecommunicator Certification Course, make available to authorized representatives of the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and
- (16) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B-T).
- (b) The school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the commission-certified training delivery site and the Division prior to the beginning of a scheduled course delivery.

*Authority G.S. 17E-4.*

## **SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS**

### **12 NCAC 10B .0911      SUSPENSION: REVOCATION: DENIAL OF DETENTION OFFICER INSTRUCTOR CERTIFICATION**

- (a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.
- (b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules of this Subchapter the Commission may take action to correct the violation and to ensure that the violation does not recur, including:
- (1) issuing an oral warning and request for compliance;
  - (2) issuing a written warning and request for compliance;
  - (3) issuing an official written reprimand;
  - (4) summarily suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
  - (5) revoking the individual's certification.
- (c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:
- (1) has failed to meet and maintain any of the requirements for qualification; or
  - (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0903(c); or
  - (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
  - (4) has failed to follow specific guidelines outlined in the "Detention Officer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or

- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to falsify data, records, scores, grades, or any other student course materials or obtain or maintain instructor certification by deceit, fraud, or misrepresentation; or
- (8) has had any type of certification issued from the Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause.

*Authority G.S. 17E-4.*

**12 NCAC 10B .0912 PERIOD/SUSPENSION: REVOCATION: OR DENIAL OF DETENTION OFFICER INSTRUCTOR CERTIFICATION**

The period of suspension, revocation or denial of the certification of an instructor pursuant to 12 NCAC 10B .0911 shall be:

- (1) no more than one year where the cause of sanction is:
  - (a) failure to deliver training in a manner consistent with the instructor lesson plans; or
  - (b) failure to follow specific guidelines outlined in the "Detention Officer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
  - (c) unprofessional personal conduct or demonstration of instructional incompetence in the delivery of the Detention Officer Certification Course.
- (2) no more than five years where the sanction is knowingly and willfully obtaining or attempting to falsify data, records, scores, grades, or any other student course materials or obtain or maintain instructor certification by deceit, fraud, or misrepresentation.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or

impairment continues to exist, where the cause of sanction is:

- (a) failure to meet and maintain any of the requirements for qualification; or
- (b) failure to remain currently knowledgeable in the person's areas of expertise.

*Authority 17E-4.*

**12 NCAC 10B .0919 SUSPENSION: REVOCATION: DENIAL OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules of this Subchapter, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) summarily suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0913(d); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or

- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to falsify data, records, scores, grades, or any other student course materials or obtain or maintain instructor certification by deceit, fraud, or misrepresentation; or
- (8) has had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause.

*Authority G.S. 17E-4.*

**12 NCAC 10B .0920 PERIOD/SUSPENSION:  
REVOCATION: OR DENIAL OF  
TELECOMMUNICATOR INSTRUCTOR  
CERTIFICATION**

The period of suspension, revocation or denial of the certification of an instructor pursuant to 12 NCAC 10B .0919 shall be:

- (1) no more than one year where the cause of sanction is:
  - (a) failure to deliver training in a manner consistent with the instructor lesson plans; or
  - (b) failure to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
  - (c) unprofessional personal conduct or demonstration of instructional incompetence in the delivery of the Telecommunicator Certification Course.
- (2) no more than five years where the sanction is knowingly and willfully obtaining or attempting to falsify data, records, scores, grades, or any other student course materials or obtain or maintain instructor certification by deceit, fraud, or misrepresentation.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (a) failure to meet and maintain any of the requirements for qualification; or
- (b) failure to remain currently knowledgeable in the person's areas of expertise.

*Authority G.S. 17E-4.*

**SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS**

**12 NCAC 10B .2004 INSTRUCTORS**

The following requirements and responsibilities are hereby established for instructors who conduct a Commission-mandated In-Service Training Program:

- (1) ~~With the exception of firearms as set out in 12 NCAC 10B .2102, the~~ The instructors ~~shall~~ shall:
  - (a) hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306; ~~or .0306.~~
  - (b) hold Professional Lecturer Instructor certification issued by either this Commission as set out in either 12 NCAC 10B .0906 or .0916, or the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, or General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306, when teaching a legal block of instruction; or
  - (c) hold Professional Lecturer Instructor certification issued by the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, when teaching a medical or psychological block of instruction.
  - (d) hold Specific Instructor Certification issued by the Criminal Justice Education and Training Standards Commission when teaching the lesson plans published by the NC Justice Academy as follows:
    - (i) Firearms must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e);
    - (ii) Weapons Retention and Disarming Techniques must be taught by Subject Control Arrest Techniques Instructor

- certified in accordance with 12 NCAC 09B .0304(e);
- (iii) Spontaneous Attack Defense must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(b);
- (iv) Handcuffing and Impact Weapons Refresher must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
- (v) Wellness and Stress Awareness must be taught by a Physical Fitness Instructor certified in accordance with 12 NCAC 09B .0304(g);
- (vi) Law Enforcement Driver Training (classroom and practical) must be taught by a Specialized Law Enforcement Driver Training Instructor certified in accordance with 12 NCAC 09B .0304(f).

In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (2) The use of guest participants is permitted provided they are subject to the direct on-site supervision of a commission-certified instructor. A guest participant shall only be used to complement the primary certified instructor of the topic area and shall in no way replace the primary instructor.
- ~~(2)~~(3) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
- ~~(3)~~(4) The instructor shall document the successful or unsuccessful completion of training for each person attending a training program and forward a record of their completion to each person's Sheriff or Department Head.

Authority G.S. 17E-4; 17E-7.

## **12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS**

(a) A Sheriff or Department Head may choose to use a lesson plan developed by the North Carolina Justice Academy, or may

opt to use a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also opt to use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209.

(b) The 2006 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Ethics;
- (3) Juvenile Minority Sensitivity Training;
- (4) Methamphetamine Awareness or Methamphetamine Investigative Issues;
- (5) Firearms Training and Requalification for deputy sheriffs and detention officers as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(c) The 2007 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Ethics (on-duty or off-duty);
- (3) Juvenile Minority Sensitivity Training;
- (4) Domestic Violence;
- (5) Interacting with Special Populations (which shall include autism);
- (6) Firearms Training and Requalification for deputy sheriffs and detention officers as set out in Section .2100 of this Subchapter; and
- (7) Any topic areas of the Sheriff's choosing.

(d) The 2007 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Detention Legal Update;
- (2) Ethics for Detention Officers;
- (3) Special Inmate Population Management; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2007 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Handling Suicidal Callers;
- (2) Emergency Call Taking Procedures;
- (3) Terrorism Training an Awareness Level For Telecommunicators;
- (4) Officer Safety Training for Telecommunicators; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(f) The 2008 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Career Survival: Truth or Consequences;
- (3) Juvenile Minority Sensitivity Training;
- (4) Response to Critical Incidents;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(g) The 2008 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Detention Officer Legal Update;

- (2) Professionalism for Detention Officers;
  - (3) Inmate Movement; and
  - (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (h) The 2008 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:
- (1) Teletypewriter (TTY);
  - (2) Customer Service;
  - (3) Incident Command; and
  - (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (i) The 2009 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:
- (1) Legal Update;
  - (2) Career Survival: Training & Standards Issues;
  - (3) Juvenile Minority Sensitivity Training: Juvenile Law;
  - (4) Domestic Violence;
  - (5) Drug Diversion for Patrol Officers;
  - (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
  - (6) Any topic areas of the Sheriff's choosing.
- (j) The 2009 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:
- (1) Career Survival for Detention Officers;
  - (2) Recognition of Mental Illnesses and Suicide Identifiers;
  - (3) Detention Officer Legal Update; and
  - (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (k) The 2009 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:
- (1) Professionalism in Emergency Services;
  - (2) Dealing with the Mentally Ill;
  - (3) Community, School and Campus Safety Issues for Telecommunicators;
  - (4) Any topic areas of the Sheriff's or Department Head's choosing.

*Authority G.S. 17E-4; 17E-7.*

#### **12 NCAC 10B .2007 SHERIFF/AGENCY HEAD RESPONSIBILITIES**

Each Sheriff or Department Head shall ensure that the respectively required In-Service Training Program established by this Section is conducted. In addition, the Sheriff or Department Head shall:

- (1) report to the Division those deputy sheriffs, detention officers and telecommunicators who are inactive;
- (2) maintain a roster of each deputy sheriff, detention officer and telecommunicator who successfully completes the respectively required In-Service Training Program;
- (3) report to the Division by January 15th, 2007, those active deputy sheriffs who fail to complete the 2006 Law Enforcement In-Service Training Program in accordance with

- (4) 12 NCAC 10B .2005. Such reporting shall be on a Commission form;
- (4) report to the Division by January 15th, 2008:
  - (a) those active telecommunicators who fail to complete the 2007 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (b) those active detention officers who fail to complete the 2007 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (c) those active deputy sheriffs who fail to complete the 2007 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005;
 Such reporting shall be on a Commission form.
- (5) report to the Division by January 15<sup>th</sup>, 2009:
  - (a) those active telecommunicators who fail to complete the 2008 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (b) those active detention officers who fail to complete the 2008 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (c) those active deputy sheriffs who fail to complete the 2008 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005.
 Such reporting shall be on a Commission form.
- (6) report to the Division by January 15<sup>th</sup>, 2010:
  - (a) those active telecommunicators who fail to complete the 2008 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (b) those active detention officers who fail to complete the 2008 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (c) those active deputy sheriffs who fail to complete the 2008 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005.
 Such reporting shall be on a Commission form.

*Authority G.S. 17E-4; 17E-7.*



**12 NCAC 10B .2008 FAILURE TO COMPLETE IN-SERVICE TRAINING PROGRAMS**

(a) Failure to complete the respectively required In-Service Training Program(s), except as set forth in Paragraph (c) of this Rule, in accordance with this Section shall result in the summary suspension of certification by the Commission.

(b) Certification may be reinstated at the request of the justice officer's Sheriff/Agency Head provided the justice officer completes the respectively required In-Service Training Program within ~~six months~~ one year of the date of suspension of certification, of the end of the calendar year in which the justice officer failed to comply. An In-Service Training Program completed under this provision shall be credited to the prior year of non-compliance; and shall not be credited toward the current year of completion.

(c) Failure to qualify a justice officer in accordance with Section .2100 of these Rules shall be governed by 12 NCAC 10B .2105.

*Authority G.S. 17E-4; 17E-7.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0304.*

**Proposed Effective Date:** May 1, 2009

**Public Hearing:**

**Date:** October 9, 2008

**Time:** 1:00 p.m. (Boylston Creek Watershed Trout Reclassification)

**Location:** Mills River Community Center, 120 School Road, Mills River, NC 28759

**Date:** October 9, 2008

**Time:** 7:00 p.m. (Fines Creek Watershed Trout Reclassification)

**Location:** Regional High Technology Center, 112 Industrial Park, Waynesville, NC 28786

**Reason for Proposed Action:**

**(Boylston Creek Watershed)** The North Carolina Wildlife Resources Commission submitted a request for a trout reclassification for a segment of Boylston Creek from its source in Transylvania County to 0.3 miles upstream of Murray Branch in Henderson County and the named waters tributary to this segment – Sutton (Sitton) Creek, Osborne Branch, Dog Creek, Woody Branch, and Sam Branch. DWQ staff expanded the request to include other streams (Polecat Branch, Long Branch, Goldmine Branch, and Betty Branch) that are also tributaries to this segment of Boylston Creek. The proposed reclassification area is located in the French Broad River Basin. Because studies conducted by the North Carolina Wildlife Resources Commission, the Division of Water Quality, and Western Carolina University reveal that naturally reproducing populations of Brook Trout and Rainbow Trout reside in the

Boylston Creek watershed, DWQ has determined that the supplemental trout classification is suitable for recognizing the trout use in the watershed. This rule change would provide supplemental protection to the subject waters which have conditions that shall sustain and allow for trout propagation...on a year round basis. The trout classification is intended to protect freshwaters for natural trout propagation. All of these waters are currently classified "C" by the Environmental Management Commission. Approximately sixteen miles of streams in the Boylston Creek watershed are proposed for reclassification. If reclassified, regulations that affect land-disturbing activities and more stringent water quality standards for trout waters would apply.

**(Fines Creek watershed)** A citizen who lives in Haywood County has requested that Fines Creek (Haywood County, French Broad River Basin) be reclassified from Class C to Class C Trout. Because there could be trout residing in tributary waters to Fines Creek, the request was expanded to include several entire named streams – Sally Branch, Orchard Branch, Phillips Branch, Sugar Cove Branch, Turkey Creek, Wesley Creek, Mooney Branch, Jacks Branch, Haynes Branch, Raccoon Branch, Shingle Branch, Gibson Branch, Morgan Creek, Cove Creek, Buckeye Cove Branch, Turkey Cove Branch, Poplar Cove Branch, James Branch, Martin Creek, and Toms Branch. The entire Fines Creek watershed does support naturally reproducing populations of trout according to fish studies conducted by the DWQ and the University of Tennessee; and therefore, DWQ staff has determined that the supplemental trout classification is suitable for recognizing the trout use in the watershed. These tributaries are presently classified "C" by the Environmental Management Commission. Approximately forty miles of streams in the Fines Creek watershed are proposed for reclassification. The reclassification is needed to provide supplemental protection to the subject waters which have conditions that shall sustain and allow for trout propagation... on a year round basis. The trout classification is intended to protect freshwaters for natural trout propagation ... If reclassified, regulations that affect land-disturbing activities and more stringent water quality standards for trout waters would apply.

**Procedure by which a person can object to the agency on a proposed rule:** You may attend the public hearings and make relevant verbal comments, and/or submit written comments, data or other relevant information by November 14, 2008. The Hearing Officer may limit the length of time that you may speak at the public hearings so that all those who wish to speak may have an opportunity to do so.

The EMC is very interested in all comments pertaining to the proposed reclassifications. All persons interested and potentially affected by the proposals are strongly encouraged to read this entire notice and make comments on the proposed reclassifications. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the texts of the proposed different rule and accepts comments on the new text (General Statute 150B 21.2(g)). Written comments may be submitted to: Adriene Weaver, DENR/Division of Water Quality/Planning

Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, [adriene.weaver@ncmail.net](mailto:adriene.weaver@ncmail.net) or by fax at (919) 807-6497.

**Comments may be submitted to:** Adriene Weaver, DENR/Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 807-6414, fax (919) 807-6497, email [adriene.weaver@ncmail.net](mailto:adriene.weaver@ncmail.net)

**Comment period ends:** November 14, 2008

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

- ☐ State  
☐ Local  
☐ Substantive ( $\geq$ \$3,000,000)  
☒ None

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS**

**SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

**15A NCAC 02B .0304 FRENCH BROAD RIVER BASIN**

(a) The French Broad River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina
  - (B) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Tennessee are classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) March 1, 1989;
- (10) October 1, 1989;
- (11) January 1, 1990;
- (12) August 1, 1990;
- (13) August 3, 1992;
- (14) October 1, 1993;
- (15) July 1, 1995;
- (16) November 1, 1995;
- (17) January 1, 1996;
- (18) April 1, 1996;
- (19) August 1, 1998;
- (20) August 1 2000;
- (21) August 1, 2002;
- (22) September 1, 2004;
- (23) November 1, ~~2007~~ 2007;
- (24) May 1, 2009.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were

reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] was reclassified from City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS- III CA (Critical Area).

(m) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 1998 with the revision to the primary classification for portions of the French Broad River [Index No. 6-(38.5)] and the North Toe River 7-2-(10.5) from Class IV to Class C.

(n) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 1998 with the reclassification of Clear Creek [Index No. 6-55-(1)] from its source to Lewis Creek from Class C Tr to Class B Tr.

(o) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2000 with the reclassification of Rough Creek [Index

No. 5-8-4-(1)], including all tributaries, from its source to the Canton Reservoir from Class WS-I to Class WS-I Tr ORW.

(p) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2002 with the revision to the primary classification for the French Broad River [Index No. 6-(1), 6-(27), 6-(47.5), 6-(52.5), and 6-(54.5)] including its four headwater forks' mainstems, watershed of tributary Davidson River, and watershed of tributary Bent Creek below Powhatan Dam, and the Nolichucky River [Index No. 7] including a lower portion of the North Toe River from Class C and Class WS-IV to Class B.

(q) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2002 with the reclassification of the North Toe River [Index No. 7-2-(0.5)], including all tributaries, from source to a point 0.2 mile upstream of Pyatt Creek, from Class C Tr to Class WS-V Tr.

(r) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended September 1, 2004 with the reclassification of a portion of Richland Creek [Index No. 5-16(1)], from source to a point approximately 11.2 miles from source (Boyd Avenue), from Class B to Class B Tr, and all tributaries to the portion of the creek referenced in this Paragraph from C, C HQW, and WS-I HQW, and WS-I HQW to C Tr, C HQW Tr, and WS-I HQW Tr, respectively, except Hyatt Creek [Index No. 5-16-6], Farmer Branch [Index No. 5-16-11], and tributaries already classified as Tr.

(s) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 2007 with the reclassification of McClure's Bog near Gash Creek [Index No. 6-47] to Class WL UWL as defined in 15A NCAC 02B .0101. The North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(t) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended May 1, 2009 with the reclassification of Boylston Creek [Index No. 6-52-(0.5)], from source to a point 0.3 mile upstream of Murray Branch and all tributaries to this portion of the Creek, and Fines Creek [Index No. 5-32], including all tributaries, from its source to the Pigeon River, from Class C to Class C Tr.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

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

### **CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Licensing Board for General Contractors intends to amend the rule cited as 21 NCAC 12 .0202.*

**Proposed Effective Date:** *January 1, 2009*

**Public Hearing:**

**Date:** October 8, 2008

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

**Location:** 3739 National Drive, Suite 200, Cumberland Building, Glenwood Place, Raleigh, NC

**Reason for Proposed Action:** To include contractors performing demolition work only for over \$30,000 under a specific classification of Rule .0202.

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

**Comments may be submitted to:** Mark Selph, North Carolina Licensing Board for General Contractors, P.O. Box 17187, Raleigh, NC 27619.

**Comment period ends:** November 14, 2008

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantive ( $\geq$ \$3,000,000)
- ☒ None

**SECTION .0200 - LICENSING REQUIREMENTS**

**21 NCAC 12 .0202 CLASSIFICATION**

(a) A general contractor must be certified in one of five classifications. These classifications are:

- (1) Building Contractor. This classification covers all building construction or demolition activity including but not limited to: commercial, industrial, institutional, and all residential building construction or demolition; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, and water and wastewater systems which are ancillary to the aforementioned structures and improvements;

and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos).

- (2) Residential Contractor. This classification covers all construction or demolition activity pertaining to ~~the construction of~~ residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos).

- (3) Highway Contractor. This classification covers all highway construction or demolition activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; demolition of any of the structures and improvements described in this Paragraph; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).

- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction or demolition work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87- 10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).

- (5) Specialty Contractor. This classification covers ~~all the construction operation and performance of contract work or demolition of the structures and improvements described below outlined as follows:~~

- (A) H(Grading and Excavating). Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.
- (B) S(Boring and Tunneling). Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
- (C) PU(Communications). Covers the installation of the following:
  - (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
  - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
  - (iii) Underground conduit and communication cable including fiber optic cable; and
  - (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.
- (D) S(Concrete Construction). Covers the construction and installation of

foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.

- (E) PU(Electrical-Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater systems, water and wastewater treatment facilities and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior

- Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
  - (ii) Installation of fire clay products and refractory construction; and
  - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
  - (ii) Shaping, compacting, setting and stabilizing of road beds;
  - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
  - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). Covers:
- (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
  - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.

- (P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:
- (i) Excavation and grading;
  - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
  - (iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

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

## TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Community Colleges intends to amend the rule cited as 23 NCAC 02D .0304.*

**Proposed Effective Date:** January 1, 2009

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

*must be received within 15 days of the publication of the proposed rule in the North Carolina Register.*

**Reason for Proposed Action:** *The State Board wants to update the established guidelines for accreditation expenses and dues.*

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

**Comments may be submitted to:** *Q. Shanté Martin, 200 W. Jones Street, MSC 5001, Raleigh, NC 27699-5001, (919) 807-6961, email martins@nccommunitycolleges.edu*

**Comment period ends:** November 14, 2008

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

## CHAPTER 02 - COMMUNITY COLLEGES

### SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS

#### SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

#### 23 NCAC 02D .0304 EXPENDITURES OF STATE FUNDS: ACCREDITATION EXPENSES & DUES

(a) Accreditation expenses relative to Southern Association of Colleges and Schools may be paid from state funds within the institution's current allotment. These expenses shall be limited to payment of travel, subsistence, lodging, and honorarium incurred by members of visiting committees, other bona fide representatives, and members of the staff of accrediting organizations. This Rule permits payment of only those

expenses for which an institution is customarily invoiced by an accrediting organization following a visit.

(b) The institution may pay from state funds the required annual dues of the Southern Association of Colleges and Schools, and such institutional association membership dues as the board of trustees deems to benefit the institution. Regarding membership dues in the Southern Association, this Rule applies to annual dues of correspondents and candidates for membership, as well as accredited members.

(c) The institution may also pay from state funds the fees for accrediting individual programs offered by the institution ~~where such an accreditation is an official prerequisite for the licensing of graduates of such programs by legally designated professional~~

~~or occupational licensing boards or agencies in the State of North Carolina. State funds may not be used to pay the accreditation costs of any other organizations or agencies, when the accrediting agency from which the accreditation is sought, is officially listed by the U.S. Department of Education or the Council on Higher Education Accreditation as a recognized accrediting agency or organization.~~

(d) Except as provided by this Rule, state funds may not be used to pay the accreditation costs of any other accrediting organizations or agencies.

*Authority G.S. 115D-5; 115D-55.*



*This Section contains information for the meeting of the Rules Review Commission on Thursday August 21, 2008 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

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

**Appointed by House**

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

**RULES REVIEW COMMISSION MEETING DATES**

October 16, 2008                      November 20, 2008  
December 18, 2008                  January 15, 2009

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**RULES REVIEW COMMISSION  
August 21, 2008  
MINUTES**

The Rules Review Commission met on Thursday, August 21, 2008, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Keith Gregory, Clarence Horton, John Lewis, Dan McLawhorn and David Twiddy.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel, and Dana Vojtko, Publications Coordinator.

The following people were among those attending the meeting:

Catherine Blum	DENR/Division of Marine Fisheries
Mike Marshall	DENR/Division of Marine Fisheries
Nancy Pate	Department of Environment and Natural Resources
Janelle Rhyne	NC Medical Board
Thom Mansfield	NC Medical Board
Wanda Long	NC Medical Board
Jean Brinkley	NC Medical Board
David Henderson	NC Medical Board
Michael Norins	Private Practice
Bob Hensley	DHHS/Social Services Commission
Nancy Hemphill	NC Medical Board
Lisa Johnson	DHHS/Social Services Commission
Gene Cella	Department of Revenue
Gail Beamon	Department of Revenue
Barry Gupton	DOI/Building Code Council
Lisa Martin	NC Home Builders Association
Cady Thomas	NC Association of Realtors
Will Crumbley	Office State Budget and Management
Carolin Bakewell	Dental Board
Elliot A. Rushing	Department of Secretary of State
Bobby White	Dental Board
Charles Brown	Town of Cary
David McLeod	Department of Agriculture and Consumer Services
Bill Lane	Kilpatrick Stockton
Chris Hoke	DHHS/Public Health

Charles Wilkins	Board of Massage and Bodywork Therapy
Pamela Blizzard	Board of Massage and Bodywork Therapy
Ann Christian	American Massage Therapy Association of NC
Scarlett Gardner	NC Medical Society
Palmer Sugg	Broughton, Wilkins

## **APPROVAL OF MINUTES**

The meeting was called to order at 10:04 a.m. with Mr. Funderburk presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Vice Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the July 17, 2008 meeting. There were none and the minutes were approved as distributed.

## **FOLLOW-UP MATTERS**

02 NCAC 52J .0203, .0210, .0302, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0608, .0609, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0803 – Board of Agriculture. The Commission approved Rules .0203, .0210, and .0302; however the Commission has received requests from more than 10 persons clearly requesting legislative review of these rules and they are therefore subject to a delayed effective date. The remainder of the rules that deal with Euthanasia of animals were withdrawn by the agency and refiled for the September meeting.

10A NCAC 27G .7102 – DHHS: Division of MH/DD/SAS. This rule was returned to the agency at the agency's request.

15A NCAC 02B .0262-.0272 and .0311 – Environmental Management Commission. No rewritten rules have been submitted since the EMC has not yet met to consider the RRC objection. Commissioner Gray moved to object to Rules .0266 and .0267 and any other rule that required retrofitting for existing development. The motion was seconded by Commissioner Twiddy. Commissioner Lewis moved to table the motion, seconded by Commissioner McLawhorn. The motion to table passed with Commissioner Gray voting against it. Commissioner Lewis said he was taking no position concerning the substance of the motion. He agreed with Mr. McLawhorn that although the Commission could, it would be the better practice not to take such action without an agency representative being present to answer any questions. The Commissioners did indicate that it was likely such a motion would again be considered when the agency's response and rewritten rules are presented to the RRC, most likely in September. No further action affecting these rules was taken.

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

21 NCAC 16H .0204 – Board of Dental Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 16I .0101 – Board of Dental Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 16R .0106 – Board of Dental Examiners. The Commission approved the rewritten rule submitted by the agency.

IPC 302.1: NC Building Code Council – Detrimental or Dangerous Materials – No rewritten rule has been submitted and no action was taken.

## **LOG OF FILINGS**

Vice Chairman Funderburk presided over the review of the log of permanent rules.

Prior to the review of the rules from the Medical Board, Commissioner Lewis recused himself and did not participate in any discussion or vote concerning these rules because he is a member of the Medical Board.

All rules were approved unanimously with the following exceptions:

10A NCAC 46 .0301: Commission for Public Health – The Commission objected to this rule based on ambiguity. It is not clear what is meant by “full time occupation” in (b). Does it mean the employee works a certain number of hours a week, it is the only thing the employee does, or something different? This objection applies to existing language in the rule.

10A NCAC 70F .0102: Social Services Commission - The Commission objected to this rule based on lack of statutory authority, ambiguity and lack of necessity. In (a), it is not clear how the length of the term of the license is determined. The Commission has authority to set a term not to exceed 24 months but this rule does not set the term. Paragraphs (b) through (e) are unnecessary to the degree they repeat G.S. 131D-10.3 (h) and without authority to the degree they differ. Specifically, the 60 month probation licensing in paragraph (c) is not consistent with G.S. 131D-10.3(h)(2). In (f), it is not clear what is the consequence of taking information into consideration. It is not clear how the licensing authority will determine what use to make of this information in deciding whether or not to grant a license.

10A NCAC 70F .0201: Social Services Commission - The Commission objected to this rule based on ambiguity. This rule is not consistent with Paragraph (d) of Rule .0202 of this Subchapter. This rule requires private child placing agencies and residential maternity homes to be incorporated. Rule .0202 (d) allows sole proprietorships and partnerships. It is not clear what the requirements are.

10A NCAC 70F .0202: Social Services Commission - The Commission objected to this Rule based on ambiguity. Paragraph (d) is not consistent with Rule .0201 of this Subchapter. Rule .0201 requires private child playing agencies and residential maternity homes to be incorporated. This rule in (d) allows sole proprietorship and partnerships. It is not clear what the requirements are. In (f) it is not clear what is meant by “periodically.”

10A NCAC 70G .0501: Social Services Commission – The Commission objected to this Rule based on lack of statutory authority and ambiguity. G.S. 131D-10.5(7) gives the Commission the authority to adopt educational requirements for the executive director and staff employed by child placing agencies. There is no authority cited to set experience requirements as paragraphs (a), (b) and (c) do. In (b) and (c), it is not clear what would constitute “a related field” to social work. In (d), there is no authority cited for the agency to attempt to incorporate by reference a document of a State agency that has not been adopted as a rule. In addition, the definition of “qualified professional” in 10A NCAC 27G .0104 includes requirements other than educational requirements that the cited authority gives the agency authority to adopt. In (e), it is not clear what is meant by licensing social workers “and” “licensing worker.”

Commissioners Lewis, Horton and McLawhorn voted against the motion to object to 10A NCAC 70F .0102, .0201, .0202 and 70G .0501 based on the staff opinion.

10A NCAC 70G .0503: Social Services Commission – The Commission objected to this Rule based on lack of statutory authority. In (s), since the definition of “qualified professional” in Rule .0501 includes requirements beyond the cited authority for this rule, there is no authority cited for requiring a “qualified professional” to do anything.

10A NCAC 70G .0510: Social Services Commission – The Commission objected to this Rule based on ambiguity. In (c), it is not clear what the standards are for disposing of prescription medication. The Pharmacy Practice Act does not appear to directly address the issue and the cited rule only applies to pharmacy permit holders.

10A NCAC 70G .0512: Social Services Commission – The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (d), it is not clear what physical restraint holds may be used by foster parents. There is no authority cited to specify them on a website rather than by rule.

10A NCAC 70H .0113: Social Services Commission - This rule was withdrawn by the agency.

10A NCAC 70H .0401: Social Services Commission – The Commission objected to this rule based on lack of statutory authority and ambiguity. There is no authority cited for the agency to set occupational standards for the executive director and staff other than educational requirements. The rule goes beyond the cited authority in Paragraphs (a), (b), and (c). In (b) and (c), it is not clear what is a “related field” or “related area of study” to social work.

10A NCAC 70H .0406: Social Services Commission – The Commission objected to this rule based on lack of statutory authority. Paragraph (f) of this rule is apparently a legal conclusion on the part of the agency, and unless there is an un-cited statute consistent with the conclusion, apparently it is an incorrect conclusion. G.S.132-1 appears to make this information a public record. The agency has cited no authority for it to make exceptions to the Public Records Law.

10A NCAC 70I .0405: Social Services Commission – The Commission objected to this rule based on lack of statutory authority and ambiguity. In (b), there is no authority cited for the agency to set experience requirements for executive directors of residential child care facilities. In (f)(1)(A), there is no authority cited for the agency to set age requirements for direct care service personnel. In (f)(3)(A), there is no authority cited for the agency to set age requirements for direct care service supervisory personnel. In (g)(1) and (h)(1), it is not clear what is a “related field” to social work. There is also no authority cited to set experience requirements for social workers and social work supervisors.

10A NCAC 70I .0604: Social Services Commission – The Commission objected to this rule based on ambiguity. In (v), it is not clear what the standards are for disposing of prescription medication. The Pharmacy Practice Act does not appear to directly address the issue and the cited rule only applies to pharmacy permit holders.

10A NCAC 70I .0613: Social Services Commission – The Commission objected to this rule based on lack of statutory authority and ambiguity. In (j)(4), it is not clear what holds are allowed. There is no authority cited to set the requirements by reference to a department website.

10A NCAC 70I .0901: Social Services Commission – The Commission objected to this rule based on ambiguity. In (d), it is not clear what is meant by “two different types of occupancies.”

10A NCAC 70K .0101: Social Services Commission – The Commission objected to this rule based on ambiguity. It is not clear what is meant by “two or more type programs.”

10A NCAC 70K .0103: Social Services Commission – The Commission objected to this rule based on ambiguity and lack of necessity. In (a)(2), it is not clear how an exact licensing period is determined. In (d)(1), it is not clear what standards the licensing authority will use in approving a plan of correction. In (e)(3), it is not clear what is the consequence of taking this information into consideration. It is not clear how the licensing authority will determine what use to make of the information in deciding whether to grant a license. Subparagraph (a)(2) and (e)(2) and (3) repeat portions of 10A NCAC 70F .0102 and are therefore unnecessary.

10A NCAC 70K .0201: Social Services Commission – The Commission objected to this rule based on lack of statutory authority and ambiguity. The cited authority for this rule is to set educational requirements for executive directors and staff employed in maternity homes. There is no authority cited for the agency to set experience or age requirements as the rule does in Subparagraphs (a)(1), (3), (4), (5), and (6). In (a)(1) and (c), it is not clear how the Commission distinguishes between full time and part-time. In (a)(2), it is not clear what is meant by “recognized and accepted by applicable professional associations and appropriate state licensing boards.” In (a)(3) and (4), it is not clear what is meant by “related field” or “related area of study.” This objection applies to existing language in the rule.

10A NCAC 70K .0204: Social Services Commission – The Commission objected to this rule based on ambiguity. In (l), it is not clear what the standards are for disposing of prescription medication. The Pharmacy Practice Act does not appear to directly address the issue and the cited rule only applies to pharmacy permit holders.

10A NCAC 70K .0301: Social Services Commission – The Commission objected to this rule based on ambiguity. In (d), it is not clear what is meant by “two different types of occupancies.”

10A NCAC 70M .0303: Social Services Commission – This rule was withdrawn by the agency.

Commissioner McLawhorn voted against the motion to object to 10A NCAC 70G .0503, .0510, .0512, 70H .0401, .0406, 70I .0405, .0604, .0613, .0901, 70K .0101, .0103, .0201, .0204 and .0301 based on the staff opinion and to approve 10A NCAC 70F .0101, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0211, .0212, .0213, 70G .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0301, .0302, .0401, .0402, .0502, .0504, .0505, .0506, .0507, .0508, .0509, .0511, .0513, 70H .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0201, .0301, .0302, .0402, .0403, .0404, .0405, .0407, .0408, .0409, 70I .0102, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0401, .0402, .0403, .0404, .0407, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0605, .0606, .0609, .0610, .0612, .0614, .0615, .0701, .0702, .0703, .0704, .0705, .0706, .0707, .0708, .0709, .0710, .0711, .0712, .0713, .0801, .0802, .0902, .0903, .0904, .0905, .0906, .0907, .0908, .0909, .0910, .0911, .0912, .0913, .0914, .0915, .0916, .0917, .0918, 70J .0101, .0103, .0201, .0202, .0203, .0204, .0205, .0206, 70K .0102, .0202, .0203, .0205, .0206, .0207, .0208, .0209, .0210, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, .0317, 70L .0101, .0102, .0201, .0301, 70M .0101, .0201, .0302, .0304 and .0502.

15A NCAC 03I .0101: Marine Fisheries Commission – The Commission objected to this rule based on ambiguity. In (2)(b), page 2 line 10, the definition of “attended” is unclear. The first part of the definition specifies that attended gear is gear that is immediately adjacent and immediately available to someone to work that gear. But then it goes on to add that the person is “within 100 yards of any gear in use by that person.” If the person needs to be within one hundred yards, that means they can also be as far as 100 yards from the gear and then the qualifier “immediately adjacent” seems unnecessary, if not a little contradictory. In (4)(d), page 6 line 22, it is unclear what the exclusion for “mollusk shells” applies to. Grammatically it would be excluded from “dead coral or rock.” But mollusk shells would not normally be considered as being included in either of those categories. If mollusk shells are to be excluded from “living marine organisms” that is not clear. If they are excluded from “a hard substrate” then it should not be a parenthetical expression following “dead coral or rock.”

15A NCAC 03O .0201: Marine Fisheries Commission – The Commission objected to this rule based on lack of authority. In (a)(2), lines 9 – 11 appear to be a waiver from the rule in the two preceding sentences that the “lease area must not be closer than 100 feet to a developed shoreline ... [and when the lease area is] bordered by undeveloped shoreline, no minimum setback is required.” There are no specific guidelines established in the rule for waiving or modifying that portion of the rule as required by G.S. 150B-19(6).

21 NCAC 14: Board of Cosmetic Art Examiners – These rules were returned to the agency at the agency's request.

21 NCAC 30 .0201: Board of Massage and Bodywork Therapy – The Commission objected to this rule based on lack of authority. In (5) lines 15 and 16 the rule specifies that the board may approve an applicant's educational credentials “on a case-by-case basis” when the applicant did not attend a board approved school. The statute cited as authority and addressing this issue, G.S. 90-629(4), requires that an applicant have completed a course of study in a board approved school. There is no authority cited to, in effect, waive that statutory qualification. There is also no authority cited for the provision in (7) requiring good character recommendations from a certain class of people: either “licensed massage and bodywork therapists” or “licensed health care practitioners.” The board may require statements attesting to an applicant's good character, one of the statutory qualifications to be licensed. It has cited no authority to restrict those statements to certain professionals.

21 NCAC 30 .0516: Board of Massage and Bodywork Therapy – The Commission objected to this rule based on ambiguity. It is unclear if the licensee must use standard universal precautions when using the hands or fingers inside a body cavity since the use of gloves are not a requirement for giving a massage or therapy. It is also unclear if the licensee must comply with the body draping requirements of Rule .0506 since this would mean that a licensee might not be able to see the therapy or massage being administered. It is also unclear what is meant by or how to determine whether a licensee is “competent to perform massage and bodywork therapy inside the vaginal or anal cavities of the client” as set out in (3) of the rule.

The Commission included in its motion that there is statutory authority for the rule and the requirement that a medical prescription be received prior to providing the services. The motion was passed with Commissioner Gregory voting against it.

21 NCAC 32X .0101, .0102, .0103, .0104, .0105, .0106, .0107: Medical Board – These rules were approved by the Commission, however the Commission has received requests from more than 10 persons clearly requesting legislative review of these rules and they are therefore subject to a delayed effective date.

## **COMMISSION PROCEDURES AND OTHER BUSINESS**

No new business was discussed.

The meeting adjourned at 12:53 p.m.

The next scheduled meeting of the Commission is Thursday, September 18, 2008 at 10:00 a.m.

Respectfully Submitted,  
Dana Vojtko  
Publications Coordinator

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## **LIST OF APPROVED PERMANENT RULES** **August 21, 2008 Meeting**

### **AGRICULTURE, BOARD OF**

<u>Outdoor Facilities</u>	02 NCAC 52J .0203
<u>Veterinary Care</u>	02 NCAC 52J .0210
<u>Primary Enclosures Used in Transporting Dogs and Cats</u>	02 NCAC 52J .0302

### **SOCIAL SERVICES COMMISSION**

<u>Scope</u>	10A NCAC 70F .0101
<u>Finances, Fees and Insurance</u>	10A NCAC 70F .0203
<u>Agency Setting</u>	10A NCAC 70F .0204
<u>Responsibility to Licensing Authority</u>	10A NCAC 70F .0205

<u>Personnel Policies</u>	10A NCAC 70F .0206
<u>Staff</u>	10A NCAC 70F .0207
<u>Confidentiality</u>	10A NCAC 70F .0208
<u>Client Rights</u>	10A NCAC 70F .0209
<u>Grievance Procedures</u>	10A NCAC 70F .0210
<u>Searches</u>	10A NCAC 70F .0211
<u>Medication Information</u>	10A NCAC 70F .0212
<u>Home-Schooling</u>	10A NCAC 70F .0213
<u>Scope</u>	10A NCAC 70G .0101
<u>Organization and Administration</u>	10A NCAC 70G .0102
<u>Personnel</u>	10A NCAC 70G .0201
<u>Intake Procedures and Practices</u>	10A NCAC 70G .0202
<u>Case Plan</u>	10A NCAC 70G .0203
<u>Placement Services</u>	10A NCAC 70G .0204
<u>Records</u>	10A NCAC 70G .0205
<u>Assessment and Treatment/Habilitation or Service Plan</u>	10A NCAC 70G .0206
<u>Client Records for Children Receiving Mental Health Treat...</u>	10A NCAC 70G .0207
<u>Medication Requirements</u>	10A NCAC 70G .0208
<u>Behavior Management and Discipline</u>	10A NCAC 70G .0209
<u>Staffing Requirements</u>	10A NCAC 70G .0301
<u>Training Requirements</u>	10A NCAC 70G .0302
<u>Scope</u>	10A NCAC 70G .0401
<u>Definitions</u>	10A NCAC 70G .0402
<u>Application Procedures and Practices</u>	10A NCAC 70G .0502
<u>Out-of-Home Family Services Agreement for Children Receiv...</u>	10A NCAC 70G .0504
<u>Person-Centered Plan for Children Receiving Therapeutic F...</u>	10A NCAC 70G .0505
<u>Client Records</u>	10A NCAC 70G .0506
<u>Client Rights</u>	10A NCAC 70G .0507
<u>Grievance Procedures</u>	10A NCAC 70G .0508
<u>Searches</u>	10A NCAC 70G .0509
<u>Home-Schooling</u>	10A NCAC 70G .0511
<u>Critical Incidents</u>	10A NCAC 70G .0513
<u>Applicability</u>	10A NCAC 70H .0101
<u>Organization and Administration</u>	10A NCAC 70H .0102
<u>Intake Procedures and Practices</u>	10A NCAC 70H .0103
<u>Case Plan</u>	10A NCAC 70H .0104
<u>Placement Services to Families and Children</u>	10A NCAC 70H .0105
<u>Adoptive Home Recruitment</u>	10A NCAC 70H .0106
<u>Adoptive Home Application</u>	10A NCAC 70H .0107
<u>Preplacement Assessment</u>	10A NCAC 70H .0108
<u>Notification Regarding Preplacement Assessment</u>	10A NCAC 70H .0109
<u>Services to Adoptive Applicants and Families</u>	10A NCAC 70H .0110
<u>Legal Process</u>	10A NCAC 70H .0111
<u>Records</u>	10A NCAC 70H .0112
<u>Scope</u>	10A NCAC 70H .0201
<u>Organization and Administration</u>	10A NCAC 70H .0301

<u>Conflict of Interest</u>	10A NCAC 70H .0302
<u>Intake Procedures and Out-Of-Home Family Services Agreement</u>	10A NCAC 70H .0402
<u>Placement Services to Families and Children</u>	10A NCAC 70H .0403
<u>Adoptive Home Application</u>	10A NCAC 70H .0404
<u>Preplacement Assessment</u>	10A NCAC 70H .0405
<u>Services to Adoptive Applicants and Families</u>	10A NCAC 70H .0407
<u>Legal Process</u>	10A NCAC 70H .0408
<u>Records</u>	10A NCAC 70H .0409
<u>Licensing Process</u>	10A NCAC 70I .0102
<u>Definitions</u>	10A NCAC 70I .0201
<u>Responsibility to Licensing Authority</u>	10A NCAC 70I .0202
<u>Substantiations of Neglect Against the Facility</u>	10A NCAC 70I .0203
<u>Licensure Procedures</u>	10A NCAC 70I .0204
<u>Governance</u>	10A NCAC 70I .0301
<u>Responsibilities of the Governing Body</u>	10A NCAC 70I .0302
<u>Finances and Insurance</u>	10A NCAC 70I .0303
<u>Internal Operating Procedures</u>	10A NCAC 70I .0304
<u>Recordkeeping and Reporting</u>	10A NCAC 70I .0305
<u>Client Rights</u>	10A NCAC 70I .0306
<u>Grievance Procedures</u>	10A NCAC 70I .0307
<u>Personnel Policies</u>	10A NCAC 70I .0401
<u>Personnel Deployment</u>	10A NCAC 70I .0402
<u>Personnel File</u>	10A NCAC 70I .0403
<u>Personnel Qualifications</u>	10A NCAC 70I .0404
<u>Volunteers</u>	10A NCAC 70I .0407
<u>Admissions Policies</u>	10A NCAC 70I .0501
<u>Admission Procedures</u>	10A NCAC 70I .0502
<u>Admission Agreement</u>	10A NCAC 70I .0503
<u>Orientation</u>	10A NCAC 70I .0504
<u>Discharge Policies and Procedures</u>	10A NCAC 70I .0505
<u>Client Records</u>	10A NCAC 70I .0506
<u>Program Policies and Practices</u>	10A NCAC 70I .0601
<u>Family Involvement</u>	10A NCAC 70I .0602
<u>Visiting Resources</u>	10A NCAC 70I .0603
<u>Routine Aspects of Health, Personal Hygiene and Safety</u>	10A NCAC 70I .0605
<u>Nutrition</u>	10A NCAC 70I .0606
<u>Recreation and Leisure Activities</u>	10A NCAC 70I .0609
<u>Religion and Spiritual Development</u>	10A NCAC 70I .0610
<u>Work</u>	10A NCAC 70I .0612
<u>Critical Incidents and Critical Incident Reports</u>	10A NCAC 70I .0614
<u>Searches</u>	10A NCAC 70I .0615
<u>Requirements for Approval</u>	10A NCAC 70I .0701
<u>Construction and Renovation</u>	10A NCAC 70I .0702
<u>Applicable Building Codes</u>	10A NCAC 70I .0703
<u>Fire and Building Safety</u>	10A NCAC 70I .0704
<u>General Sanitation</u>	10A NCAC 70I .0705

<u>Bathing and Toilet Areas</u>	10A NCAC 70I .0706
<u>Sleeping Areas</u>	10A NCAC 70I .0707
<u>Living/Activity Areas</u>	10A NCAC 70I .0708
<u>Dining Areas</u>	10A NCAC 70I .0709
<u>Heat, Light and Ventilation</u>	10A NCAC 70I .0710
<u>Exterior Space</u>	10A NCAC 70I .0711
<u>Inspections</u>	10A NCAC 70I .0712
<u>Vehicles Used for Transportation of Children</u>	10A NCAC 70I .0713
<u>Staffing Requirements</u>	10A NCAC 70I .0801
<u>Training Requirements</u>	10A NCAC 70I .0802
<u>Design and Construction</u>	10A NCAC 70I .0902
<u>Location</u>	10A NCAC 70I .0903
<u>Living Arrangement</u>	10A NCAC 70I .0904
<u>Living/Activity Areas</u>	10A NCAC 70I .0905
<u>Dining Areas</u>	10A NCAC 70I .0906
<u>Kitchen</u>	10A NCAC 70I .0907
<u>Laundry Room</u>	10A NCAC 70I .0908
<u>Sleeping Areas</u>	10A NCAC 70I .0909
<u>Bathing and Toilet Areas</u>	10A NCAC 70I .0910
<u>Corridors</u>	10A NCAC 70I .0911
<u>Outside Entrances and Exits</u>	10A NCAC 70I .0912
<u>Floors</u>	10A NCAC 70I .0913
<u>Housekeeping and Furnishings</u>	10A NCAC 70I .0914
<u>Fire Safety and Disaster Plans</u>	10A NCAC 70I .0915
<u>Building Service Equipment</u>	10A NCAC 70I .0916
<u>Outside Premises</u>	10A NCAC 70I .0917
<u>Vehicles Used for Transportation of Children</u>	10A NCAC 70I .0918
<u>Applicability</u>	10A NCAC 70J .0101
<u>Personnel</u>	10A NCAC 70J .0103
<u>Applicability</u>	10A NCAC 70J .0201
<u>Admission Procedures</u>	10A NCAC 70J .0202
<u>Admission Criteria</u>	10A NCAC 70J .0203
<u>Recordkeeping</u>	10A NCAC 70J .0204
<u>Service Planning</u>	10A NCAC 70J .0205
<u>Discharge Services</u>	10A NCAC 70J .0206
<u>Organization and Administration</u>	10A NCAC 70K .0102
<u>Services</u>	10A NCAC 70K .0202
<u>Case Record</u>	10A NCAC 70K .0203
<u>Physical Facilities</u>	10A NCAC 70K .0205
<u>Case Plan or Out-of-Home Family Services Agreement</u>	10A NCAC 70K .0206
<u>Client Rights</u>	10A NCAC 70K .0207
<u>Grievance Procedures</u>	10A NCAC 70K .0208
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**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray Selina Brooks Melissa Owens Lassiter Don Overby	Randall May A. B. Elkins II Joe Webster Shannon Joseph
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A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

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Tracie Locklear, Ammie Brewer-James, Native Designs Hair & Tanning Salon v. DENR, Health Radiation Protection	08 EHR 1143	Gray	7/17/08

### DEPARTMENT OF INSURANCE

Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 1130	Overby	03/12/08
Alesha D Carter v. State Health Plan	07 INS 1858	Lassiter	05/19/08

### MISCELLANEOUS

Kevin Edral Douglas v. Wake County District Attorney, DMV	07 MIS 1976	Webster	05/12/08
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### OFFICE OF STATE PERSONNEL

Marsha A Early v. Durham County Department of Social Services	01 OSP 0279	Lassiter	04/02/08	
Scott Burgess v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	07 OSP 0052	Gray	07/16/08	
Divina P. Shields v. North Carolina State University	07 OSP 0317	Lassiter	07/11/08	
Jacqueline B. Maynard v. UNC	07 OSP 0575	Webster	04/08/08	
Warren R. Follum v. NCSU	07 OSP 0577	Webster	03/21/08	
Sharon P. House v. UNC	07 OSP 0630	Webster	04/08/08	
Pam Moses v. Macon County Health Department	07 OSP 0945	Overby	06/30/08	
Cassandra F. Barner v. Halifax County Department of Social Serv.	07 OSP 1186	Joseph	05/16/08	23:05 NCR 528
Michael Shelton Woody v. DENR, Division of Forest Resources	07 OSP 1255	Brooks	05/13/08	
Kellee M. Buck v. Dare County Department of Social Services	07 OSP 1385	Overby	05/27/08	
Dennis E. Hrynkow v. Dept. of Insurance	07 OSP 1400	Joseph	04/03/08	
Stacey M. Gasque v. N.C. Department of Corrections	07 OSP 1479	Overby	06/09/08	
James Dobaly v. North Carolina Department of Health and Human Services	07 OSP 1873	Lassiter	07/02/08	
Adley K. Prager v. Dept. of Crime Control and Public Safety and Butner Public Safety	07 OSP 2011	Webster	05/29/08	
Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution	07 OSP 2012	Joseph	04/07/08	
Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz	07 OSP 2047	Joseph	04/07/08	
Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public Safety and The Dept. of Crime Control & Public Safety (NC Highway Patrol)	07 OSP 2222	Morrison	06/05/08	23:01 NCR 147
Norman K. Goering v. Crime Control and Public Safety, Highway Patrol	07 OSP 2256	Joseph	07/29/08	23:05 NCR 547
Kimberly James v. UNC-Charlotte	08 OSP 0146	Webster	05/08/08	
Nancy Hester v. Guilford County AOC Pretrial Services	08 OSP 0224	Overby	06/19/08	
Laura L. Holliman v. Caledonia Correctional Inst.	08 OSP 0591	Gray	07/08/08	
Ashley K. Severson v. Greene County	08 OSP 0611	Joseph	07/29/08	
Richard D. Lincoln v. DOT	08 OSP 0801	Gray	05/27/08	
Robert M. Hewitt v. Morrison Correctional Institute	08 OSP 0971	Gray	06/26/08	
Kenyatta Burrus v. Craven County Clerk of Superior Court	08 OSP 1089	Overby	06/12/08	
Dexter J. Hill v. Department of Agriculture and Consumer Services	08 OSP 1167	Overby	07/08/08	
Dianna Humphrey v. Caswell Center	08 OSP 1327	Lassiter	07/02/08	
Charles Godwin v. NC Department of Crime Control and Public Safety	08 OSP 1463	Lassiter	07/28/08	
Kyla Solomon v. Office of Citizen Services	08 OSP 1547	Lassiter	07/22/08	

### RESPIRATORY CARE BOARD

Angelique Thompson v. Respiratory Care Board	07 RCB 1176	Gray	03/13/08	23:01 NCR 153
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### DEPARTMENT OF REVENUE

Parker Bark Company Inc. v. Department of Revenue	08 REV 1228	Overby	06/17/08
Deandra A. Scott v. Department of Revenue	08 REV 1180	Overby	07/01/08
Gorett Williams v. Department of Revenue	08 REV 1227	Overby	07/08/08
Anthony Chad Bynum v. Department of Revenue	08 REV 1268	Overby	07/09/08

### OFFICE OF SECRETARY OF STATE

Bennett Jeffrey Packer v. North Carolina Department of The Secretary of State	07 SOS 2241	May	06/09/08
Hope Taylor (formerly Taylor-Guevara) v. North Carolina Department of The Secretary of State	07 SOS 2280	Joseph	05/21/08
Wendy Branch Miller v. SOS	08 SOS 1018	Lassiter	07/14/08

### UNC HOSPITALS

Charity Smith v. UNC Hospitals	08 UNC 0533	Gray	07/28/08
Jimmy L. Holder v. UNC Hospitals	08 UNC 0589	May	07/29/08



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**CONTESTED CASE DECISIONS**

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Barbara C. King v. UNC Hospitals	08 UNC 0805	May	07/29/08
Kaprina Wells v. UNC Hospitals	08 UNC 0860	Gray	07/28/08
Rolie Adrienne Webb "Andi" v. UNC Hospitals	08 UNC 0881	Gray	06/11/08
Marcus M. McCullers v. UNC Hospitals	08 UNC 0928	Gray	07/30/08

**WELL CONTRACTORS CERTIFICATION COMMISSION**

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

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