NORTH CAROLINA REGISTER

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April 15, 2016

I. EXECUTIVE ORDERS
Executive Order No. 92 ..... 2133 – 2134

II. PROPOSED RULES
Environmental Quality, Department of
Environmental Management Commission ..... 2136 – 2141
Justice, Department of
Sheriffs' Education and Training Standards Commission ..... 2135 – 2136

III. RULES REVIEW COMMISSION ..... 2142 – 2170

IV. CONTESTED CASE DECISIONS
Index to ALJ Decisions ..... 2171 – 2180
Text of ALJ Decisions
14 DHR 05078 ..... 2181 – 2189
15 DOJ 04637 ..... 2190 – 2197
15 DOJ 05370 ..... 2198 – 2206
15 DOJ 05371 ..... 2207 – 2213
15 DOJ 07443 ..... 2214 – 2220

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

Julian Mann III, Director
Molly Masich, Codifier of Rules
Dana Vojtko, Publications Coordinator
Lindsay Woy, Editorial Assistant
Kelly Bailey, Editorial Assistant

Contact List for Rulemaking Questions or Concerns

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

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

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

contact:	Molly Masich, Codifier of Rules	molly.masich@oah.nc.gov	(919) 431-3071
	Dana Vojtko, Publications Coordinator	dana.vojtko@oah.nc.gov	(919) 431-3075
	Lindsay Woy, Editorial Assistant	lindsay.woy@oah.nc.gov	(919) 431-3078
	Kelly Bailey, Editorial Assistant	kelly.bailey@oah.nc.gov	(919) 431-3083

Rule Review and Legal Issues

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

contact:	Abigail Hammond, Commission Counsel	abigail.hammond@oah.nc.gov	(919) 431-3076
	Amber Cronk May, Commission Counsel	amber.may@oah.nc.gov	(919) 431-3074
	Amanda Reeder, Commission Counsel	amanda.reeder@oah.nc.gov	(919) 431-3079
	Jason Thomas, Commission Counsel	jason.thomas@oah.nc.gov	(919) 431-3081
	Alexander Burgos, Paralegal	alexander.burgos@oah.nc.gov	(919) 431-3080
	Julie Brincefield, Administrative Assistant	julie.brincefield@oah.nc.gov	(919) 431-3073

Fiscal Notes & Economic Analysis and Governor's Review

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

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Sarah Collins scollins@nclm.org

Legislative Process Concerning Rule-making

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

Karen Cochrane-Brown, Director/Legislative Analysis Division	karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney	Jeffrey.hudson@ncleg.net

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NORTH CAROLINA REGISTER

Publication Schedule for January 2016 – December 2016

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:	270th day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
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31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
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31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

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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) text of proposed rules;
(3) text of permanent rules approved by the Rules Review Commission;
(4) emergency rules
(5) Executive Orders of the Governor;
(6) 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; and
(7) 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 rul

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State of North Carolina

PAT McCRORY
GOVERNOR

March 15, 2016

EXECUTIVE ORDER NO. 92

REESTABLISHING THE FOOD SAFETY AND DEFENSE TASK FORCE

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

Section 1. Establishment

The North Carolina Food Safety and Defense Task Force is hereby re-established.

Section 2. Purpose

The purpose of the Food Safety and Defense Task Force (hereinafter the "Task Force") is to coordinate interagency and public-private efforts to enhance protection of the State's food supply system and its agricultural industry.

Section 3. Membership

Task Force members shall serve at the pleasure of the Governor. The Governor shall appoint members to the Task Force as follows:

a. The Commissioner of Agriculture, or designee;
b. The Secretary of Environmental Quality, or designee;
c. The Secretary of Health and Human Services, or designee;
d. The Secretary of Public Safety, or designee;
e. Representatives of the University of North Carolina System; and
f. Representatives of other government agencies, private industry, and other public members invited to participate by the Governor.

The Commissioner of Agriculture, the Secretary of the Department of Health and Human Services, and the Secretary of the Department of Environmental Quality shall serve as co-chairs of the Task Force.

Section 4. Duties

The Task Force shall have the following duties:

a. Partner with State and federal agencies to conduct focused studies of the vulnerability of the State's food system to criminal and terrorist acts and make recommendations regarding the following issues:
    1. Improving safety and defense of the food system,
    2. Reducing terrorism threat measures,
    3. Improving food safety and defense mitigation and response plans, and

4. Implementing or coordinating training for key stakeholders in the State's food supply system.

b. Recommend legislation needed to improve the ability of State departments and agencies to protect the safety and defense of the State's food supply and the agricultural industry base, including legislation to protect sensitive and proprietary information of the State's food supply system, safety and defense vulnerability information, and defense plans that, if compromised, would heighted the exposure of the State's food supply system to criminal or terrorist acts.
c. Recommend budget, staffing, and resource adjustments necessary to improve the capability of State departments and agencies to protect the safety and defense of the State's food supply system and agricultural industrial base.
d. Prepare an annual report no later than December 15th each year that includes any recommendations or proposals for changes in laws, rules, and programs that the Task Force determines to be appropriate to enhance food safety and defense in the State.

Section 5. Effect and Duration

This Executive Order shall be effective immediately. It shall remain in effect until December 31, 2017, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded. All other executive orders or portions of executive orders inconsistent herewith are hereby rescinded.

IN WITNESS WHEREOF, I have hereunto signed my named and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the fifteenth day of March, 2016.

Pat McCrory
Governor

ATTEST:

Elaine Marshall
Secretary of State

Note from the Codifier: *The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.*

TITLE 12 – DEPARTMENT OF JUSTICE

Notice *is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 10B .0601.*

Link to agency website pursuant to G.S. 150B-19.1(c): *http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and Training-Standards/All-Commission-Forms-and-Publications.aspx*

Proposed Effective Date: *August 1, 2016*

Public Hearing:
Date: *May 2, 2016*
Time: *8:30 a.m.*
Location: *1700 Tryon Park Drive, Raleigh, NC 27610*

Reason for Proposed Action: *Amend Detention Officer Certification Course to add two hours of instruction on the Prison Rape Elimination Act.*

Comments may be submitted to: *Julia Lohman, P.O. Box 629, Raleigh, NC 27602, phone (919) 662-4370, fax (919) 662-4516, email jlohman@ncdoj.gov*

Comment period ends: *June 16, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).
☒ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☒ **Local funds affected**
☐ **Substantial economic impact (≥$1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

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

SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR DETENTION OFFICERS

12 NCAC 10B .0601 DETENTION OFFICER CERTIFICATION COURSE

(a) This Section establishes the current standard by which Sheriffs' Office and district confinement personnel shall receive detention officer training. The Detention Officer Certification Course shall consist of a minimum of ~~172~~ 174 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

(b) Each Detention Officer Certification Course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	LEGAL UNIT		
	(A)	Orientation	3 hours
	(B)	Criminal Justice Systems	2 hours
	(C)	Legal Aspects of Management and Supervision	14 hours
	(D)	Introduction to Rules and Regulations	2 hours
	(E)	Ethics	3 hours
	UNIT TOTAL		24 Hours
(2)	PHYSICAL UNIT		
	(A)	Contraband/Searches	6 hours
	(B)	Patrol and Security Function of the Jail	5 hours
	(C)	Key and Tool Control	2 hours
	(D)	Investigative Process in the Jail	8 hours
	(E)	Transportation of Inmates	7 hours
	(F)	Prison Rape Elimination Act	2 hours
	UNIT TOTAL		~~8~~ 30 Hours
(3)	PRACTICAL APPLICATION UNIT		
	(A)	Processing Inmates	8 hours
	(B)	Supervision and Management of Inmates	5 hours
	(C)	Suicides and Crisis Management	5 hours
	(D)	Aspects of Mental Illness	6 hours
	(E)	Fire Emergencies	4 hours

	(F)	Notetaking and Report Writing	6 hours
	(G)	Communication Skills	5 hours
	UNIT TOTAL		39 hours
(4)	MEDICAL UNIT		
	(A)	First Aid and CPR	8 hours
	(B)	Medical Care in the Jail	6 hours
	(C)	Stress	3 hours
	(D)	Subject Control Techniques	2 hours
	(E)	Physical Fitness for Detention Officers	22 hours
	UNIT TOTAL		71 hours
(5)	REVIEW AND TESTING		7 hours
(6)	STATE EXAM		3 hours
	TOTAL HOURS		~~172~~ 174 HOURS

(c) Consistent with the curriculum development policy of the Commission as published in the "Detention Officer Certification Course Management Guide," the Commission shall designate the developer of the Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Detention Officer Certification Courses. Individuals who complete such a pilot Detention Officer Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Detention Officer Certification Training Manual" published by the North Carolina Justice Academy shall be used as the basic curriculum for the Detention Officer Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this manual, CD, indexes and binder is fifty-one dollars and seventy-five cents ($51.75) at the time of adoption of this Rule.

(e) The "Detention Officer Certification Course Management Guide" published by the North Carolina Justice Academy is hereby incorporated by reference and shall include any later amendments or editions of the incorporated matter to be used by school directors in planning, implementing and delivering basic detention officer training. The standards and requirements established by the "Detention Officer Certification Course Management Guide" must be adhered to by the school director. The Justice Academy shall issue to each certified school director a copy of the guide at the time of certification at no cost to the certified school.

Authority G.S. 17E-4(a).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***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 02D .0902, and the Environmental Management Commission and Department of Environmental Quality intends to repeal the rule cited as 15A NCAC 02D .1010.*

Link to agency website pursuant to G.S. 150B-19.1(c): *http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process*

Proposed Effective Date: *September 1, 2016*

Public Hearing:
Date: *May 25, 2016*
Time: *3:00 p.m.*
Location: *Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603*

Reason for Proposed Action:
Hearing 1: *To receive comments on behalf of the Environmental Management Commission and the Secretary of the Department Environmental Quality on repeal of 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions, pursuant to Section 4.24 of Session Law 2015-286 which mandates the Secretary of the Department of Environmental Quality repeal 15A NCAC 02D .1010. Until the effective date of the repeal, 15A NCAC 02D .1010 shall not be implemented or enforced.*

Hearing 2: *To receive comments on behalf of the Environmental Management Commission on amendment to Rule 15A NCAC 02D .0902, Applicability, to narrow the applicability of 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds (VOC), from statewide to the maintenance area for the 1997 8-hour ozone standard. The proposed amendments will remove unnecessary burden associated with permitting and complying with the work practice standards in 15A NCAC 02D .0958.*

Provisions of the Clean Air Act require that the VOC requirements previously implemented in an ozone nonattainment area prior to redesignation of the area to attainment remain in place; however, facilities outside the maintenance area counties for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 15A NCAC 02D .0958.

Comments may be submitted to: *Joelle Burleson, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email daq.publiccomments@ncdenr.gov (please type May 25, 2016 hearings in the subject line).*

Comment period ends: *June 14, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery

service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Local funds affected**
☐ **Substantial economic impact (≥$1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0900 – VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0902 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day unless specified otherwise in this Section.

(c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of emissions of volatile organic compounds unless provisions specified in Paragraph (d)(1) of this Rule are applied.

(d) This Section does not apply to:

(1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:
(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
(B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
(C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
(D) research and development laboratory activities, provided the activity produces no commercial product or feedstock material; or

(2) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(e) The following rules of this Section apply to facilities located statewide:

(1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
(2) .0926, Bulk Gasoline Plants;
(3) .0927, Bulk Gasoline Terminals;
(4) .0928, Gasoline Service Stations Stage I;
(5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
(6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
(7) .0948, VOC Emissions from Transfer Operations; and
(8) .0949, Storage of Miscellaneous Volatile Organic ~~Compounds; and~~ Compounds.
~~(9) .0958, Work Practices for Sources of Volatile Organic Compounds.~~

(f) Except as provided in Paragraph (e) of this Rule, the rules in this Section apply to facilities subject to Section 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental Protection Agency has issued Control Technique Guidelines that are located in the following moderate nonattainment areas for the 1997 8-hour ozone standard as designated in 40 CFR ~~81.334:~~ 81.334 prior to January 2, 2014:

(1) Cabarrus County;
(2) Gaston County;
(3) Lincoln County;
(4) Mecklenburg County;
(5) Rowan County;
(6) Union County; and
(7) Davidson Township and Coddle Creek Township in Iredell County.

These facilities are subject to reasonably available control technology requirements under this Section and shall comply with these requirements in accordance with Rule .0909 of this Section through use of Rule .0951 of this ~~Section.~~Section and with Rule .0958 of this Section.

(g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment and becomes a maintenance area for the 1997 8-hour ozone standard, all sources in that county or part of county subject to Paragraph (f) of this Rule that achieved compliance in accordance with Rule .0909 of this Section shall continue to comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year for which the compliance date in Rule .0909 of this Section has not passed before redesignation of the area to attainment for the 1997 ozone standard shall comply in accordance with Paragraph (h) of this Rule.

(h) If a violation of the 1997 ambient air quality standard for ozone occurs when the areas listed in Paragraph (f) become ozone maintenance area, no later than 10 days after the violation occurs, the Director shall initiate technical analysis to determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the Rules implemented are to apply in the areas listed in Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the counties in which the Rules of this Section are being implemented notifying them that they are or may be subject to the requirements defined in Rule .0909 of this Section.

For Mecklenburg County, "Director" means, for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1010 HEAVY-DUTY VEHICLE IDLING RESTRICTIONS

~~(a) Applicability. The requirements of this Rule apply to on-road heavy-duty vehicles powered in part or entirely by an internal combustion engine.~~

~~(b) Definitions. For the purposes of this Rule, the following definitions apply:~~

~~(1) "Auxiliary power unit" means a mechanical or electrical device affixed to a vehicle that is designed to be used to generate an alternative source of power for any of the vehicle's systems other than the primary propulsion engine;~~

~~(2) "Congestion" means a situation that occurs when the volume of traffic exceeds the capacity of a roadway;~~

~~(3) "Emergency" means a situation that poses an immediate risk to health, life, property, or environment;~~

~~(4) "Emergency vehicle" means any vehicle that responds to or supports an emergency. These vehicles are operated by part of the government, charities, non-governmental organizations, and commercial companies;~~

~~(5) "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle;~~

~~(6) "Farm vehicle" means a vehicle used exclusively for farm use and operated within 150 miles of the farmer's farm by the farmer or the farmer's employee to transport either agricultural product, farm machinery, or farm supplies. It is not used in the operations of a for-hire motor carrier.~~

~~(7) "Heavy duty vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle weight rating of 10,001 pounds or greater for the purpose of this Rule;~~

~~(8) "Idling" means the operation of a motor vehicle's propulsion engine while the vehicle is stationary;~~

~~(9) "Military vehicle" means a motor vehicle owned by the U.S. Department of Defense;~~

~~(10) "Motor vehicle" means any self-propelled vehicle used for transporting property or persons;~~

~~(11) "On-road vehicle" means a self-propelled vehicle that is designed for use on a highway.~~

~~(12) "Passenger bus" means any bus, including school buses, which is designed to carry sixteen or more passengers;~~

~~(13) "Power take-off" means a device used to transfer mechanical energy from a heavy-duty vehicle's propulsion engine to equipment that supplies mechanical, pneumatic, hydraulic, or electric power to non-vehicular mechanical, pneumatic, hydraulic, or electrically operated devices; and~~

~~(14) "Queue area" means an area used by heavy-duty vehicles waiting to provide or receive services.~~

~~(c) Exemptions. The following exemptions to idle restrictions apply to this Rule:~~

~~(1) Heavy-duty vehicles may idle if they remain motionless due to traffic conditions, traffic control devices or signals, congestion, or at the direction of law enforcement officials;~~

~~(2) Emergency vehicles may idle while performing an emergency or training function. This exemption does not apply when idling only for driver comfort;~~

~~(3) Military vehicles;~~

~~(4) Heavy-duty vehicles may idle main propulsion engines to operate power take-offs to perform the heavy-duty vehicle's designed functions (e.g., refrigeration of cargo, processing of cargo, dumping, lifting, hoisting, drilling, mixing, loading, unloading, other operations requiring the use of power take-offs). This exemption does not apply when idling only for driver comfort;~~

~~(5) Heavy-duty vehicles may idle if following manufacturer's recommendations for cold engine~~

~~startup and engine cool-down, maintenance, inspection, servicing, repairing, or diagnostic purposes, if idling is required for such activity;~~

~~(6) Heavy duty vehicles with an occupied sleeper berth compartment may idle for the purposes of air conditioning or heating during federally mandated rest or sleep periods. This exemption shall expire on May 1, 2011;~~

~~(7) Auxiliary power units;~~

~~(8) Heavy duty vehicles with a primary diesel engine meeting the nitrogen oxide idling emission standard in Title 13, of the California Code of Regulations, Section 1956.8(a)(6)(C);~~

~~(9) A passenger bus when non-driver passengers are on board the vehicle and up to 20 minutes prior to passengers boarding;~~

~~(10) Heavy duty vehicles may idle to provide customer climate controlled comfort during periods of providing customer services (e.g., library bookmobile, blood mobile, safety shoe and safety glasses vendors). This exemption does not apply when idling only for driver comfort; and~~

~~(11) Heavy duty vehicles may idle if defrosters, heaters, air conditioners, or other equipment are operating solely to prevent a safety or health emergency.~~

~~(12) Heavy duty farm vehicles.~~

~~(d) Requirements.~~

~~(1) No person who operates a heavy duty vehicle shall cause, let, permit, suffer or allow idling for a period of time in excess of 5 consecutive minutes in any 60 minute period.~~

~~(2) Heavy duty vehicles located in a queue area are not exempted from this Rule. 27.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.107(b).

* * * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 13B .0207 and amend the rules cited as 15A NCAC 13B .0201 and .0206.*

Link to agency website pursuant to G.S. 150B-19.1(c): *http://deq.nc.gov/permits-regulations/rules-regulations/proposed-main*

Proposed Effective Date: *September 1, 2016*

Public Hearing:
Date: *May 4, 2016*
Time: *2:00 p.m.*
Location: *NC Department of Environmental Quality, 217 West Jones Street, Raleigh, NC 27603, Room 1210*

Reason for Proposed Action: *Legislative requirement per Session Law 2015-241 (HB97) Landfill Changes, as amended by Session Law 2015-286 (HB765) Modify Effective Date for Life-of-Site Permits for Sanitary Landfills and Transfer Stations and Make Other Technical, Clarifying, and Conforming Changes. Session Law 2015-241 (HB97) states "No later than July 1, 2016, the Environmental Management Commission shall adopt rules to allow applicants for permits for sanitary landfills to apply for a permit for the life-of-site of the facility. No later than July 1, 2016, the Commission shall also adopt rules to allow applicants for permits for transfer stations to apply for a permit to construct and operate a transfer station for the life-of site of the station."*

Comments may be submitted to: *Jessica Montie, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 707-8247, fax (919) 707-8247, email Jessica.montie@ncdenr.gov*

Comment period ends: *June 14, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

☒ **State funds affected** *15A NCAC 13B .0206 and .0207*
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Local funds affected**
☐ **Substantial economic impact (≥$1,000,000)**
☒ **Approved by OSBM**
☒ **No fiscal note required by G.S. 150B-21.4** *15A NCAC 13B .0201*

CHAPTER 13 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13B – SOLID WASTE MANAGEMENT

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

15A NCAC 13B .0201 PERMIT REQUIRED

(a) No person shall treat, process, store, or dispose of solid waste or arrange for the treatment, processing, ~~storage~~ storage, or disposal of solid waste except at a solid waste management facility permitted by the Division for such activity, except as provided in G.S. 130A-294(b).

(b) No person shall cause, suffer, allow, or permit the treatment, storage, or processing of solid waste upon any real or personal property owned, operated, leased, or in any way controlled by that person without first ~~obtaining~~ having been issued a permit for a solid waste management facility from the Division authorizing such activity, except as provided in G.S. 130A-294(b).

(c) No solid waste management facility shall be established, operated, maintained, constructed, ~~expanded~~ expanded, or modified without ~~an appropriate and~~ a currently valid permit issued by the ~~Division.~~ Division for the specified type of disposal activity. It is the responsibility of every owner and operator of a proposed solid waste management facility to apply for a permit for the facility. The term "owner" shall include record owners of the land where the facility is located or proposed to be located and holders of any leasehold interest, however denominated, in any part of the land or structures where the facility is located or proposed to be located.

(d) The solid waste management facility permit, except for land clearing and inert debris permits, shall have two parts, as follows:

(1) A permit approval to construct a solid waste management facility or portion of a facility shall be issued by the Division after site and construction plans have been approved and it has been determined that the facility can be operated in accordance with Article 9 of Chapter 130A and the applicable rules set forth in this Subchapter, and other applicable state, ~~federal~~ federal, and local laws. An applicant shall not clear or grade land or commence construction for a solid waste management facility or a portion thereof until a ~~construction~~ permit approval to construct has been issued.

(2) A permit approval to operate a solid waste management facility ~~may~~ shall not be issued unless it has been determined that the facility has been constructed in accordance with the construction ~~permit,~~ plans, that any ~~pre-operative~~pre-operation conditions of the ~~construction~~ permit to construct have been met, and that the ~~construction~~ permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

(e) Land clearing and inert debris facilities may be issued a combined permit that includes approval to construct and operate the facility.

(f) Land clearing and inert debris facilities subject to Rule ~~.0563 Item (1)~~ .0563(1) of this Subchapter may construct and operate after notification as provided for under Rule ~~.0563 Item (2).~~.0563(2) of this Subchapter.

(g) Permits, except for life-of-site permits issued pursuant to Rule .0207 of this Section,~~including those issued prior to the effective date of this Rule,~~ shall be reviewed every five years. Modifications, where necessary, shall be made in accordance with rules in effect at the time of review.~~review for those areas of a permitted sanitary landfill site which have not previously received solid waste.~~

(h) All solid waste management facilities shall be operated in conformity with these Rules and ~~in such a manner as to prevent the creation of~~ shall not create a nuisance, or an unsanitary condition, ~~conditions,~~ or a potential public health hazard.

Authority G.S. 130A-294; S.L. 2015-286, s. 4.9.

15A NCAC 13B .0206 OPTION TO APPLY FOR ISSUANCE OF 10-YEAR PERMIT FOR SANITARY LANDFILL OR TRANSFER STATION

~~(a) An applicant for a sanitary landfill or transfer station permit subject to Section .0400, .0500 or .1600 of these Rules may apply for a permit for a design, construction and operation phase of five years or a design, construction and operation phase of ten years. A permit for a ten year phase of construction and operation of a sanitary landfill shall meet the five year phase requirements contained in Section .0500 and .1600, applied in two five year increments.~~

~~(b)~~ A permit issued prior to July 1, 2016 for a ~~designed~~design phase of ten years shall be subject to review within five years of the issuance date, as provided in Rule ~~.0201(g).~~ .0201(g) of this Section. Permit modifications issued for a ten-year phase of construction or operation of a sanitary landfill or transfer station shall be made in accordance with rules in effect at the time of review and include an updated operations plan for the facility, revisions to the closure and post-closure plans and costs, and updates to the environmental monitoring plans.

Authority G.S. 130A-294; S.L. 2012-187, s. 15.1; S.L. 2015-286, s. 4.9.

15A NCAC 13B .0207 LIFE-OF-SITE PERMIT ISSUED FOR A SANITARY LANDFILL OR TRANSFER STATION

(a) A new or existing sanitary landfill or transfer station permit shall be subject to Section .0400, .0500, or .1600 of this Subchapter and shall be for the life-of-site as defined in G.S. 130A-294(a2).

(b) A life-of-site permit application for a new sanitary landfill shall contain design, construction, site development, and operation plans. Site development plans shall show the phases or progression of operation in periods of no less than five years and no greater than the life of the site as contained in the facility plan. The life-of-site of a sanitary landfill shall be specified in the facility plan prepared in accordance with Section .0500 or .1600 of this Subchapter.

(c) A life-of-site permit application for a sanitary landfill that has an existing permit as of July 1, 2016 shall be considered complete when it includes the definition of the entire waste boundary and a specification of the life-of-site quantified in the facility plan. An existing permit shall be approved for the life of the site within 90 days of submission of the complete application.

(d) Each phase within a life-of-site permit for sanitary landfills shall be designed and constructed in accordance with Sections .0500 or .1600 of this Subchapter. Phase development plans shall show the progression of construction and operation in periods of no less than five years and no greater than the life of the site as contained in the facility plan.

(e) A life-of-site permit application for a new transfer station shall conform to the requirements of Section .0400 of this Subchapter and shall contain a site plan for the life of the site. The life-of-site

of a transfer station shall be specified in the site plan prepared in accordance with Section .0400 of this Subchapter.

(f) A life-of-site permit application for a transfer facility that has an existing permit as of July 1, 2016 shall be considered complete when it includes a specification of the life-of-site quantified in the site plan prepared in accordance with Section .0400 of this Subchapter. An existing permit shall be approved for the life of the site within 90 days of submission of the complete application.

Authority G.S. 130A-294; S.L. 2015-286, s. 4.9.

This Section contains information for the meeting of the Rules Review Commission February 18, 2016 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate	**Appointed by House**
Jeff Hyde (1st Vice Chair)	Garth Dunklin (Chair)
Robert A. Bryan, Jr.	Stephanie Simpson (2nd Vice Chair)
Margaret Currin	Anna Baird Choi
Jay Hemphill	Jeanette Doran
Jeffrey A. Poley	Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

April 21, 2016	May 19, 2016
June 16, 2016	July 21, 2016

RULES REVIEW COMMISSION MEETING MINUTES
March 17, 2016

The Rules Review Commission met on Thursday, March 17, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, and Alex Burgos.

The meeting was called to order at 10:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES
Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the February 18, 2016 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS
911 Board
09 NCAC 06C .0111, .0112, .0113, .0114, .0205, and .0216 – The agency is addressing the objections from the January meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

Property Tax Commission
17 NCAC 11 .0216 and .0217 - The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

Board of Chiropractic Examiners
21 NCAC 10 .0208 was withdrawn at the request of the agency.

Board of Dental Examiners
21 NCAC 16O .0301, .0302, .0401, .0402; 16Q .0101, .0202, .0203, .0204, .0205, .0206, .0207, .0301, .0302, .0303, .0304, .0305, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0501, .0502, .0503, .0601, .0602, and .0703 - All rules were unanimously approved.

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because she has a client who sought her involvement in the review of these Rules.

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rules because her husband's law firm may have a potential conflict.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 21 NCAC 16Q .0101.

LOG OF FILINGS (PERMANENT RULES)
DHHS – Division of Health Service Regulation
All rules were unanimously approved.
Social Services Commission
The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review to allow the Social Services Commission additional time to revise the rules in response to the technical change requests.

Department of Insurance
The Commission objected to the rules, finding the agency failed to comply with the Administrative Procedure Act. Specifically, the Commission found that by failing to send notice to its interested persons' mailing list, the Department failed to comply with G.S. 150B-21.2(d).

As these rules were readoptions scheduled by the Commission pursuant to G.S. 150B-21.3A(d)(2), the Commission will set a new readoption date for these Rules at a later meeting.

Environmental Management Commission
15A NCAC 02L .0106 was unanimously approved.

Mary Maclean Asbill, with the Southern Environmental Law Center, addressed the Commission.

Jennie W. Hauser, with the Attorney General's Office representing the agency, addressed the Commission.

Jay Zimmerman, with the Division of Water Resources, addressed the Commission.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of the approved rule.

Coastal Resources Commission
All rules were unanimously approved.

Wildlife Resources Commission
All rules were unanimously approved.

Department of Revenue
All rules were unanimously approved.

Board of Dental Examiners
21 NCAC 16W .0101 was unanimously approved.

Medical Board
21 NCAC 32M .0117 was unanimously approved.

Board of Nursing
21 NCAC 36 .0815 was unanimously approved.

Prior to the review of the rule from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because she represents the Board in legal matters, and sometimes assists in rulemaking.

State Human Resources Commission
All rules were unanimously approved.

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she is a state employee.

EXISTING RULES REVIEW
Social Services Commission
10A NCAC 70I - The Commission unanimously approved the report as submitted by the agency.
10A NCAC 70K – The Commission unanimously approved the report as submitted by the agency.

Department of Environmental Quality
15A NCAC 01L - The Commission unanimously approved the report as submitted by the agency.

Jennifer Everett, with the agency, addressed the Commission.

15A NCAC 01N – The Commission approved the report as submitted by the agency with Commissioners Currin, Doran, and Hemphill voting against the approval.

The Commission recessed at 12:05 p.m. and reconvened at 12:13 p.m.

Department of Treasurer
20 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.
20 NCAC 04 – The Chapter is repealed. No action was required by the Commission.
20 NCAC 07 - The Commission unanimously approved the report as submitted by the agency.

Medical Care Commission
10A NCAC 13P - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than April 30, 2017.

DHHS/Division of Health Services Regulation
10A NCAC 14J - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than September 30, 2019.

DHHS/Division of Medical Assistance
10A NCAC 21 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2018.

10A NCAC 22 – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2018.

Social Services Commission
10A NCAC 97- As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than June 30, 2017.

Department of Natural and Cultural Resources
15A NCAC 12H – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than December 31, 2016.

Commission for Public Health
15A NCAC 18C – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than July 31, 2019.

Locksmith Licensing Board
21 NCAC 29 – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than February 28, 2017.

State Human Resources Commission
25 NCAC 01D - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than February 28, 2017.

Department of Natural and Cultural Resources
The agency requested a waiver pursuant to 26 NCAC 05 .0112 to nullify the prior classification of rules within the following periodic review reports: 15A NCAC 12A, 15A NCAC 12B, 15A NCAC 12C, 15A NCAC 12D, 15A NCAC 12F, 15A NCAC 12G, 15A NCAC 12I, 15A NCAC 12J, and 15A NCAC 12K. The agency further requested that the periodic review reports be rescheduled on 26 NCAC 05 .0211.

The waiver request was unanimously approved.

The Commission rescheduled the date of review for the reports, and amended 26 NCAC 05 .0211.

The Commission will review the agency's reports at its March 2018 meeting.

Shawn Middlebrooks, with the agency, addressed the Commission.

COMMISSION BUSINESS
The Commission amended 26 NCAC 05 .0211 to reflect all waivers granted by the Commission, and recodifications and transfers of rules in the Code.

The Chair issued a reminder to the Commissioners that the RRC will present at the Administrative Law Section's annual CLE, scheduled for April 8, 2016 from 9:30-10:30 a.m. Additionally, the Chair advised the Commission that he will be giving an update on the status of the lawsuit filed by the State Board of Education against the Rules Review Commission, and on the Periodic Review before the Administrative Procedure Oversight Committee on April 5, 2016.

Chairman Dunklin opened the meeting for a public hearing on the proposed adoption of Rules 26 NCAC 05 .0103, .0104, .0301, .0302, and .0303. The Chair called on anyone present who wished to comment on 26 NCAC 05 .0103, .0104, .0301, .0302, and .0303 as they were noticed in the North Carolina Register. Nadine Pfeiffer from the Division of Health Service Regulation and Ann B. Wall from the Department of Secretary of State made their comments before the Commission. The comments will become part of the rulemaking record. The period to receive comments will expire at 5:00 p.m., April 15, 2016.

The Commission may vote on the adoption of Rules 26 NCAC 05 .0103, .0104, .0301, .0302, and .0303 at its regularly scheduled meeting in April.

The public hearing portion of the meeting was closed at 1:08 p.m.

At 1:08 p.m., Chairman Dunklin ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission.

The Commission came out of closed session and reconvened at 1:53 p.m.

The meeting adjourned at 1:53 p.m.

The next regularly scheduled meeting of the Commission is Thursday, April 21st at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

_____

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

_____

Garth Dunklin, Chair

March 2016

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
ERICA GARNER	NCWRC
Jennifer Everett	DEQ
Crystal Tillman	NCBON
LINDA BURHANS	NCBON
Bobby Lowery	NCBON
Brooke Greer	BODE
Jennie W. Hauser	AC-EMC
Angela Ellis	NCBON
Jennifer Lewis	NCBON
Chandra Graves	NCBON
Nadine Pfeffer	NC DHHS - DHSR
Laetta Peace Barnes	Insurance
Carolin Bakewell	Dental Bd
May Macke Asbill	SELC
Scarlette Gardner	NC-OSHR
John R. Bognar Jr.	NC-OSHR
Janice W Davidson	NC DOR
Eric Wayne	NC DOR
Jay Zimmerman	NC DWR
Judy Esteves	NC Attorney General's office
Shannon Conley	NC State treasurer.
Chris Mac	NC DHHS - DMS

March 2016

Rules Review Commission
Meeting
Please **Print** Legibly

Vincent Tomaino	NC DEQ WI
Paula Kawulinski	DSHR
Jenn McKinnis	OSHR
Lynne Berry	DAAS
Barden Culbreth	NC Locksmith Bd
Rita B. Bland	NC DSS
Tracy Ashworth	DPS
Darlene Yos	DPS
Brianna Elliott	Duke
Carletta Dix	DSS
Margaret Mace	OSHR
Margaret McDonald	DPS
Brian Murray	DPS
Danita Morant	OSHR
Josh Davis	DNCR
Kevin Howell	DNCR
Shawn Middlebrooks	DNCR
Ann Wall	DOJ
Brandon Watson	DST

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Medical Care Commission
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 13P**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than April 30, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax:919/431-3100
Rules Division 919/431-3000 fax: 919/431-3104
Judges and Assistants 919/431-3000 fax: 919/431-3100
Clerk's Office 919/431-3000 fax: 919/431-3100
Rules Review Commission 919/431-3000 fax: 919/431-3104
Civil Rights Division 919/431-3036 fax: 919/431-3103

RRC DETERMINATION
PERIODIC RULE REVIEW
January 21, 2016
APO Review: February 02, 2016

Medical Care Commission
Total: 29

RRC Determination: Necessary with substantive public interest

Rule	Determination
10A NCAC 13P .0101	Necessary with substantive public interest
10A NCAC 13P .0102	Necessary with substantive public interest
10A NCAC 13P .0201	Necessary with substantive public interest
10A NCAC 13P .0203	Necessary with substantive public interest
10A NCAC 13P .0204	Necessary with substantive public interest
10A NCAC 13P .0216	Necessary with substantive public interest
10A NCAC 13P .0219	Necessary with substantive public interest
10A NCAC 13P .0221	Necessary with substantive public interest
10A NCAC 13P .0301	Necessary with substantive public interest
10A NCAC 13P .0302	Necessary with substantive public interest
10A NCAC 13P .0403	Necessary with substantive public interest
10A NCAC 13P .0501	Necessary with substantive public interest
10A NCAC 13P .0502	Necessary with substantive public interest
10A NCAC 13P .0504	Necessary with substantive public interest
10A NCAC 13P .0507	Necessary with substantive public interest
10A NCAC 13P .0508	Necessary with substantive public interest
10A NCAC 13P .0510	Necessary with substantive public interest
10A NCAC 13P .0601	Necessary with substantive public interest
10A NCAC 13P .0602	Necessary with substantive public interest
10A NCAC 13P .0603	Necessary with substantive public interest
10A NCAC 13P .0901	Necessary with substantive public interest
10A NCAC 13P .0902	Necessary with substantive public interest
10A NCAC 13P .0903	Necessary with substantive public interest
10A NCAC 13P .0904	Necessary with substantive public interest
10A NCAC 13P .0905	Necessary with substantive public interest
10A NCAC 13P .1401	Necessary with substantive public interest
10A NCAC 13P .1402	Necessary with substantive public interest
10A NCAC 13P .1403	Necessary with substantive public interest
10A NCAC 13P .1507	Necessary with substantive public interest

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Division of Health Service Regulation
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 14J**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than September 30, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax:919/431-3100
Rules Division 919/431-3000 fax: 919/431-3104
Judges and Assistants 919/431-3000 fax: 919/431-3100
Clerk's Office 919/431-3000 fax: 919/431-3100
Rules Review Commission 919/431-3000 fax: 919/431-3104
Civil Rights Division 919/431-3036 fax: 919/431-3103

RRC DETERMINATION
PERIODIC RULE REVIEW
November 19, 2015
APO Review: January 05, 2016

HHS - Health Service Regulation, Division of
Total: 33

RRC Determination: Necessary with substantive public interest

Rule	Determination
10A NCAC 14J .0101	Necessary with substantive public interest
10A NCAC 14J .0102	Necessary with substantive public interest
10A NCAC 14J .0103	Necessary with substantive public interest
10A NCAC 14J .0201	Necessary with substantive public interest
10A NCAC 14J .0203	Necessary with substantive public interest
10A NCAC 14J .0204	Necessary with substantive public interest
10A NCAC 14J .0301	Necessary with substantive public interest
10A NCAC 14J .0302	Necessary with substantive public interest
10A NCAC 14J .0303	Necessary with substantive public interest
10A NCAC 14J .0402	Necessary with substantive public interest
10A NCAC 14J .0403	Necessary with substantive public interest
10A NCAC 14J .0404	Necessary with substantive public interest
10A NCAC 14J .0405	Necessary with substantive public interest
10A NCAC 14J .0501	Necessary with substantive public interest
10A NCAC 14J .0601	Necessary with substantive public interest
10A NCAC 14J .0702	Necessary with substantive public interest
10A NCAC 14J .0705	Necessary with substantive public interest
10A NCAC 14J .0904	Necessary with substantive public interest
10A NCAC 14J .1001	Necessary with substantive public interest
10A NCAC 14J .1002	Necessary with substantive public interest
10A NCAC 14J .1201	Necessary with substantive public interest
10A NCAC 14J .1202	Necessary with substantive public interest
10A NCAC 14J .1203	Necessary with substantive public interest
10A NCAC 14J .1207	Necessary with substantive public interest
10A NCAC 14J .1210	Necessary with substantive public interest
10A NCAC 14J .1212	Necessary with substantive public interest
10A NCAC 14J .1213	Necessary with substantive public interest
10A NCAC 14J .1214	Necessary with substantive public interest
10A NCAC 14J .1215	Necessary with substantive public interest
10A NCAC 14J .1218	Necessary with substantive public interest
10A NCAC 14J .1219	Necessary with substantive public interest
10A NCAC 14J .1225	Necessary with substantive public interest
10A NCAC 14J .1226	Necessary with substantive public interest

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Sarah Pfau, Rulemaking Coordinator
Department of Health and Human Services
Division of Medical Assistance
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 21 and 10A NCAC 22**

Dear Ms. Pfau:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than March 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration	Rules Division	Judges and Assistants	Clerk's Office	Rules Review Commission	Civil Rights Division
919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3036
fax:919/431-3100	fax: 919/431-3104	fax: 919/431-3100	fax: 919/431-3100	fax: 919/431-3104	fax: 919/431-3103

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RRC DETERMINATION
PERIODIC RULE REVIEW
July 01, 2014 through June 30, 2015
HHS - Medical Assistance, Division of
Total: 82

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
10A NCAC 21A .0301	Necessary with substantive public interest	August 22, 2015
10A NCAC 21A .0302	Necessary with substantive public interest	August 22, 2015
10A NCAC 21A .0303	Necessary with substantive public interest	August 22, 2015
10A NCAC 21B .0204	Necessary with substantive public interest	August 22, 2015
10A NCAC 21B .0311	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0101	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0201	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0301	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0302	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0401	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0402	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0501	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0502	Necessary with substantive public interest	August 22, 2015
10A NCAC 21D .0503	Necessary with substantive public interest	August 22, 2015
10A NCAC 22B .0101	Necessary with substantive public interest	August 22, 2015
10A NCAC 22B .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22B .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 22B .0104	Necessary with substantive public interest	August 22, 2015
10A NCAC 22B .0105	Necessary with substantive public interest	August 22, 2015
10A NCAC 22C .0101	Necessary with substantive public interest	August 22, 2015
10A NCAC 22C .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22C .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 22D .0101	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0104	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0105	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0106	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0107	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0201	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0202	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0203	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0301	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0302	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0402	Necessary with substantive public interest	August 22, 2015

10A NCAC 22F .0601	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0602	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0603	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0604	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0605	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0606	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0704	Necessary with substantive public interest	August 22, 2015
10A NCAC 22F .0706	Necessary with substantive public interest	August 22, 2015
10A NCAC 22G .0108	Necessary with substantive public interest	August 22, 2015
10A NCAC 22G .0109	Necessary with substantive public interest	August 22, 2015
10A NCAC 22G .0208	Necessary with substantive public interest	August 22, 2015
10A NCAC 22G .0502	Necessary with substantive public interest	August 22, 2015
10A NCAC 22G .0504	Necessary with substantive public interest	August 22, 2015
10A NCAC 22G .0509	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0101	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0104	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0105	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0202	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0203	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0204	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0205	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0302	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0303	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0304	Necessary with substantive public interest	August 22, 2015
10A NCAC 22H .0305	Necessary with substantive public interest	August 22, 2015
10A NCAC 22I .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22I .0104	Necessary with substantive public interest	August 22, 2015
10A NCAC 22J .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22J .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 22J .0104	Necessary with substantive public interest	August 22, 2015
10A NCAC 22J .0105	Necessary with substantive public interest	August 22, 2015
10A NCAC 22J .0106	Necessary with substantive public interest	August 22, 2015
10A NCAC 22K .0101	Necessary with substantive public interest	August 22, 2015
10A NCAC 22K .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22K .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 22L .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22L .0103	Necessary with substantive public interest	August 22, 2015
10A NCAC 22L .0104	Necessary with substantive public interest	August 22, 2015
10A NCAC 22L .0203	Necessary with substantive public interest	August 22, 2015
10A NCAC 22N .0102	Necessary with substantive public interest	August 22, 2015
10A NCAC 22N .0202	Necessary with substantive public interest	August 22, 2015
10A NCAC 22N .0203	Necessary with substantive public interest	August 22, 2015
10A NCAC 22N .0302	Necessary with substantive public interest	August 22, 2015
10A NCAC 22N .0303	Necessary with substantive public interest	August 22, 2015
10A NCAC 22O .0112	Necessary with substantive public interest	August 22, 2015

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Carlotta Dixon, Rulemaking Coordinator
Department of Health and Human Services
Social Services Commission
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 97**

Dear Ms. Dixon:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than June 30, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration	Rules Division	Judges and Assistants	Clerk's Office	Rules Review Commission	Civil Rights Division
919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3036
fax:919/431-3100	fax: 919/431-3104	fax: 919/431-3100	fax: 919/431-3100	fax: 919/431-3104	fax: 919/431-3103

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RRC DETERMINATION
PERIODIC RULE REVIEW
July 01, 2014 through June 30, 2015

Social Services Commission
Total: 8

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
10A NCAC 97B .0401	Necessary with substantive public interest	April 25, 2015
10A NCAC 97B .0402	Necessary with substantive public interest	April 25, 2015
10A NCAC 97B .0403	Necessary with substantive public interest	April 25, 2015
10A NCAC 97C .0104	Necessary with substantive public interest	April 25, 2015
10A NCAC 97C .0106	Necessary with substantive public interest	April 25, 2015
10A NCAC 97C .0108	Necessary with substantive public interest	April 25, 2015
10A NCAC 97C .0109	Necessary with substantive public interest	April 25, 2015
10A NCAC 97C .0111	Necessary with substantive public interest	April 25, 2015

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Joshua Davis, Rulemaking Coordinator
Department of Cultural and Natural Resources
4605 Mail Service Center
Raleigh, North Carolina 27699-4605

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 12H**

Dear Mr. Davis:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2016.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

cc: Shawn Middlebrooks

Administration	Rules Division	Judges and Assistants	Clerk's Office	Rules Review Commission	Civil Rights Division
919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3036
fax:919/431-3100	fax: 919/431-3104	fax: 919/431-3100	fax: 919/431-3100	fax: 919/431-3104	fax: 919/431-3103

RRC DETERMINATION
PERIODIC RULE REVIEW
November 19, 2015
APO Review: January 05, 2016

Natural and Cultural Resources, Department of
Total: 22

RRC Determination: Necessary with substantive public interest

Rule	Determination
15A NCAC 12H .0103	Necessary with substantive public interest
15A NCAC 12H .0104	Necessary with substantive public interest
15A NCAC 12H .0105	Necessary with substantive public interest
15A NCAC 12H .0201	Necessary with substantive public interest
15A NCAC 12H .0202	Necessary with substantive public interest
15A NCAC 12H .0203	Necessary with substantive public interest
15A NCAC 12H .0204	Necessary with substantive public interest
15A NCAC 12H .0205	Necessary with substantive public interest
15A NCAC 12H .0206	Necessary with substantive public interest
15A NCAC 12H .0207	Necessary with substantive public interest
15A NCAC 12H .0208	Necessary with substantive public interest
15A NCAC 12H .0301	Necessary with substantive public interest
15A NCAC 12H .0302	Necessary with substantive public interest
15A NCAC 12H .0303	Necessary with substantive public interest
15A NCAC 12H .0304	Necessary with substantive public interest
15A NCAC 12H .0305	Necessary with substantive public interest
15A NCAC 12H .0306	Necessary with substantive public interest
15A NCAC 12H .0307	Necessary with substantive public interest
15A NCAC 12H .0308	Necessary with substantive public interest
15A NCAC 12H .0401	Necessary with substantive public interest
15A NCAC 12H .0402	Necessary with substantive public interest
15A NCAC 12H .0403	Necessary with substantive public interest

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Commission for Public Health
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 18C**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than July 31, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration	Rules Division	Judges and Assistants	Clerk's Office	Rules Review Commission	Civil Rights Division
919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3036
fax:919/431-3100	fax: 919/431-3104	fax: 919/431-3100	fax: 919/431-3100	fax: 919/431-3104	fax: 919/431-3103

An Equal Employment Opportunity Employer

RRC DETERMINATION
PERIODIC RULE REVIEW
September 17, 2015
APO Review: November 23, 2015

Public Health, Commission for
Total: 33

RRC Determination: Necessary with substantive public interest

Rule	Determination
15A NCAC 18C .0102	Necessary with substantive public interest
15A NCAC 18C .0202	Necessary with substantive public interest
15A NCAC 18C .0203	Necessary with substantive public interest
15A NCAC 18C .0305	Necessary with substantive public interest
15A NCAC 18C .0307	Necessary with substantive public interest
15A NCAC 18C .0402	Necessary with substantive public interest
15A NCAC 18C .0403	Necessary with substantive public interest
15A NCAC 18C .0404	Necessary with substantive public interest
15A NCAC 18C .0405	Necessary with substantive public interest
15A NCAC 18C .0406	Necessary with substantive public interest
15A NCAC 18C .0408	Necessary with substantive public interest
15A NCAC 18C .0409	Necessary with substantive public interest
15A NCAC 18C .0601	Necessary with substantive public interest
15A NCAC 18C .0706	Necessary with substantive public interest
15A NCAC 18C .0707	Necessary with substantive public interest
15A NCAC 18C .0708	Necessary with substantive public interest
15A NCAC 18C .0711	Necessary with substantive public interest
15A NCAC 18C .0713	Necessary with substantive public interest
15A NCAC 18C .0714	Necessary with substantive public interest
15A NCAC 18C .0803	Necessary with substantive public interest
15A NCAC 18C .0906	Necessary with substantive public interest
15A NCAC 18C .1002	Necessary with substantive public interest
15A NCAC 18C .1003	Necessary with substantive public interest
15A NCAC 18C .1004	Necessary with substantive public interest
15A NCAC 18C .1406	Necessary with substantive public interest
15A NCAC 18C .1507	Necessary with substantive public interest
15A NCAC 18C .1515	Necessary with substantive public interest
15A NCAC 18C .1516	Necessary with substantive public interest
15A NCAC 18C .1523	Necessary with substantive public interest
15A NCAC 18C .1524	Necessary with substantive public interest
15A NCAC 18C .1527	Necessary with substantive public interest
15A NCAC 18C .1528	Necessary with substantive public interest
15A NCAC 18C .1529	Necessary with substantive public interest

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Barden Culbreth, Rulemaking Coordinator
Locksmith Licensing Board
Randolph E. Cloud & Assoc
Post Office Box 10972
Raleigh, North Carolina 27605

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 29**

Dear Mr. Culbreth:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 28, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax:919/431-3100
Rules Division 919/431-3000 fax: 919/431-3104
Judges and Assistants 919/431-3000 fax: 919/431-3100
Clerk's Office 919/431-3000 fax: 919/431-3100
Rules Review Commission 919/431-3000 fax: 919/431-3104
Civil Rights Division 919/431-3036 fax: 919/431-3103

RRC DETERMINATION
PERIODIC RULE REVIEW
January 21, 2016
APO Review: February 02, 2016

Locksmith Licensing Board
Total: 18

RRC Determination: Necessary with substantive public interest

Rule	Determination
21 NCAC 29 .0102	Necessary with substantive public interest
21 NCAC 29 .0204	Necessary with substantive public interest
21 NCAC 29 .0205	Necessary with substantive public interest
21 NCAC 29 .0206	Necessary with substantive public interest
21 NCAC 29 .0401	Necessary with substantive public interest
21 NCAC 29 .0402	Necessary with substantive public interest
21 NCAC 29 .0404	Necessary with substantive public interest
21 NCAC 29 .0502	Necessary with substantive public interest
21 NCAC 29 .0503	Necessary with substantive public interest
21 NCAC 29 .0504	Necessary with substantive public interest
21 NCAC 29 .0601	Necessary with substantive public interest
21 NCAC 29 .0702	Necessary with substantive public interest
21 NCAC 29 .0703	Necessary with substantive public interest
21 NCAC 29 .0802	Necessary with substantive public interest
21 NCAC 29 .0803	Necessary with substantive public interest
21 NCAC 29 .0804	Necessary with substantive public interest
21 NCAC 29 .0805	Necessary with substantive public interest
21 NCAC 29 .0806	Necessary with substantive public interest

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 17, 2016

Margaret Duke, Rulemaking Coordinator
State Human Resources Commission
Office of State Human Resources
1331 Mail Service Center
Raleigh, North Carolina 27699-1331

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **25 NCAC 01D**

Dear Ms. Duke:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the March 17, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 28, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond

Abigail M. Hammond
Commission Counsel

Administration	Rules Division	Judges and Assistants	Clerk's Office	Rules Review Commission	Civil Rights Division
919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3000	919/431-3036
fax:919/431-3100	fax: 919/431-3104	fax: 919/431-3100	fax: 919/431-3100	fax: 919/431-3104	fax: 919/431-3103

An Equal Employment Opportunity Employer

RRC DETERMINATION
PERIODIC RULE REVIEW
October 15, 2015
APO Review: December 20, 2015

State Human Resources Commission
Total: 2

RRC Determination: Necessary with substantive public interest

Rule	Determination
25 NCAC 01D .0201	Necessary with substantive public interest
25 NCAC 01D .2701	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES
March 17, 2016 Meeting

HHS - HEALTH SERVICE REGULATION, DIVISION OF	
Definitions	10A NCAC 14A .0201
Request for Determination	10A NCAC 14A .0202
Record	10A NCAC 14A .0203
Exceptions to Recommended Decision	10A NCAC 14A .0204
ENVIRONMENTAL MANAGEMENT COMMISSION	
Corrective Action	15A NCAC 02L .0106
COASTAL RESOURCES COMMISSION	
General Identification and Description of Landforms	15A NCAC 07H .0305
General Use Standards for Ocean Hazard Areas	15A NCAC 07H .0306
Requesting the Static Line Exception	15A NCAC 07J .1201
Requesting the Development Line	15A NCAC 07J .1301
Procedures for Approving the Development Line	15A NCAC 07J .1302
Local Governments and Communities with Development Lines	15A NCAC 07J .1303
WILDLIFE RESOURCES COMMISSION	
Wildlife Taken for Depredations	15A NCAC 10B .0106
Black Bear	15A NCAC 10B .0107
Sale of Wildlife	15A NCAC 10B .0118
Prohibited Taking and Manner of Take	15A NCAC 10B .0201
Bear	15A NCAC 10B .0202
Deer (White Tailed)	15A NCAC 10B .0203
Elk	15A NCAC 10B .0225
Public Mountain Trout Waters	15A NCAC 10C .0205
Black Bass	15A NCAC 10C .0305
Crappie	15A NCAC 10C .0306
Striped Bass	15A NCAC 10C .0314
White Perch	15A NCAC 10C .0319
Manner of Taking Nongame Fishes: Purchase and Sale	15A NCAC 10C .0401
Taking Nongame Fishes for Bait or Personal Consumption	15A NCAC 10C .0402
General Regulations Regarding Use	15A NCAC 10D .0102
Hunting On Game Lands	15A NCAC 10D .0103
Carteret County	15A NCAC 10F .0330
Jackson County	15A NCAC 10F .0377
Endangered Species Listed	15A NCAC 10I .0103
Threatened Species Listed	15A NCAC 10I .0104
Special Concern Species	15A NCAC 10I .0105
REVENUE, DEPARTMENT OF	
Taxability and Gross Receipts	17 NCAC 07B .1201

Prescription Drugs	17	NCAC 07B	.1401
Fraternity and Sorority Meals	17	NCAC 07B	.2208
Cover Charge	17	NCAC 07B	.2211
Contractors, Subcontractors, and Retailer-Contractors	17	NCAC 07B	.2602
Plumbing: Heating Contractors: Purchases	17	NCAC 07B	.2608
Leases for Out of State Use	17	NCAC 07B	.4407

DENTAL EXAMINERS, BOARD OF

Conscious Sedation	21	NCAC 16O	.0301
Nitrous Oxide Monitoring	21	NCAC 16O	.0302
Non-Delegable Functions	21	NCAC 16O	.0401
Educational Requirements	21	NCAC 16O	.0402
General Anesthesia and Sedation Definitions	21	NCAC 16Q	.0101
General Anesthesia Equipment and Clinical Requirements	21	NCAC 16Q	.0202
Temporary Approval Prior to Site Evaluation	21	NCAC 16Q	.0203
Procedure for General Anesthesia Evaluation or Inspection...	21	NCAC 16Q	.0204
Results of Site Evaluation and Reevaluation	21	NCAC 16Q	.0205
Itinerant (Mobile) General Anesthesia Permit, Equipment a...	21	NCAC 16Q	.0206
Annual Review of General Anesthesia and Itinerant (Mobile...	21	NCAC 16Q	.0207
Credentials and Permits for Moderate Conscious Sedation	21	NCAC 16Q	.0301
Moderate Conscious Sedation Clinical Requirements and Equ...	21	NCAC 16Q	.0302
Temporary Approval Prior to Site Inspection	21	NCAC 16Q	.0303
Off Site Use of Moderate Conscious Sedation Permits	21	NCAC 16Q	.0304
Annual Renewal of Moderate Conscious Sedation Permit Requ...	21	NCAC 16Q	.0305
Procedure for Moderate Conscious Sedation Evaluation or I...	21	NCAC 16Q	.0306
Minimal Conscious Sedation Credentials, Evaluation and Pe...	21	NCAC 16Q	.0401
Minimal Conscious Sedation Permit Requirements, Clinical ...	21	NCAC 16Q	.0402
Temporary Approval Prior to Site Inspection	21	NCAC 16Q	.0403
Credentials and Permits for Moderate Pediatric Conscious ...	21	NCAC 16Q	.0404
Moderate Pediatric Conscious Sedation Clinical Requiremen...	21	NCAC 16Q	.0405
Off Site Use of Moderate Pediatric Conscious Sedation Per...	21	NCAC 16Q	.0406
Annual Renewal of Moderate Pediatric Conscious Sedation P...	21	NCAC 16Q	.0407
Procedure for Moderate Pediatric Conscious Sedation Evalu...	21	NCAC 16Q	.0408
Annual Renewal Required	21	NCAC 16Q	.0501
Payment of Fees	21	NCAC 16Q	.0502
Inspection Authorized	21	NCAC 16Q	.0503
Reports of Adverse Occurrences	21	NCAC 16Q	.0601
Failure to Report	21	NCAC 16Q	.0602
Reports of Adverse Occurrences	21	NCAC 16Q	.0703
Direction Defined	21	NCAC 16W	.0101

MEDICAL BOARD

Reporting Criteria	21	NCAC 32M	.0117

NURSING, BOARD OF

Reporting Criteria	21	NCAC 36	.0815

STATE HUMAN RESOURCES COMMISSION

Public Inspection	25	NCAC 01C	.0303
Confidential Information in Personnel Files	25	NCAC 01C	.0304
Temporary Appointment	25	NCAC 01C	.0405
Temporary Part-time Appointment	25	NCAC 01C	.0407
Limitations	25	NCAC 01C	.0504
Agency Responsibility	25	NCAC 01C	.0902
Eligibility Requirements	25	NCAC 01C	.0903
Unavailability When Leave is Exhausted	25	NCAC 01C	.1007
Policy	25	NCAC 01O	.0101
Purpose	25	NCAC 01O	.0102
Components of a Performance Management System	25	NCAC 01O	.0103
Rating Scale	25	NCAC 01O	.0104
Dispute Resolution	25	NCAC 01O	.0105
Monitoring, Evaluating, Reporting	25	NCAC 01O	.0106
Performance Management Policy	25	NCAC 01O	.0107
Performance Management Covered Employees	25	NCAC 01O	.0108
Performance Management Definitions	25	NCAC 01O	.0109
Performance Cycle	25	NCAC 01O	.0110
Documentation of Performance	25	NCAC 01O	.0111
Performance Management Resources and Training	25	NCAC 01O	.0112
Confidentiality and Records Retention	25	NCAC 01O	.0113
Performance Management Compliance	25	NCAC 01O	.0114
Performance Management Dispute	25	NCAC 01O	.0115
Frequency of Performance Reviews	25	NCAC 01O	.0207
Performance Planning	25	NCAC 01O	.0208
Performance Feedback	25	NCAC 01O	.0209
Addressing Poor Performance	25	NCAC 01O	.0210
Annual Performance Evaluation	25	NCAC 01O	.0211

RRC DETERMINATION
PERIODIC RULE REVIEW
March 17, 2016
Necessary with Substantive Public Interest

Social Services Commission	10A NCAC 70I .0201	10A NCAC 70K .0101
10A NCAC 70I .0101	10A NCAC 70I .0405	10A NCAC 70K .0201

RRC DETERMINATION
PERIODIC RULE REVIEW
March 17, 2016
Necessary Without Substantive Public Interest

Social Services Commission	10A NCAC 70I .0204	10A NCAC 70I .0305
10A NCAC 70I .0102	10A NCAC 70I .0301	10A NCAC 70I .0306
10A NCAC 70I .0202	10A NCAC 70I .0302	10A NCAC 70I .0307
10A NCAC 70I .0203	10A NCAC 70I .0303	10A NCAC 70I .0401

10A NCAC 70I .0402
10A NCAC 70I .0403
10A NCAC 70I .0404
10A NCAC 70I .0406
10A NCAC 70I .0407
10A NCAC 70I .0501
10A NCAC 70I .0502
10A NCAC 70I .0503
10A NCAC 70I .0504
10A NCAC 70I .0505
10A NCAC 70I .0506
10A NCAC 70I .0601
10A NCAC 70I .0602
10A NCAC 70I .0604
10A NCAC 70I .0605
10A NCAC 70I .0606
10A NCAC 70I .0607
10A NCAC 70I .0608
10A NCAC 70I .0609
10A NCAC 70I .0610
10A NCAC 70I .0611
10A NCAC 70I .0612
10A NCAC 70I .0613
10A NCAC 70I .0614
10A NCAC 70I .0615
10A NCAC 70I .0901
10A NCAC 70I .0902
10A NCAC 70I .0903
10A NCAC 70I .0904
10A NCAC 70I .0905
10A NCAC 70I .0906
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10A NCAC 70I .0910
10A NCAC 70I .0911
10A NCAC 70I .0912
10A NCAC 70I .0913
10A NCAC 70I .0914
10A NCAC 70I .0915
10A NCAC 70I .0916
10A NCAC 70I .0917
10A NCAC 70I .0918
10A NCAC 70K .0102
10A NCAC 70K .0103
10A NCAC 70K .0202
10A NCAC 70K .0203
10A NCAC 70K .0204
10A NCAC 70K .0206
10A NCAC 70K .0207
10A NCAC 70K .0208
10A NCAC 70K .0209
10A NCAC 70K .0210
10A NCAC 70K .0301
10A NCAC 70K .0302
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10A NCAC 70K .0309
10A NCAC 70K .0310
10A NCAC 70K .0311
10A NCAC 70K .0312
10A NCAC 70K .0313
10A NCAC 70K .0314
10A NCAC 70K .0315
10A NCAC 70K .0316
10A NCAC 70K .0317
10A NCAC 70K .0318

State Treasurer, Department of
20 NCAC 01A .0101
20 NCAC 01A .0102
20 NCAC 01C .0402
20 NCAC 01C .0404
20 NCAC 01F .0101
20 NCAC 01F .0102
20 NCAC 01F .0201
20 NCAC 01F .0203
20 NCAC 01F .0204
20 NCAC 01F .0207
20 NCAC 07 .0101
20 NCAC 07 .0102
20 NCAC 07 .0103
20 NCAC 07 .0104
20 NCAC 07 .0105
20 NCAC 07 .0106
20 NCAC 07 .0107
20 NCAC 07 .0201
20 NCAC 07 .0202
20 NCAC 07 .0203
20 NCAC 07 .0301
20 NCAC 07 .0302
20 NCAC 07 .0303
20 NCAC 07 .0304
20 NCAC 07 .0305
20 NCAC 07 .0401
20 NCAC 07 .0402
20 NCAC 07 .0403
20 NCAC 07 .0404
20 NCAC 07 .0501
20 NCAC 07 .0502
20 NCAC 07 .0503
20 NCAC 07 .0504
20 NCAC 07 .0505
20 NCAC 07 .0601
20 NCAC 07 .0602
20 NCAC 07 .0603

RRC DETERMINATION
PERIODIC RULE REVIEW
March 17, 2016
Unnecessary

Environment and Natural Resources, Department of
15A NCAC 01L .0101
15A NCAC 01L .0102
15A NCAC 01L .0201
15A NCAC 01L .0202
15A NCAC 01L .0301
15A NCAC 01L .0302
15A NCAC 01L .0303
15A NCAC 01L .0401
15A NCAC 01L .0501
15A NCAC 01L .0502
15A NCAC 01L .0503
15A NCAC 01L .0504
15A NCAC 01L .0601
15A NCAC 01L .0602
15A NCAC 01L .0603
15A NCAC 01L .0604
15A NCAC 01L .0605
15A NCAC 01L .0701
15A NCAC 01L .0702
15A NCAC 01L .0703
15A NCAC 01L .0801
15A NCAC 01L .0901
15A NCAC 01L .0902
15A NCAC 01L .1001
15A NCAC 01L .1002
15A NCAC 01L .1003
15A NCAC 01L .1004
15A NCAC 01L .1101
15A NCAC 01L .1201
15A NCAC 01L .1202
15A NCAC 01N .0101
15A NCAC 01N .0102
15A NCAC 01N .0103
15A NCAC 01N .0201
15A NCAC 01N .0202
15A NCAC 01N .0203
15A NCAC 01N .0301
15A NCAC 01N .0302
15A NCAC 01N .0303
15A NCAC 01N .0401
15A NCAC 01N .0402
15A NCAC 01N .0501
15A NCAC 01N .0502

15A NCAC 01N .0503
15A NCAC 01N .0701
15A NCAC 01N .0702
15A NCAC 01N .0703
15A NCAC 01N .0704
15A NCAC 01N .0705
15A NCAC 01N .0801
15A NCAC 01N .0802
15A NCAC 01N .0901
15A NCAC 01N .0902

State Treasurer, Department of
20 NCAC 01E .0101
20 NCAC 01E .0102
20 NCAC 01E .0104
20 NCAC 01F .0103
20 NCAC 01F .0104
20 NCAC 01F .0105
20 NCAC 01F .0106
20 NCAC 01F .0107
20 NCAC 01F .0108
20 NCAC 01F .0109
20 NCAC 01F .0110
20 NCAC 01F .0202
20 NCAC 01F .0205
20 NCAC 01F .0206
20 NCAC 01F .0301

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at http://www.ncoah.com/hearings.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton

AGENCY	CASE NUMBER	DATE	PUBLISHED DECISION REGISTER CITATION
ALCOHOLIC BEVERAGE CONTROL COMMISSION			
Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
The Geube Group, Michael K Grant Sr. v. Alcoholic Beverage Control Commission	14 ABC 08696	02/16/15	
Alcoholic Beverage Control Commission v. Bhavesh Corp T/A K and B Foodmart	14 ABC 09023	02/04/15	
Alcoholic Beverage Control Commission v. Greenleafe Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5th Ave Speedmart	15 ABC 00355	04/22/15	
Alcoholic Beverage Control Commission v. Monterrey Mexican Restaurant Inc T/A Monterrey Mexican Restaurant	15 ABC00393	04/07/15	
NC Alcoholic Beverage Control Commission v. Greenbox, LLC, T/A Big Shots Sports Bar and Grill	15 ABC 04354	10/29/15	
Alcoholic Beverage Control Commission v. Woodlawn Restaurant and Lounge, LLC T/A O'Hara's Restaurant and Lounge	15 ABC 04355	09/03/15	
Alcoholic Beverage Control Commission v. Ortez Corp. Inc, T/A Pollo Royal Restaurant	15 ABC 04362	09/03/15	
NC Alcoholic Beverage Control Commission v. Rodeo Restaurant Group Corp, T/A Brasilla Churrasco Steakhouse	15 ABC 05010	10/06/15	
NC Alcoholic Beverage Control Commission v. Double K Sports Bar Inc, T/A Double K Sports Bar	15 ABC 05753	12/07/15	
NC Alcoholic Beverage Control Commission v. S and J Tobacco and Food Mart T/A S and J Tobacco and Food Mart	15 ABC 06629	12/14/15	
NC Alcoholic Beverage Control Commission v. 2Ak Enterprises LLC, T/A Tilt on Trade	15 ABC 06634	12/02/15	
NC Alcoholic Beverage Control Commission v. CCS Charlotte Enterprise LLC, T/A Caldwell Corner Store	15 ABC 06636	12/02/15	
NC Alcoholic Beverage Control Commission v. Fast Track Inc T/A Country Market And Deli	15 ABC 06643	02/22/16	
NC Alcoholic Beverage Control Commission v. Pablo Juarez Aguilar T/A La Cueva	15 ABC 07135	02/22/16	

NC Alcoholic Beverage Control Commission v. Santiago Torres Fuentes TA Sabor Latino Restaurante	15 ABC 07251	02/17/16	
NC Alcoholic Beverage Control Commission v. Jeannine W. Santiago T/A Baileys Tavern	15 ABC 08595	02/10/16	
BOARD OF ARCHITECTURE			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77
BOARD OF BARBER EXAMINERS			
Arthur Donald Darby Jr v. Board of Barber Examiners - Staff	14 BBE 04565	12/05/14	
BOARD OF FUNERAL SERVICES			
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 05389	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 07597	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 08028	02/23/15	
BOARD OF SOCIAL WORK			
NC Social Work Certification and Licensure Board v. Stephanie Helbeck Cornfield	15 BSW 04491	10/09/15	30:14 NCR 1573
BOARD FOR THE LICENSING OF GEOLOGISTS			
Robert Payne, P.G. v. NC Board for the Licensing of Geologists	14 BOG 03255	06/11/15	30:07 NCR 780
DEPARTMENT OF COMMERCE			
Hog Slat, Inc v. Department of Commerce	13 COM 20122	12/05/14	
BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS			
Belinda Johnson v. Board of Certified Public Accountant Examiners	15 CPA 00798	03/09/15	
NC State Board of Certified Public Accountant Examiners v. Linda R. Sharp	15 CPA 04488	01/29/16	30:19 NCR 2112
DEPARTMENT OF PUBLIC SAFETY			
Kimberly H. Oliver v. Victims Compensation Commission	13 CPS 14371	04/17/15	30:03 NCR 354
Jose Guadalupe Munoz Nunez v. Victims Compensation Commission	14 CPS 02633	02/16/15	
Anne Marie Brandt v. NC Department of Public Safety	14 CPS 05077	08/18/15	30:08 NCR 924
Jack Norris v. Victims Compensation Commission	14 CPS 06019	03/30/15	30:01 NCR 89
Yessika Murga Martinez v. Crime Victims Compensation Commission	14 CPS 07544	05/29/15	
Joanne Sanon v. Department of Public Safety	14 CPS 07995	01/16/15	
Edward Andrew Carder v. NC Division of Victim Compensation Services	14 CPS 08579	08/25/15	30:14 NCR 1561
Bonnie Hall v. Crime Victims Compensation Commission	14 CPS 08618	01/23/15	
Antwon B. Logan v. Victims Compensation Commission	15 CPS 00093	03/11/15	
Dalton James v. Victims Compensation Commission	15 CPS 00463	04/24/15	
Dwight Earl Evans Jr. v. Victims Compensation Commission	15 CPS 03563	08/20/15	
Shawn J. McKay v. NC Department of Public Safety	15 CPS 04164	10/28/15	
Timothy Ryan Revels v. Department of Public Safety, Office of Victim Services	15 CPS 05756	09/22/15	
Sallie Ruth Newton v. NC Crime Victims Rights Act, NC Dept of Public Safety-Office of Admin Hearings	15 CPS 06419	02/11/16	
Kish D. Anderson v. NC Victims Compensation Commission	15 CPS 06451	12/16/15	
Latasha Watkins v. Victim Compensation	15 CPS 06893	11/30/15	
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES			
Michelle Starnes v. Patricia Norris, DVM, Director of Animal Welfare Division, North Carolina Department of Agriculture and Consumer Services	15 DAG 03112	06/25/15	
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
Lakehouse Pub v. NC Department of Health and Human Services	10 DHR 06208	01/19/16	
Strategic Interventions Inc. v. Western Highlands Network A LME-MCO	13 DHR 05119	06/21/13	
Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	05/04/15	30:03 NCR 360
Joyce Carol Hunter v. DHHS, Division of Health Service Regulation	13 DHR 17855	01/03/14	
Rex Hospital v. DHHS, Division of Medical Assistance	13 DHR 18151	05/29/15	30:03 NCR 372
Paul M Stella v. DHHS, Division of Public Health	13 DHR 19269	02/06/14	
UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance	13 DHR 19653	05/29/15	30:03 NCR 387
UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance	13 DHR 19654	05/29/15	30:03 NCR 387
A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation	13 DHR 19835	05/22/15	
Stepping Stone Counseling v. NCDHHS, Division of Medical Assistance	13 DHR 19837	05/12/15	

Carolina Community Support Services, Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01500	04/02/15	30:04 NCR 480
Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01503	04/02/15	30:01 NCR 97
Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01594	04/02/15	30:01 NCR 133
Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare	14 DHR 02198	06/17/15	30:07 NCR 794
Pamela and Andrew Frederick v. DHHS	14 DHR 04017	08/28/15	
Regina Joyner v. Division of Child Development and Early Education, DHHS	14 DHR 04463	12/10/14	
Cumberland County Hospital System, Inc d/b/a Cape Fear Valley Health System and Hoke Healthcare LLC v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section	14 DHR 04692	01/21/15	
Mariusz Leonard Poppe v. NCDHHS, Division of Medical Assistance	14 DHR 05078	02/15/16	30:20 NCR 2181
Bio-Medical Applications of NC, Inc d/b/a BMA Rocky Mount v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care Inc d/b/a Nash County Dialysis	14 DHR 05495	03/26/15	30:02 NCR 196
Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 05566	03/10/15	30:02 NCR 229
First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation	14 DHR 06332	02/12/15	
Carrie's Loving Hands, Felicia McGee v. NCDHHS, Division of Health Service Regulation, Certification	14 DHR 06565	02/13/15	
Erica Chante Johnson v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 06571	03/10/15	30:02 NCR 236
A United Community LLC v. Alliance Behavioral Healthcare as legally authorized contractor of and agent for NC Department of Health and Human Services	14 DHR 06837	07/20/15	30:08 NCR 930
Brenda Buck v. NCDHHS, Division of Health Service Regulation	14 DHR 07027	01/02/15	
Humble Beginnings Child Care Inc v. Division of Child Development and Early Education	14 DHR 07029	05/22/15	
Peace Of Mind Adult Group Home Kimberly Goolsby v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07325	05/22/15	
Peace of Mind Adult Group Home and Kimberly Goolsby v. DHHS, Division of Health Service Regulation	14 DHR 07626	08/31/15	
Peace of Mind Adult Group Home Kimberly Goolsby, v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07327	05/22/15	
Dennis Reid v. NCDHHS	14 DHR 07992	04/17/15	
Hanna Lawrence v. DHHS	14 DHR 08026	01/09/15	
CMS Agency Inc. v. NC DHHS and Eastpointe human Services LME/PHP	14 DHR 08147	10/30/15	30:12 NCR 1351
Sharda R Wilkes v. NCDHHS, Division of Health Service Regulation	14 DHR 08575	01/21/15	
Sandy's Playschool LLC, Michelle Bailey-Motley v. DHHS, Division of Child Development	14 DHR 08580	02/16/15	
Alicia Staton v. Department of Health and Human Services	14 DHR 08589	02/02/15	
Tiffany Leary v. NCDHHS, Division of Health Services, Health Care Personnel Registry	14 DHR 08785	01/06/15	
Patrician Shearin v. NCDHHS	14 DHR 09012	06/29/15	
Mr. Imad Sider, EMSS Inc d/b/a New Bern Minimart v. NC Department of Health and Human Services, Division of Public Health	14 DHR 09906	07/28/15	30:08 NCR 950
Tomika Jones Moore v. NCDHHS, Division of Health Service Regulation	14 DHR 10137	04/06/15	
Jones Country Mart, Inesar M Ahmad v. NCDHHS, WIC	14 DHR 10138	02/03/15	
Theresa L Greene v. DHHS, Division of Health Service Regulation	14 DHR 10160	02/10/15	
Jeanette Peele v. Health Care Personnel Registry, Nurse Aide I	14 DHR 10162	05/18/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10167	04/27/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10171	04/27/15	
Shawn Williams v. Rutherford-Polk-McDowell District Health Department, Environmental Health Division	14 DHR 10277	08/21/15	
Sarah M Carr, Agape v. Division of Child Development and Early Learning in DHHS	14 DHR 10278	08/28/15	
Sophia B Pierce and Associates d/b/a Sunny Acres Group Home v. DHHS, Division of Facility Services, Mental Health Licensure and Certification Section	14 DHR 10281	04/02/15	
Freida M. Butler v. DHHS, Division of Health Service Regulation	15 DHR 00009	05/12/15	
Kandice T. Stigger v. DHHS, Division of Health Service Regulation	15 DHR 00271	05/15/15	
Mildred R. Walker v. DHHS, Division of Health Service Regulation	15 DHR 00390	05/21/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	15 DHR 00462	04/27/15	
Phyllis Bryant Duren v. NCDHHS	15 DHR 00578	04/01/15	
New Life Child Care Ctr, Ruby McKinzie v. DHHS, Division of Public Health	15 DHR 00667	03/20/15	
Brown Therapeutic Home Inc. v. DHHS, Division of Health Service Regulation	15 DHR 00707	03/25/15	

Christina Renee Jones v. DHHS, Division of Health Service Regulation	15 DHR 00845	04/30/15	
Samerian Lynn Davis v. Victorian Senior Care, DHHS, DHSR, Health Care Personnel Registry	15 DHR 00991	05/27/15	
Jean's Rest Home Inc., Lula J. McDonald v. DHHS, Division of Health Service Regulation, ACLS Jan Brickley	15 DHR 01123	06/26/15	
Crystal Watson Sanjak v. DHHS, Health Care Personnel Registry	15 DHR 01152	04/29/15	
H. Urquiza Corp., La Esmeralda 2, Hermilo Urquiza v. DHHS, Division of Public Health, WIC	15 DHR 01193	05/22/15	
Donna Lewis v. DHHS, Division of Health Service Regulation	15 DHR 01205	08/07/15	
Tiny Hands of Hope Daye, Felecia Fuller v. DHHS, Division of Child Development and Early Education	15 DHR 01354	05/29/15	
Bridgette Squires v. DHHS, Health Service Regulation	15 DHR 01471	04/08/15	
Strategic Interventions, Inc. v. Smoky Mountain Center Area Authority LME/MCO	15 DHR 01519	08/26/15	30:13 NCR 1435
Gentlehands of North Carolina Inc. John O. Okonji v. DHHS	15 DHR 01546	07/01/15	
Annie Beatrice Christian v. DHHS, Division of Health Service Regulation	15 DHR 01566	06/17/15	
Barbara Combs v. Julian F. Keith ADATC, Division of Mental Health Developmental	15 DHR 01570	05/12/15	
Sharon Renee Quick v. DHHS	15 DHR 01830	06/22/15	
Melissa Ann Peaden v. DHHS, Division of Health Service Regulation	15 DHR 01832	06/03/15	
Ray D. McGee v. DHHS	15 DHR 01906	05/22/15	
Kenneth Grimes v. NC Asbestos Hazard Management Program	15 DHR 01975	07/01/15	
Henry and Barbara Brown and Quality Professional Multiservices LLC v. DHHS, Division of Health Service Regulation	15 DHR 02306	07/01/15	
Daniel Tafesse v. DHHS, Division of Health Service Regulation	15 DHR 02582	06/25/15	
Dr. Najla Ahmed, Pediatric Associates of Cleveland County v. DHHS, Division of Medical Assistance	15 DHR 02635	06/09/15	
Michael Darnelle South v. DHHS	15 DHR 02770	06/19/15	
Gemika Steele, First Steps Child Development v. Division of Child Development and Early Education of Health and Human Services	15 DHR 02905	07/09/15	
Sandra Kay Laney Stewart v. Medicaid Estate Recovery, Glana M Surles	15 DHR 03057	07/23/15	
Special K Enrichment and Melanie James v. Partners Behavioral Health Management	15 DHR 03194	08/19/15	
Fredricklyn E. Johnson v. Division of Child Development and Early Education	15 DHR 03217	07/17/15	
Stop-N-Drop Academic Charlotte McLean v. NCDCDEE	15 DHR 03243	07/17/15	
Cynthia Jones v. Onslow County Department of Social Services, Elaine Lacy, Danielle Kurman	15 DHR 03345	07/31/15	
Christian Prep Academy Inc., Pamela Powell v. DHHS, Division of Public Health, Child and Adult Care Food Program	15 DHR 03347	06/19/15	
Hernando Felix Sanchez Claudia Perales, LA Superior Supermarket v. Department of Health and Human Services Division	15 DHR 03374	07/16/15	
Seon M. Oh, Express international Trading Inc. d/b/a Southside Fish and Grocery V. Nutrition Services, WIC Program, DHHS	15 DHR 03419	07/16/15	
Roshanda McClure v. DHHS, Division of Health Service Regulation	15 DHR 03477	07/17/15	
Tangy Nance v. DHHS	15 DHR 03479	07/01/15	
Emmanuel Baptist Ministries Inc., Debbie Hildreth and Sandy Tarlton v. DHHS, Division of Public Health, CACFP-Program	15 DHR 03562	07/01/15	
Pamela McNeil v. NC Center for Aide Regulation and Education	15 DHR 03570	07/20/15	
Desteni Akira Lucas v. DHHS, Division of Health Service Regulation	15 DHR 03605	07/30/15	
Zakkee Hill Sr. v. DHHS	15 DHR 03739	06/25/15	
Donil Marchil Warren v. DHHS, Division of Health Service Regulation	15 DHR 04251	09/16/15	
Jehnston Health Pamella L. Pflaum v. DHHS-Hearing Office	15 DHR 04253	08/13/15	
Elite Home Health Care Inc. c/o Tara Ellerbe v. NC DHHS	15 DHR 04328	10/30/15	
Patrice M. Harris-Powell NC Healthcare Personnel, NC Nurse Aide Registry	15 DHR 04353	08/18/15	
Marleen Monique Ore v. DHHS, Division of Child Development and Early Education	15 DHR 04421	08/31/15	
Marleen Monique Ore v. Beaufort County Department of Social Services	15 DHR 04423	08/10/15	
Hasson Omar Dawkins v. DHHS, Health Service Regulation	15 DHR 04459	09/28/15	
Jennifer R. Lewis, Executive Director of Youth Focus Inc. MHL #041-631 v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	15 DHR 04515	09/22/15	
Onass Place Inc, Onas Perry v. Smoky Mountain LME/MCO and NC DHHS, Division of Medical Assistance	15 DHR 04658	10/07/15	
Onass Place Inc, Onas Perry v. Smoky Mountain LME/MCO and NC DHHS, Division of Medical Assistance	15 DHR 04659	10/07/15	
Margaret Jumper v. Medicaid State Recovery	15 DHR 04780	09/01/15	
L.I.M.S. MHL #013-176, Sharon Edwards-Berryman v. DHHS, Mental Health Licensure and Certification Section	15 DHR 04842	09/09/15	
Kristin N. Kaul, MS LPS (Partner at Albemarle Counseling Group, PLLC)	15 DHR 04881	09/15/15	
Gemini Johnson v. East Carolina Behavioral Health (N.K.A Trillium Health Resources)	15 DHR 04882	09/15/15	

James E. Kronlage v. East Carolina Behavioral Health (N.K.A. Trillium Health Resources)	15 DHR 04883	09/15/15	
Dorothy H. Rosenke v. East Carolina Behavioral Health (N.K.A Trillium Health Resources)	15 DHR 04884	09/15/15	
Hilary K. Hunsberger, MSW LCSW (Partner at Albemarle Counseling Group, PLLC) v. East Carolina Behavioral Health	15 DHR 04885	09/15/15	
David G. Webb v. DHHS, Office of the Controller	15 DHR 04886	09/24/15	
Treasures of Joy, Patricia S. Stinson v. DHHS, Division of Child Development and Early Education	15 DHR 05112	09/24/15	
Carolina Community Ventures Inc., Gina Bell	15 DHR 05214	12/03/15	
Lawanda D. Bland v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	15 DHR 05218	10/26/15	
Landmark Assisted Living LLC, Licensee D/B/A Grayson Creek of Welcome	15 DHR 05293	10/22/15	
Candii Homes, Rosalina Teel v. Eastpointe	15 DHR 05598	10/08/15	
Carolyn Rhone v. NC DHHS, Division of Health Service Regulation	15 DHR 05601	10/30/15	
Johnny Dale Hooks, Sr. v. NC Department of Health and Human Services	15 DHR 05783	12/02/15	
Carolyn Pritchett v. DHHS	15 DHR 06086	12/30/15	
Nancy Peace v. NC DHHS, Division of Child Development and Early Education	15 DHR 06231	12/31/15	
Linda Maness Garner v. NC DHHS, Division of Child Development and Early Education	15 DHR 06621	12/16/15	
Delaine Manly v. NC DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	15 DHR 06679	10/29/15	
Brittany Easton v. Health Care Personnel Registry	15 DHR 06727	10/28/15	
Blessing E. Anyebe v. NC DHHS, Division of Health Care Regulation, Health Care Personnel Registry Section	15 DHR 06853	12/15/15	
My Lil Friends Childcare (Ashley Slaght Gage) v. NC DHHS	15 DHR 07298	02/17/16	
Memaw's Lovin Care, Linda W Riddick v. Division of Child Development And Early Education, DHHS	15 DHR 07698	02/25/16	
Laura Yvette Hardison v. DHHS, Division of Health Service Regulation	15 DHR 07973	12/11/15	
Jackie Mburu, Administrator, Nana's Touch FCH v. DHHS Division of Health Service Regulation, Adult Care Licensure Section, Megan Lamphere, Chief	15 DHR 08056	02/22/16	
A Brighter Day Group Home Shannon Hairston v. NCDHSR Mental Health Licensure	15 DHR 08227	02/23/16	
Elite Home Health Care Inc C/O Tara Ellerbe v. NC Health and Human Services Hearing Office	15 DHR 08229	02/18/16	
Rebecca Keith v. Health Care Registry	15 DHR 08280	02/22/16	
Courtney Noah Hall v. NC DHHS, Division of Health Service Regulation	15 DHR 08611	02/09/16	
Montgomery Food Inc DBA Food King Bryan Dozier	15 DHR 10008	02/29/16	
Sugar and Spice Child Enrichment Center Inc v. NC DHHS, Division of Public Health, Child and Adult Care Food Program	15 DHR 10088	02/01/16	

DEPARTMENT OF JUSTICE

Thomas Eliza Anderson v. Private Protective Services Board	11 DOJ 10367	06/24/14	
Daniel Joseph Steele v. NC Private Protective Services Board	13 DOJ 03346	06/29/15	30:07 NCR 838
Ronnie Earl Smith Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04114	04/09/15	30:02 NCR 243
Aisha Christina Burston v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04118	01/13/15	
Susan Maney v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05067	04/14/15	30:02 NCR 252
Dewayne Rosean Ward v.NC Criminal Justice Education and Training Standards Commission	14 DOJ 05116	05/16/15	
Tobias La'Trell Clagon v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05117	07/01/15	
Arthur Randall Griffin v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05118	04/27/15	
Rachel Elisabeth Hoffman v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05502	03/11/15	30:04 NCR 513
Rayburn Darrell Rowe v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05503	04/20/15	30:06 NCR 692
Robert Boyce Sherrill Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05504	03/04/15	
Billy Vance Waldroup v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07718	08/24/15	30:08 NCR 958
Michelle Wiggins Morings v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07719	03/17/15	
Timothy McCoy Rogers v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07923	10/07/15	
Billy Ray Burleson v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07924	07/28/15	30:09 NCR 1034
Darin Clay Whitaker v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07925	06/12/15	
Sandy Hargrove Cowan v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 07927	08/19/15	
Ahmad Malik Lance v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 08050	01/27/15	
Christopher J. Weaver v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 08146	09/01/15	
Bobby Andrew Boudreau v. NC Private Protective Services Board	14 DOJ 08155	12/19/14	
Catherine Denise Netter v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08257	07/09/15	

Carol Bernice Manning v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 08258	08/17/15	30:12 NCR 1365
Waseen Abdul-Haqq v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08259	07/21/15	30:06 NCR 699
Donald Earl Schwab v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08347	05/28/15	30:04 NCR 518
Brandon Tyler Josey v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08348	08/08/15	30:09 NCR 1040
Kia Rena Graham v. NC Private Protective Services Board	14 DOJ 08582	01/28/15	
Steven Joseph O'Byrne v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 09954	08/13/15	30:12 NCR 1370
Samuel Jason Bradley v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00051	03/25/15	
Martin Luther Locklear v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00052	06/05/15	30:05 NCR 580
Shenikwa Janay Barefield v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00053	10/15/15	30:13 NCR 1451
Michael Allen Strickland v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00054	05/07/15	
Ronald Corbett Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00055	05/04/15	30:05 NCR 587
Michael Glenn Davis v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00211	09/11/15	30:13 NCR 1457
Rodrigo Estanol v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00212	08/03/15	30:13 NCR 1466
George Allen Woodcock v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00213	04/28/15	
Defferson Luvontae Graham v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00214	07/17/15	30:10 NCR 1181
Edward Holley v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00215	07/16/15	30:10 NCR 1186
Christopher Paul Abner v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00216	08/17/15	30:10 NCR 1194
Kenneth Sinatra Whittington Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 00388	06/30/15	
Billy-Dee Greenwood v. NC Private Protective Services Board	15 DOJ 00520	06/02/15	30:07 NCR 833
Kendrix Lavel Mace v. NC Private Protective Services Board	15 DOJ 00708	06/04/15	
Donald Lee Lucas v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01031	09/16/15	
Jose Antonio Perez III v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01032	11/23/15	30:15 NCR 1694
John Charles Lavergne Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01033	07/22/15	
Tod Leslie Bonello v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01107	08/03/15	
Harfel Clementa Davis v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01533	08/05/15	30:13 NCR 1478
Shavonne Tawanna Collins v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01535	07/07/15	
Inah Latonna York v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01537	05/26/15	
Clonzie Lee Nealy Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01539	07/22/15	
Sheila Lauvedia Banks v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01542	05/26/15	
Rion Neil Ferguson v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01543	07/13/15	
James Alvin Hunt v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02028	08/19/15	
Joseph Thomas Burris v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02029	10/01/15	30:11 NCR 1241
Hugh George Luster v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02530	08/18/15	
Roger Lee Inge Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02534	10/22/15	
Matthew John Steeno v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02691	08/07/15	
Andre Deshaud Pickens v. NC Private Protective Services Board	15 DOJ 02730	06/19/15	30:10 NCR 1202
William Micah Jernigan v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 02958	07/23/15	
Brianna Coneese Billups v. NC Criminal Justice Education and Training Standards Commssion	15 DOJ 03111	10/26/15	
Donnelle Farrar v. NC Private Protective Services Board	15 DOJ 03448	08/27/15	30:10 NCR 1206
Ashley Bryant Helms v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 03885	11/13/15	30:15 NCR 1700
Nathaniel Shayne Hobbs v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 03886	01/21/16	
Rae Marie Bishop v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 03888	10/13/15	
John Paul Melki v. NC Private Protective Services Board	15 DOJ 03983	10/01/15	
Matthew Dixon Lawhorn v. NC Sheriffs' Education Training Standards Commission	15 DOJ 03987	11/24/15	
Brandon Lee Hargrave Sr. v. NC Alarm Systems Licensing Board	15 DOJ 04292	07/30/15	
Michael Ross Pitchford v. NC Private Protective Services Board	15 DOJ 04293	09/25/15	
Frank Shipley Heberer v. NC Alarm Systems	15 DOJ 04294	08/04/15	30:11 NCR 1249
Stanley Colt Robbins v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 04637	02/01/16	30:20 NCR 2190
William Elmore Burwell Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 04849	01/19/16	30:18 NCR 2010
Larry Thompson v. NC Sheriffs' and Training Standards Commission	15 DOJ 05259	02/04/16	
Timothy T.J. Conterras v. NC Private Protective Services Board	15 DOJ 05300	09/30/15	30:11 NCR 1254
Greg Wayne Galloway v. Criminal Justice Education and Training Standards Commission	15 DOJ 05370	02/03/16	30:20 NCR 2198
Timothy Arnold Ruffin v. Crminal Justice Education and Training Standards Commission	15 DOJ 05371	02/26/16	30:20 NCR 2207
Phillip Joel Trivette v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 05546	01/13/16	30:18 NCR 2016
Walter Thalton Graham v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 05547	01/25/16	

Travis Lee Richmond v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 05790	11/02/15	
Steven Voyed Warr v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 05791	02/18/16	
Richard Waverly Merritt v. NC Private Protective Services Board	15 DOJ 05829	12/01/15	
Tracey Renee Thorpe v. NC Private Protective Services Board	15 DOJ 05830	12/01/15	
Justin Charles Guffey v. NC Private Protective Services Board	15 DOJ 05832	12/08/15	
Weston Jerome Samuels v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 06037	02/19/16	
Joseph Mark Karaszewski v. NC Private Protective Services Board	15 DOJ 06328	02/19/16	
Randy Orlanda Williams Sr v. NC Private Protective Services Board	15 DOJ 06491	01/26/16	
Ushica Lee Burns v. NC Private Protective Services Board	15 DOJ 06492	01/27/16	
Scott Christopher Baucom v. NC Private Protective Services Board	15 DOJ 07051	01/26/16	30:18 NCR 2021
Bryan Keith Epps v. Criminal Justice Education and Training Standards Commission	15 DOJ 07443	02/02/16	30:20 NCR 2214
William Dale Aaronson v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 07779	02/05/16	
Tommy Lee Hudson v. NC Private Protective Services Board	15 DOJ 08234	02/04/16	
Sherman Lamonte Meekins v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 08605	02/26/16	
David Antonio Bowman v. NC Alarm Systems Licensing Board	15 DOJ 08970	02/02/16	
Stacy Elmer Guthrie v. NC Private Protective Services Board	15 DOJ 09270	02/22/16	
Gary Dean Brooks v. NC Private Protective Services Board	15 DOJ 09336	02/01/16	
Dexter Mandel Carney v. NC Private Protective Services Board	15 DOJ 09380	02/19/16	
DEPARTMENT OF LABOR			
Southern Hospitality Home Care LLC, Shiela Robinson v. NC Dept of Labor ID 95008	15 DOL 08363	02/22/16	
Southern Hospitality Home Care LLC, Shiela Robinson v. NC Dept of Labor ID 94705	15 DOL 08364	02/24/16	
DEPARTMENT OF TRANSPORTATION			
Barnhill Contracting Co. Inc v. Department of Transportation, Division of Highways	12 DOT 04647	02/03/15	
Arturo Barcena v. NC Quick Pass	15 DOT 07492	02/02/16	
DIVISION OF EMPLOYMENT SECURITY			
Kendra Marie Halsey v. Elizabeth City State University	14 DSC 09486	03/17/15	
Ruby Anne Beck v. NC Department of Public Safety	15 DSC 01652	06/02/15	
DEPARTMENT OF STATE TREASURER			
Stephanie T. Treio v. NC Department of State Treasurer	14 DST 06380	05/08/15	30:04 NCR 531
Candace Collins v. NC Retirement Agency	14 DST 06428	12/02/14	
Lloyd McRae Herring v. NC Department of State Treasurer Retirement Systems Division	14 DST 06724	01/20/15	
Trina Parker v. State of NC Department Treasurer Retirement Division Disability Section	14 DST 06732	02/16/15	
James R. Trotter v. State Treasurer, State Retirement Systems Division	14 DST 10143	10/26/15	
Revonda E. Nance v. NC Department of State Treasurer Retirement Systems	15 DST 01151	05/27/15	
Selyna Deshazo v. NC Retirement System Disability Section	15 DST 03060	08/20/15	
Holly Ann Bowers v. Disability Retirement Systems Division, Garry Austin	15 DST 05827	10/01/15	
STATE BOARD OF EDUCATION			
TPS Publishing Inc. v. NC State Board of Education	14 EDC 07610	10/22/15	30:12 NCR 1376
McGraw-Hill School Education LLC v. NC State Board of Education; Textbook Commission; and Department of Public Instruction	14 EDC 08481	11/23/15	30:15 NCR 1673
Danny Lorenzo Scott v. Public Schools of NC, Department of Public Instruction	14 EDC 09883	07/10/15	30:06 NCR 705
Sherry-Lynn Amaral v. DPI NC Finiancial Licensure and Business Services Licensure Section	14 EDC 10060	10/07/15	30:12 NCR 1395
Allison Rascoe v. NC State Board of Education	15 EDC 00272	08/28/15	30:14 NCR 1580
Partnership Achieving Community Education "PACE" Academy v. NC State Board of Education	15 EDC 03643	08/13/15	30:14 NCR 1586
Timothy M. Maghran v. Department of Public Instruction	15 EDC 05550	11/05/15	
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES			
Alcoa Power Generating Inc. v. Division of Water Resources, DENR	13 EHR 18085	05/29/15	30:03 NCR 402
Bannor Michael Macgregor v. Durham County Department of Health, Environmental Health Division	14 EHR 02900	04/13/15	
Brian T Jackson, Rosemary Jackson v. NCDHHS, Environmental Health Section, Doug Mcvey and/or Harry Lewis	14 EHR 02843	01/13/15	

David Frank Crisp v. NC Department of Environment and Natural Resources	14 EHR 03870	08/14/15	30:09 NCR 1046
Garrett Adam Couick v. Cabarrus County Health Alliance	14 EHR 07603	07/24/15	
John J. Woodard Jr. v. NC Department of Environment and Natural Resources, Division of Energy, Mineral, and Land Resources	15 EHR 03522	08/20/15	
Premier Builders and Development Co. Inc. Petitioner v. NC Department of Environment and Natural Resources	15 EHR 03567	08/17/15	
DEPARTMENT OF INSURANCE			
Thelma Grant POA Marilyn Howard v. State Health Plan for Teachers and State Employees	13 INS 20396	05/22/15	
Kristin Jean Wilkinson v. State Health Plan for Teachers and State Employees	14 INS 04418	09/01/15	
Angela Joyner-Perry v. NC State Health Plan for Teachers and State Employees Retirement System	15 INS 00208	05/13/15	
Kathy Fields v. NC State Health Plan	15 INS 00799	12/02/15	30:18 NCR 2025
Stacy M. Warner v. NC State Health Plan	15 INS 00833	07/31/15	30:11 NCR 1258
Tiece M. Ruffin v. NC State Health Plan	15 INS 03371	07/20/15	
NC Code Officials Qualification Board v. Christian M Noles	15 INS 06682	01/29/16	
Kristen Jean Wilkinson v. NC State Health Plan, Blue Cross and Blue Shield of NC	15 INS 06986	12/30/15	
BOARD OF LICENSED PROFESSIONAL COUNSELORS			
Beth Ford v. NC LPC Board	14 LPC 05203	08/01/14	
Beth Ford v. NC Board of Licensed Professional Counselors	14 LPC 07355	05/20/15	
MISCELLANEOUS			
Thomas Charles Fogarty v. Town of Maggie Valley	13 MIS 19252	01/14/14	
Jeanne McIntosh v. NC Medical Board	14 MIS 05206	09/30/14	
Tornello Faontaine: Pierce the Tribe of El and/or Bey Living Soul and Citizen of the Most High Adonai in Care of Postal Department 49308, Greensboro, NC Non-Domestic	14 MIS 08305	02/19/15	
Dennis Goodson v. Office of Administrative Hearings	14 MIS 10144	02/19/15	
Larsen Pant v. Charlotte Mecklenburg Police Department	15 MIS 05219	10/30/15	
Gloria Caudle v. Town of Enfield	15 MIS 05295	12/02/15	30:18 NCR 2030
OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)			
Linda Huggins v. Department of Administration, NC Human Relations Commission	08 OSP 01153	01/23/15	
Lauren Wilson Burch v. NC Alcohol Law Enforcement	12 OSP 08548	04/14/15	30:06 NCR 0681
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 11438	04/28/15	30:01 NCR 62
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14194	08/14/14	
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14195	08/14/14	
Willie Joyce Partin v. DOT, Division of Motor Vehicles, Traffic Records, Crash Report Unit	13 OSP 17728	12/04/13	
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 19135	04/28/15	30:01 NCR 62
Steven Dolinski v. NC Department of Public Safety	14 OSP 01047	02/16/15	
Freddie Wayne Huff II v. NC Department of Public Safety	14 OSP 03402	02/16/15	
Monica Bullard v. NC Department of Public Safety	14 OSP 04724	03/18/15	
Kenneth M. Lloyd Jr. v. State of NC Department of Transportation	14 OSP 05708	01/15/15	
Millie E. Hershner v. NC Department of Administration	14 OSP 06051	10/02/14	
Matthew Lennon v. NC Department of Justice and NC Department of Public Safety	14 OSP 06377	02/16/15	
Oshun G. Williams v. NCDOT Division #5	14 OSP 06561	01/22/15	
Estate of Todd McCracken v. Department of Revenue	14 OSP 07170	08/24/15	30:09 NCR 1076
Clara Rogers v. NC Department of Public Safety/Community Corrections Boyce Fortner, 4th Judicial Division Administrator, Karey Treadway, Asst. Judicial Division Administrator, Kevin Miller, Judicial District Manager District 25	14 OSP 07799	01/14/15	
Raymond Gene Gonzales v. NCDHHS, Division of Vocational Rehabilitation Services	14 OSP 07804	02/27/15	30:04 NCR 534
Joseph Tenhagen v. NC Department of Public Safety, Employee Advisory Committee	14 OSP 07837	03/23/15	30:05 NCR 571
Dr. Tatiana A. Tagirova v. Elizabeth City State University	14 OSP 07929	03/05/15	
Machelle Hamilton v. Caswell Center, Department of Health and Human Services	14 OSP 08082	01/13/15	
Gail Ann Hagen v. Partners Behavioral Health Management	14 OSP 08303	01/21/15	
William Frank Strickland v. NC Department of Health and Human Services	14 OSP 09484	03/17/15	

Teresa Hayes v. University of North Carolina Chapel Hill School of Dentistry	14 OSP 09689	02/12/15	
Stephen Dale Brown v. NC State University	14 OSP 09759	06/25/15	30:07 NCR 812
Zoila Brock v. Nanette Outlaw, Director Duplin County Social Services	14 OSP 10048	04/17/15	30:06 NCR 711
Benham Aryafar V. North Carolina State Board of Community Colleges/South Piedmont Community College	14 OSP 10059	02/19/15	
Robert Jarmon v. North Carolina Central University	14 OSP 10276	06/09/15	
Zeenalyn P. Williams v. NCDHHS, Central Regional Hospital	15 OSP 00006	07/17/15	
Karimah Michelle Bennett v. North Carolina Central University	15 OSP 00470	04/29/15	
Chandra Edwards v. Chapel Hill-Carrboro City Schools	15 OSP 00579	04/01/15	
Denise Brooks v. Polk Correctional Institution	15 OSP 00949	05/18/15	
Joevelyn Heard-Leak v. NC State University Center for Urban Affairs	15 OSP 01091	08/31/15	30:15 NCR 1708
Ronnie Evans v. Angela Tarantini, Department of Correction	15 OSP 01232	07/30/15	
Waldo Fenner v. John Umstead Hospital/RJ Blackley Alcohol and Drug Abuse Treatment Center (ADATC)	15 OSP 01648	05/21/15	
Barbara Smith-Lide b. NC Department of Public Safety	15 OSP 01737	12/03/15	
Samuel Avery Furlow v. NC Department of Public Safety, Polk Correctional Institution	15 OSP 02299	09/09/15	30:15 NCR 1712
Savvas Georgiades v. University of North Carolina at Pembroke-Department of Human Resources	15 OSP 02473	09/22/15	
Kimberly A. Sutton v. NC Department of Public Safety, Division of Adult Correction and Juvenile Justice	15 OSP 02512	07/28/15	
Kesselly Jahneh Kasiah Sr. v. Guilford County Schools, Shirley Morrission	15 OSP 02826	08/28/15	
Leah Scheuerell v. Harnett Correctional Facility and Raleigh Regional Office	15 OSP 03150	07/14/15	
Samantha Davis v. Caswell Center	15 OSP 03254	07/15/15	
Donald P. Morrison, II v. NC Department of Public Safety/Division of Adult Correction/Harnett Correction Institution	15 OSP 04351	09/08/15	
Michael Glenn Davis v. NC Department of Public Safety, Adult Correction and Juvenile Justice	15 OSP 04607	09/24/15	
Johnnie M Darden Sr. v. Department of Public Safety	15 OSP 05439	12/31/15	
John Gomes v. Winston Salem State University	15 OSP 06084	01/27/16	30:19 NCR 2123
Teresa Hayes v. The University of North Carolina Chapel Hill School of Dentistry	15 OSP 06124	11/24/15	
Jonathan S. Onyenekewe v. NC DHHS, RJ Blackley ADATC	15 OSP 06489	11/10/15	
James Hampton Sr. v. UNC Pembroke	15 OSP 06622	11/20/15	
Ron Hedrington v. Tarheel Challence Academy (TCA Director Timmons Edward)	15 OSP 07237	12/03/15	
Angela Miles Stephens v. NC Department fo Public Safety	15 OSP 07244	12/02/15	
April Dawn Johnson v. Broughton Hospital	15 OSP 07723	12/30/15	

DEPARTMENT OF REVENUE

Donald McPhaul Jr. v. NC Department of Revenue	14 REV 04564	12/05/14	
John David Kimrey Jr. v. NC Department of Revenue	14 REV 04924	07/10/15	
Trumilla L. Howard v. NC Department of Revenue	14 REV 06018	03/09/15	
Ocean Isle Palms, LLC v. NC Department of Revenue	14 REV 08416	02/22/16	
Eagle Point, LLC v. NC Department of Revenue	14 REV 08418	02/22/16	
Coastal Communities at Seawatch, LLC v. NC Department of Revenue	14 REV 08419	02/22/16	
Seawatch at Sunset Harbor, LLC v. NC Department of Revenue	14 REV 08420	02/22/16	
Coastal Communities at Ocean Ridge Plantation, LLC v. Department of Revenue	14 REV 08421	02/22/16	
Rivers Edge Goldf club and Plantation, LLC v. Department of Revenue	14 REV 08422	02/22/16	
Sean Condren v. NC Department of Revenue	14 REV 09184	08/07/15	30:14 NCR 1569
Norman Harvin v. NC Department of Revenue	14 REV 09948	06/19/15	
Cassidy Linker v. NC Department of Revenue	14 REV 09956	02/20/15	
Brenda Wells v. NC Department of Revenue	15 REV 00303	04/13/14	
Jasmine J. Davenport v. NC Department of Revenue	15 REV 00357	05/29/15	
Olethia Davis v. NC Department of Revenue (Lyons Gray, Jerry Coble, Charles H. Helms, Margaret "Beth" Collins, Roderick Anthony Edwards, Thomas "Tommy" Thomas, Joan Kincaid Lawrence)	15 REV 00664	05/12/15	
Forrest Small and Kimberly Mazanec v. Department of Revenue	15 REV 00666	06/23/15	30:11 NCR 1261
Jesse Lee and Kesha Nickerson, v. NC Department of Revenue	15 REV 01088	06/17/15	
Chester L McDowell Sr v. NC Department of Revenue	15 REV 01574	10/06/15	
Michael Park and Yopop South Park LLC. V. NC Department of Revenue	15 REV 02607	07/27/15	
Marva Gillis NC Department of Revenue	15 REV 05754	10/07/15	
Stephane and Natacha Cayatte v. NC Department of Revenue	15 REV 05918	01/05/16	
Mark A Lovely v. NC Department of Revenue	15 REV 06487	01/06/16	

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD			
North Carolina Substance Abuse Professional Practice Board v. John Patrick Craven	14 SAP 05713	01/06/15	
NC Substance Abuse Professional Practice Board v. Keith Edward Green	15 SAP 00750	08/24/15	30:16 NCR 1853
OFFICE OF THE SECRETARY OF STATE			
Carolyn Marie Aikens v. Secretary of State, Notary Public	13 SOS 15500	11/05/13	
Jamel Byrd-El v. Department of the Secretary of State	14 SOS 06624	01/26/15	
Marvin Ray Sparrow v. Secretary of State	14 SOS 07416	05/05/15	
Sharron Marie Glover v. Ozie Stallworth Director, Notary Certification Enforcement Section and filing Division Department of the NC Secretary of State	14 SOS 07998	01/28/15	
Deborah T. Godfrey v. Secretary of State Notary Division	14 SOS 09902	03/09/15	
John Bradford Pittman v. NC Department of the Secretary of State	15 SOS 02354	10/19/15	
Qadir El Bey, Mesu El Bey, Asas Ashu El Bey, Fatama El Bey v. State of North Carolina Department of Secretary of State	15 SOS 02377	07/21/15	
Rasul Kheshu-Sadiq Bey	15 SOS 03219	08/21/15	
Chena Conroy v. NC Department of the Secretary of State	15 SOS 05173	10/28/15	
Cabell J. Regan v. NC Department of the Secretary of State	15 SOS 06035	02/26/16	
Jason Gold v. NC Department of the Secretary of State; Notary Section	15 SOS 07346	12/03/15	
UNIVERSITY OF NORTH CAROLINA HOSPITALS			
Deloris Young v. University of North Carolina Hospitals	15 UNC 01408	07/06/15	
Barbara Snipes v. University of North Carolina Hospitals	15 UNC 01927	07/16/14	
Deborah H. Justice v. University of North Carolina Hospitals	15 UNC 02347	05/21/15	
John Walker v. UNC Hospitals	15 UNC 02639	07/16/15	
Bernardine Fox v. UNC Hospitals	15 UNC 02692	08/24/15	

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/15/2016 9:00 AM

STATE OF NORTH CAROLINA

COUNTY OF DAVIDSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DHR 05078

MARIUSZ LEONARD POPPE PETITIONER, V. NC DEPT OF HEALTH SERVICES, DIVISION OF MEDICAL ASSISTANCE, MEDICAID ESTATE RECOVERY, MS. GLANA M SURLESRESPONDENT. RESPONDENT.	**FINAL DECISION**

THIS MATTER came on for hearing before Administrative Law Judge, J. Randall May, on November 18, 2015 but was continued until November 20, 2015 in High Point, North Carolina.

APPEARANCES

For Respondent: Kimberly S. Murrell
Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

Petitioner: Mariusz Leonard Poppe, *pro se*

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule when it denied Petitioner's request for an undue hardship waiver of Medicaid estate recovery under the rules of 10A NCAC 21D .0500 *et seq.* and the North Carolina State Plan for Medical Assistance.

EXHIBITS

For Respondent: Exhibits 1 – 12 were admitted. The Administrative Law Judge took judicial notice of N.C. Gen. Stat. § 108A-70.5 and 10A N.C.A.C. 21D .0500 *et seq.* and the Federal Poverty Guidelines.

For Petitioner: Exhibits P1 – P4 were admitted.

WITNESSES

Respondent:
Glana Surles (Estate Recovery Case Manager, Division of Medical Assistance)

Petitioner:
Mariusz Leonard Poppe (Petitioner)
George Poppe (Heir to the Estate of Irene Poppe)
Glana Surles (Estate Recovery Case Manager, Division of Medical Assistance)

APPLICABLE STATUTES, RULES, REGULATIONS AND POLICIES

N.C. Gen. Stat. § 108A-70.5
42 U.S.C. § 1396p
10A N.C.A.C. 21D .0500 *et seq.*
North Carolina State Plan for Medical Assistance

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted in evidence and the entire record in this proceeding, the undersigned makes the following Findings of Fact. In making the Findings of Fact, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which each witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner, Mariusz Leonard Poppe, is an heir of the Estate of Irene Poppe and has requested an undue hardship waiver of Respondent's estate claim against the Estate of Irene Poppe.

2. Respondent, North Carolina Department of Health and Human Services, Division of Medical Assistance (the "Department"), is an official state agency of the State of North Carolina and the agency responsible for administration of the Medicaid program in North Carolina.

3. Irene Poppe was a Medicaid recipient prior to her death on November 29, 2013.

4. As a Medicaid recipient, Irene Poppe received medical services paid for by the Department that subjected her estate to the North Carolina Medicaid Estate Recovery Plan, pursuant to N.C.G.S. § 108A-70.5. As required by federal law, the North Carolina Estate Recovery Plan directs the Department to recover expenses paid for certain medical services on behalf of Medicaid recipients from the estates of these recipients.

5. Irene Poppe died on November 29, 2013 leaving an estate containing assets, including real property, subject to claims from creditors.

6. Pursuant to N.C.G.S. § 108A-70.5, the Department holds a statutory estate claim and is a sixth-class creditor, as prescribed in N.C.G.S. § 28A-19-6, for purposes of determining the order of claims against the Estate of Irene Poppe.

7. Irene Poppe's Estate qualified for estate recovery and the Department made a claim against her estate.

8. The primary asset of Irene Poppe's Estate is her interest in real property located at 303 Wood Street, Thomasville, NC, which Ms. Irene Poppe held at the time of her death.

9. Pursuant to N.C.G.S. § 28A-15-1, which states that "[a]ll of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against the decedent's estate," Irene Poppe's interest in the real property described above became an asset of her estate upon her death and is available to pay claims against her estate.

10. There are circumstances when the Department waives estate recovery, including when the sale of the estate's real property would result in undue hardship to a surviving heir.

11. Undue hardship is defined by the North Carolina Administrative Code, 10A NCAC 21D .0502, as follows:

(b) Undue or substantial hardship shall include the following:

(1) Real or personal property included in the estate is the sole source of income for a survivor and the net income derived is below 75 percent of the federal poverty level for the dependents of the survivor(s) claiming hardship, or

(2) Recovery would result in forced sale of the residence of a survivor who lived in the residence for at least 12 months immediately prior to and on the date of the decedent's death and who would be unable to obtain an alternate residence because the net income available to the survivor and his spouse is below 75 percent of the federal poverty level and assets in which the survivor or his spouse have an interest are valued below twelve thousand dollars ($12,000).

12. The Department applies these rules as updated by the North Carolina State Plan for Medical Assistance, which increases the qualifying income level to 200 percent of the federal poverty level. Accordingly, in order to qualify under the definition of undue hardship, the individual claiming hardship must either: (1) have a gross household income less than 200 percent of the federal poverty level AND the real property is the sole source of household income; OR (2) have lived in the residence for at least 12 months immediately prior to and

continuously since the death of the Medicaid recipient; have gross household income less than 200 percent of the federal poverty level; AND have household assets valued less than $12,000. See Respondent's Exhibit 5, North Carolina State Plan for Medical Assistance, Attachment 4.17-A, Page 2.

13. Petitioner requested a waiver of estate recovery based on undue hardship and submitted documentation to the Department in support of his request. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner.

14. The Department reviewed the information provided by Petitioner and informed him by letter dated May 16, 2014 that his request for an undue hardship waiver was denied. See Respondent's Exhibit 1, Document Constituting Agency Action.

15. In requesting an undue hardship waiver of estate recovery, Petitioner does not claim that the real property of the estate is his sole source of income.

16. Accordingly, the only issue in this case is whether Petitioner satisfies the residency, income, and asset criteria for an undue hardship waiver.

17. Petitioner provided documentation to the Department showing that he is an heir of the Estate of Irene Poppe; that he lived in the real property of the estate at least 12 months prior to and continually since the death of Irene Poppe; and that his assets are valued below $12,000.00. See Respondent's Exhibit 2, Documentation Submitted by Petitioner.

18. Petitioner submitted documentation to the Department showing estate accounting, funeral expenses, and itemized statements of monetary support provided to his mother by the heirs. See Respondent's Exhibit 3 and Petitioner's Exhibits P2 and P3.

19. George Poppe, Petitioner's brother, testified that he is one of the heirs to the Estate of Irene Poppe. He also testified that all of decedent's children provided monetary support to her and maintained the repairs and upkeep of her home over her lifetime, which allowed her to remain in the home. Petitioner also testified to the monetary support provided to the decedent as well as the repairs he made to his mother's home. See Respondent's Exhibit 3 and Petitioner's Exhibits P2 and P3.

20. Glana Surles, Estate Recovery Case Manager for the Division of Medical Assistance, opined that the estate accounting documentation and any expenditures by the heirs were not relevant to the review of undue hardship claims.

21. Petitioner provided income documentation to the Department, including bank statements, W-2 Wage and Tax statements, and federal tax documentation, showing his income for several years, including 2013, the year of Irene Poppe's death. Petitioner also included: a letter with documentation indicating that he had a change in his household income, his most recent 2014 federal tax documentation, his February 2015 Commission Report as well as his *estimated* 2015 Social Security benefits. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner.

22. The income documentation provided to the Department by the Petitioner shows that the adjusted *gross* income for his household for 2012 was $69,209.00, for 2013 was $70,016.00, and for 2014 was $64,608.00. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner. See also Respondent's Exhibit 4, Income Calculation Sheet Compared to Poverty Guidelines prepared by Glana Surles.

23. The 2015 federal poverty level for a family of one is $11,770.00 and 200% of this guideline is $23,540.00. See Respondent's Exhibit 1, Document Constituting Agency Action. See also Respondent's Exhibit 4 and 2015 Federal Poverty Guidelines.

24. Petitioner's *gross* household income exceeds 200% of the federal poverty level for a family of one by $45,869.00 for 2012; $46,676.00 for 2013; and $41,068.00 for 2014. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner. See also Respondent's Exhibit 4.

25. Petitioner's *gross* household income exceeds 200% of the federal poverty level.

26. Petitioner submitted a letter to the Department, dated January 20, 2015, stating that he wished to retire on Social Security benefits and that he would receive future monthly *net* benefits of $1,683.00 per month. Petitioner also included with the letter documentation from the Social Security Administration regarding Petitioner's *estimated* monthly Social Security benefits for 2015. See Respondent's Exhibit 3, pgs. 84, 111, Documentation Submitted by Petitioner.

27. Petitioner testified that the Department should consider his *net* income in evaluating his claim of undue hardship.

28. Glana Surles, Estate Recovery Case Manager for the Division of Medical Assistance, testified that the Department only considers an applicant's *gross* income when evaluating claims of undue hardship as required by the North Carolina State Plan for Medical Assistance. Ms. Surles also testified that *if* considering an applicant's *net* income in evaluating a claim of undue hardship, in accordance the North Carolina Administrative Code, the applicant's *net* income must be below 75% of the federal poverty level. The Department applies the updated rules included in North Carolina State Plan for Medical Assistance because these rules are more lenient, increasing the qualifying income level to 200 percent of the federal poverty level. See Respondent's Exhibit 5, North Carolina State Plan for Medical Assistance, Attachment 4.17-A, Page 2. See also 10A NCAC 21D .0502.

29. The 2015 federal poverty level for a family of one is $11,770.00; 200% of this guideline is $23,540.00, and 75% of this guideline is $8,828.00. See Respondent's Exhibit 1, Document Constituting Agency Action. See also 2015 Federal Poverty Guidelines.

30. In accordance with the North Carolina State Plan for Medical Assistance, to qualify for an undue hardship waiver, an applicant's maximum *gross* income for tax year 2015 must be below $23,540.00.

31. In accordance with the North Carolina Administrative Code, to qualify for an undue hardship waiver, an applicant's maximum *net* income for tax year 2015 must be below $8,828.00.

32. Petitioner's *estimated* Social Security benefits for 2015 indicate that he would receive $2,354.00 in *gross* benefits per month and $1,687.00 in *net* benefits per month. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner.

33. Glana Surles testified that based on a review of Petitioner's *estimated* Social Security benefits for 2015, Petitioner's *estimated gross* yearly income ($28,248.00) would still exceed 200% of the federal poverty level for a family of one ($23,540.00) by $4,708.00. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner. See also 2015 Federal Poverty Guidelines.

34. Ms. Surles testified that based on a review of Petitioner's *estimated* Social Security benefits for 2015, Petitioner's *estimated net* yearly income ($20,244.00) would also still exceed 75% of the federal poverty level for a family of one ($8,828.00) by $11,416.00. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner.

35. Petitioner's 2015 *estimated gross* income exceeds 200% of the federal poverty level.

36. Petitioner's 2015 *estimated net* income exceeds 75% of the federal poverty level.

37. Even after Petitioner retires, based on Petitioner's *estimated* Social Security benefits for 2015, he still would not qualify for an undue hardship waiver. See Respondent's Exhibit 3, pgs. 84, 111, Documentation Submitted by Petitioner.

38. Petitioner also submitted additional documents in support of his undue hardship claim in open court, which were reviewed by Glana Surles. The new documentation indicated a change in Petitioner's current 2015 Social Security benefits. See Petitioner's Exhibits P1 - P4.

39. Petitioner testified about his current financial circumstances. He stated that he retired in 2015 and the only income he is now receiving is *net* Social Security benefits in the amount of $1,689.00 per month; a slight increase from Petitioner's *estimated* 2015 *net* Social Security benefits of $1,687.00 per month, which Ms. Surles testified would exceed the federal poverty threshold to qualify for an undue hardship waiver. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner and Petitioner's Exhibit P1.

40. Ms. Surles further testified that a review of the new documentation submitted by Petitioner in court does not change Respondent's decision that Petitioner does not qualify for an undue hardship waiver. See Petitioner's Exhibits P1 - P4.

41. All of the income documentation submitted to the Department by Petitioner shows that his *gross* income exceeds 200% of the federal poverty level. See Respondent's

Exhibits 2 and 3, Documentation Provided to Respondent by Petitioner in Support of Undue Hardship Claim. See also Respondent's Exhibit 4 and Petitioner's Exhibits P1 and P4.

42. Petitioner does not qualify for an undue hardship waiver because his income exceeds the federal poverty thresholds to qualify for an undue hardship waiver.

43. Petitioner has not submitted any additional documentation to the Respondent in support of his claim of undue hardship.

44. Petitioner does not satisfy the criteria to qualify for an undue hardship waiver of the Department's estate recovery claim against the Estate of Irene Poppe.

CONCLUSIONS OF LAW

Based on the foregoing facts, the undersigned makes the following Conclusions of Law:

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C.G.S. § 150B-23 *et seq*. All necessary parties have been joined. The parties received proper notice of the hearing in this matter.

2. To the extent that the findings of facts contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels. *Bonnie Ann F. v. Callahen Indep. Sch. Bd.*, 835 F. Supp. 340 (S. D. Tx. 1993).

3. Pursuant to 42 U.S.C. § 1396p(b) and N.C.G.S. § 108A-70.5, the Department is required, in applicable circumstances, to recover from the estates of Medicaid recipients the cost paid for the recipient's medical assistance.

4. The Estate of Irene Poppe qualified for the North Carolina Medicaid Estate Recovery Plan under N.C.G.S. § 108A-70.5, Chapter 21D of the North Carolina Administrative Code, and the North Carolina State Plan for Medical Assistance.

5. The procedure for requesting and sole criteria for qualifying for a waiver of the Department's Medicaid estate recovery claim based on undue hardship are contained in 10A N.C.A.C. 21D .0500 *et seq.* and the North Carolina State Plan for Medical Assistance.

6. The only issue in this contested case is whether the Department substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule when it determined that Petitioner did not meet the criteria for an undue hardship waiver of the Department's estate recovery claim and denied his request for a waiver.

7. Petitioner has the burden of proof to show that the Department has substantially prejudiced Petitioner's rights and has exceeded its authority or jurisdiction; acted erroneously;

failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule.

8. The Department's evidence shows that its decision to deny Petitioner's undue hardship request was based on full consideration of the information available to it and that Petitioner did not sufficiently demonstrate that he met the criteria for an undue hardship waiver.

9. Petitioner did not present evidence that the Department substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule.

10. Petitioner did not meet his burden in showing that the Department substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule.

11. Based on all of the information presented to the Court, Petitioner does not meet the criteria for an undue hardship waiver of estate recovery as defined in the North Carolina Administrative Code and in the North Carolina State Plan for Medical Assistance.

12. The Department acted properly in denying Petitioner's request for an undue hardship waiver of estate recovery and did not substantially prejudice Petitioner's rights; exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act arbitrarily or capriciously; or fail to act as required by law or rule in denying Petitioner's request.

FINAL DECISION

Although very sympathetic to Petitioner's cause, upon a review of the foregoing Findings of Fact and Conclusions of Law, I hereby **UPHOLD** the agency's denial of Petitioner's undue hardship waiver request. The Petitioner has not presented sufficient evidence to substantially carry its burden.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision**. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision**. N.C. Gen.

Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 15th day of February, 2016.

J Randall May
Administrative Law Judge

On this date mailed to:

KIMBERLY S MURRELL
ASSISTANT ATTORNEY GENERAL
NC DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH NC 27699
ATTORNEY FOR RESPONDENT

MARIUSZ LEONARD POPPE
303 WOOD STREET
THOMASVILLE NC 27360
PETITIONER

This the 15th day of February, 2016.

Betty Owens
Paralegal
Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6700
Telephone: 919-431-3000

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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/01/2016 4:54 PM

STATE OF NORTH CAROLINA	**IN THE OFFICE OF**
COUNTY OF NASH	**ADMINISTRATIVE HEARINGS** **15 DOJ 04637**
STANLEY COLT ROBBINS, **Petitioner,** **v.** **NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION,** **Respondent**	**PROPOSAL FOR DECISION**

This case came on for hearing on October 21, 2015 before Administrative Law Judge Donald W. Overby in Halifax, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Joseph Hester
Attorney for Petitioner
Hester, Moore & Tucker, PLLC
3230 Zebulon Road
Rocky Mount, NC 27804

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, N.C. 27602-0629

ISSUES

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification for the commission of the Class B Misdemeanor offense of Assault on a Female?

RULES AT ISSUE

12 NCAC 09A .0204(b)(3)(A)
12 NCAC 09A .0103(23)(b)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACTS.

In making the FINDINGS OF FACTS, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of hearing. The Petitioner received by certified mail the proposed denial letter mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on June 5, 2015.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. Judy Kelley, Investigator for Respondent, testified at the hearing in this matter. Ms. Kelley was assigned to investigate Petitioner's application for certification. On Petitioner's F-5A form, Petitioner listed in the criminal history section that he had been charged with assault on a female. As part of her investigation, Ms. Kelley requested documents from the Court and other agencies regarding Petitioner's assault on a female charge. Ms. Kelley's investigation showed that 911 was called to the home of Mr. Stanley Craig Robbins (Petitioner's father) because there was an issue arising when Petitioner came to pick up his son, Simon. Petitioner's father, Petitioner's mother (Georgia Robbins) and Petitioner's wife (Shannon Robbins) did not want Petitioner to take the child to another location where he had been residing with another woman. Petitioner's parents and his wife all believed that the child would be in potential harm in the presence of the other woman.

4. Petitioner and Shannon Robbins were in a back bedroom, they had words and he pushed her into a closet. Mr. Stanley Robbins pulled Petitioner off Ms. Shannon Robbins, and then he and Petitioner tussled.

5. Petitioner was charged with simple assault from the incident involving his father. Petitioner was charged with assault of a female for the incident involving his wife. Only the assault on a female is of concern to the Commission in this proceeding. The charge of assault on a female was dismissed, and the form obtained from the Court stated "mediation successful". (Respondent's Exhibit 5)

6. Ms. Kelley brought Petitioner's application and her investigation before Respondent's Probable Cause Committee in May 2015. At the meeting, Respondent's Committee found probable cause that Petitioner committed the offense of assault on a female. Respondent sent Petitioner a Proposed denial letter which explained the Committee's decision and his rights to appeal that decision.

(Respondent's Exhibit 1-7)

7. Corporal Randall Baker with the Nash County Sheriff's Office testified at the hearing. He was a Deputy at the time of the incident and responded to the call for service on a domestic violence matter at the home of Mr. Stanley Robbins on February 23, 2014. Corporal Baker knew Petitioner from working together in the Sheriff's Office prior to Petitioner's separation from the Sheriff's Office, so he knew where he was responding.

8. Petitioner was sitting outside the home when Corporal Baker arrived and was completely cooperative and friendly. Petitioner explained to Corporal Baker that they were having a dispute over the baby. Petitioner stayed outside while Corporal Baker went inside and spoke with the parties. Mr. Stanley Robbins came outside the home, was scratched and bleeding. Mr. Stanley Robbins had lacerations to his head and ear. He told Corporal Baker that he was scratched from working in the barn. Mr. Stanley Robbins denied medical care for his injuries.

9. When Corporal Baker went inside, Ms. Shannon Robbins appeared very upset, but the child was unharmed and not upset. Ms. Shannon Robbins was crying but she didn't have any noticeable injuries. Corporal Baker later found that her injuries were under her clothing. Ms. Shannon Robbins had some bruising from a "pinching" type injury under her clothing and denied medical care.

10. During the course of his investigation, Corporal Baker found that this incident began because Shannon Robbins and Petitioner's parents did not want Petitioner taking their child and leaving. As a result, Petitioner and his wife argued. At the scene, Ms. Shannon Robbins explained that Petitioner asked her to step into a closet to speak with her. She said she wasn't going into the closet. He grabbed her and forced her into the closet to talk, and she fell. Shannon Robbins yelled and Mr. Stanley Robbins came to help. Shannon Robbins had the child in her arms when she fell. Petitioner explained to Corporal Baker that as he tried to talk to Ms. Shannon Robbins, she lost her foot in the closet, and Petitioner grabbed her to try to stop her from falling.

11. Corporal Baker spoke with both Petitioner's parents and Ms. Shannon Robbins about the incident and had them provide their own statements. Corporal Baker placed Petitioner under arrest and took him and Ms. Shannon Robbins to the magistrate. Corporal Baker charged Petitioner with assault on a female and the magistrate found probable cause and issued a warrant for arrest.

12. The Domestic Violence Report that Corporal Baker completed notes concerning Shannon Robbins that she was crying, fearful, hysterical, afraid, and nervous. He notes that she complained of pain, bruises and abrasions. He adds "verbal and mental abuse from stress." Corporal Baker also noted that Shannon Robbins had told him that there was a prior history of domestic violence

13. Corporal Brandon Jenkins with the Nash County Sheriff's Office testified at the hearing. Corporal Jenkins handles cases involving sex offenders and domestic violence. Corporal Jenkins first spoke to Ms. Shannon Robbins on February 24, 2014, the day after the incident. Corporal Jenkins generally speaks with victims face to face to see if their statements are consistent with the original report which is what he did in this instance. Corporal Jenkins met with Ms. Shannon Robbins at the Sheriff's office during the work day. Corporal Jenkins has known Petitioner for about 25 years, has worked with him and knew that Petitioner and Ms. Shannon Robbins have had marital problems in the past. Ms. Shannon Robbins recitation of the events with Corporal Jenkins was consistent with what had been reported by Corporal Baker the day before.

14. Corporal Jenkins advised Shannon Robbins that she could obtain ex parte orders. Shannon Robbins told Corporal Jenkins that she did not want to obtain an ex parte order at the time because it would mean Petitioner's guns would be taken. She specifically stated that she did not want to affect Petitioner's law enforcement career. Ms. Shannon Robbins knew the charges would already have an effect on Petitioner but she didn't want to drop the charges because she wanted him to get help and go through mediation. Ms. Shannon Robbins admitted she had been pushed in the past but not to this extent.

15. Corporal Jenkins spoke with Mr. Stanley Robbins as he considered him to be a victim also. Mr. Stanley Robbins told Corporal Jenkins that he pulled Petitioner off Ms. Shannon Robbins and then he and Petitioner tussled. Mr. Stanley Robbins told Corporal Jenkins that Petitioner may be suffering from PTSD and that he thought Petitioner would try to get Shannon to try to drop the charges. Corporal Jenkins prepared a supplemental report following his meetings with Ms. Shannon Robbins and Mr. Stanley Robbins. (Respondent's Exhibit 6, pp. 28-29)

16. On March 11, 2014, Corporal Jenkins spoke with Ms. Shannon Robbins again and Shannon stated she wanted to drop the charges and Petitioner wanted her to change her statement. Although she was wanting to drop the charges, she was still adamant that she would not change her statement. Shannon stated that she wasn't sure why Petitioner grabbed her but that he shouldn't have backed her into the closet to begin with. She specifically asked Corporal Jenkins about "Sheriff's Training and Standards."

17. Shannon Robbins testified at the hearing. She has been employed by Nash County Clerk's Office for four (4) years and has been a clerk in Superior Court for one (1) year. Ms. Shannon Robbins and Petitioner are married and have a two (2) year old son, Simon. At the time of the incident, she and Petitioner were separated and were arguing because she didn't want Petitioner to take their child and stay away overnight.

18. Ms. Shannon Robbins testimony at the hearing differed significantly from what she told officers at the scene. At the contested case hearing she claims that basically she did not tell either deputy the information they reduced to writing in their reports. From her testimony, it seems that from her days clerking in criminal courts that she had determined that what happened between she and Petitioner did not satisfy the definition of an assault. Her understanding of the definition is erroneous.

19. Shannon Robbins testified that Petitioner backed her into the closet and she stumbled over a vacuum cleaner. This testimony is inconsistent with both her original story to both deputies and pictures from the scene. Photos of the closet show a vacuum cleaner pushed far back into the closet, not in the doorway and not in a fashion that Ms. Shannon Robbins could have tripped over. Shannon Robbins wrote her statement to officers in her own handwriting and signed it. In this statement she did not mention anything about falling over a vacuum cleaner but instead indicated Petitioner pushed her down into the closet.

20. Shannon Robbins stated that Petitioner's certification is very important to their family. By the time this hearing was held, she and Petitioner had been reconciled for over a year. From the outset, she was keenly aware that this incident could affect his certification, repeatedly asking how the AOF might affect his officer's certification. Shannon Robbins asked the DA to drop the charges and was told they wouldn't drop this type of charge and that they had already dismissed one assault charge on Petitioner. The testimony offered at this contested case hearing by Ms. Shannon Robbins is inconsistent with her written statement given to officers at the time of the incident and other credible evidence, and is not believable nor credible.

21. Petitioner's father, Mr. Stanley Craig Robbins, testified at this hearing. He stated that he had prior law enforcement experience with both the NC State Highway Patrol and DMV Motor Enforcement. His testimony was not consistent with other statements and credible evidence at the time of the incident. His testimony is not believable nor credible.

22. Petitioner testified at the hearing. Interestingly, while his family has "circled the wagons" in an effort to try to save his certification, his testimony is not significantly different from what he was stating at the time of the incident.

23. Petitioner was previously employed with Rocky Mount Police Department in 2005 and then with Nash County Sheriff's Office in October 2006. He is married to Ms. Shannon Robbins. On the day of the incident, Petitioner went to his parent's house to pick up his son. When he got in the house his mother approached him about not taking his son and working it out with Ms. Shannon Robbins. He went to the bedroom and his wife was on the other side of the room, across the bed. He and Ms. Shannon Robbins discussed his taking the child, and he told her that he wasn't going to leave with the child. He contends that he told her to let him hold the child while

he was there. His mom was coming in and out of the room, talking during this time. Petitioner kept coming closer to Ms. Shannon Robbins and he believes that she backed into the closet to get away from him. Petitioner asked her to go into the closet and she refused. When Ms. Shannon Robbins went down, as a reflex Petitioner went to grab her and his son, he threw his right arm out to keep the weight from being on them. Petitioner knew his father was in the home and he felt his father grab him after the incident. Petitioner said he felt the arms around him and he backed up until he felt his father, and when his father grabbed him again he twisted around and said that's enough. Petitioner said once he was free, he went to Ms. Shannon Robbins and asked if she was okay. Petitioner then left the room and went outside.

24. Unknown to Petitioner, his mother called 911 even prior to Shannon Robbins falling in the closet.

25. While there is no evidence that Petitioner intended to harm either his wife or child, the credible and believable evidence is that he intentionally grabbed and/or pushed his wife while she was holding the infant child and, as a direct result, his wife fell to the floor of the closet, thus constituting an assault. He is a male above the age of 18 years.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09A .0204(b)(3)(A) states the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

> (3) has committed or been convicted of:
> (A) a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B misdemeanor; or

4. Assault on a female, in violation of N.C.G.S. 14-33(c)(2) constitutes a Class B misdemeanor as defined in 12 NCAC 9A .0103(23)(b) of the Respondent's administrative rules and as set forth in the Class B misdemeanor manual.

5. The actions of Respondent are constitutional, within the statutory authority of the agency, not made upon unlawful procedure, not affected by error of law, supported by substantial evidence and are not arbitrary, capricious or an abuse of discretion.

6. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a).

The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

7. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't of Env't & Natural Resources, 172 N.C. App. 697, 635 S.E. 2d 442 (2006).

8. Petitioner has failed to meet the burden of proof that he did not commit the criminal offense of assault on a female.

9. A preponderance of the evidence exists to show Petitioner committed the Class B misdemeanor of assault on a female when he pushed his wife into a closet causing her to fall on to the floor of the closet.

10. The undersigned has an extensive history of adjudicating criminal cases in general and domestic violence cases in particular having served eight years as an elected District Court Judge and an additional six years as an Emergency District Court judge. Concluding that Petitioner committed the offense of AOF is enough to satisfy the Commission. Law enforcement officers have a duty to be truthful and honest. The dishonesty of his family in trying to preserve his certification is not held against the Petitioner. The Petitioner has not been completely straight forward and honest in this matter. While that is concerning to the undersigned, that too is not the test for this hearing. The totality of the facts and circumstances in this case are considered in making the recommendation below.

PROPOSAL FOR DECISION

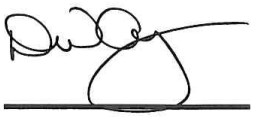
Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Petitioner's certification as a law enforcement officer be issued on a three (3) year probationary period. It is recommended that during the probationary period, should Petitioner be dismissed from any law enforcement department for cause, then that dismissal shall be grounds for revocation of his certification, aside from any statutory and regulatory conditions

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the 1st day of February, 2016.



Donald W Overby
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/03/2016 11:04 AM

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05370

Greg Wayne Galloway Petitioner, v. N C Criminal Justice Education And Training Standards Commission Respondent.	**PROPOSAL FOR DECISION**

This contested case came on for hearing on November 2, 2015, before Administrative Law Judge Selina M. Brooks in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to North Carolina General Statute §150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

For Petitioner: George V. Laughrun, II
301 S. McDowell Street
Suite 602
Charlotte, North Carolina 28204

For Respondent: Whitney Hendrix Belich
N.C. Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, North Carolina 27602-0629

WITNESSES

For Petitioner: Gregory Wayne Galloway, on his own behalf
Sergeant Marsha A. Dearing
Sergeant J.J. Ojaniit

For Respondent: Deputy Director Richard N. Squires
Lieutenant Andy Harris

EXHIBITS

1

Petitioner's Exhibits 1 – 16 were admitted.

Respondent's Exhibits 1 and 2 were admitted.

ISSUES

1. Whether Petitioner's law enforcement certification should be suspended due to the Petitioner's willful failure to submit to a test of his urine as requested by the Charlotte Mecklenburg Police Department?

2. Whether Petitioner's law enforcement certification should be suspended for lack of good moral character based upon Petitioner's action in substituting his urine at the time of testing?

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the Undersigned makes the following Findings of Fact, Conclusions of Law and Proposed Decision. In the absence of a transcript, the Undersigned has reviewed her notes as well as the documentary evidence to refresh her recollection.

APPLICABLE LAW AND RULES

NC Gen. Stat. § 17C-10
12 NCAC 09A.0204(b)(2) & (12), and (c)
12 NCAC 09A.0205 (c)(2)
12 NCAC 09C.0310
12 NCAC 09B.0101(3)

FINDINGS OF FACT

1. Both parties, the Petitioner, Gregory Wayne Galloway, and the Respondent, North Carolina Criminal Justice Education and Training Standards Commission (hereafter "Commission"), are properly before this Administrative Law Judge in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of Proposed Suspension of Law Enforcement Certification through a letter mailed by Respondent on January 8, 2015. (Respondent's Exhibit #1)

2. The Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. The Petitioner received his Law Enforcement Certification from the Commission on September 10, 1987 and has been employed by the Charlotte Mecklenburg Police Department (hereafter "CMPD") since that date. (Respondent's Exhibit #1)

4. On January 9, 2015, the Commission's Deputy Director Richard N. Squires, drafted a memorandum to be submitted to the Commission's Probable Cause Committee (hereafter "Committee") proposing a suspension of the Petitioner's certification as a law enforcement officer based upon two (2) allegations: that Petitioner refused to submit to an in-service drug screen; and that Petitioner lacked good moral character. (Respondent's Exhibit #1)

5. On May 19, 2015, the Committee found that probable cause existed to suspend the Petitioner's Law Enforcement Certification based upon the Petitioner's refusal to submit to an in-service drug test and that the Petitioner lacked good moral character to continue to hold such certification.

6. The Petitioner was notified of the findings of the Committee by certified mail on July 1, 2015. (Respondent's Exhibit # 2)

7. The Petitioner filed an appeal on July 8, 2015 and a contested case hearing was held on November 2, 2015, in Charlotte, North Carolina before the Undersigned.

8. Sergeant Ojaniit is a supervisor sergeant in the Freedom Division and supervisor of the school resource officers. He was contacted by Sergeant Dearing of the Internal Affairs Division, to locate the Petitioner for a random drug test on August 28, 2014. (Petitioner's Exhibit #1).

9. Sergeant Ojaniit picked up Petitioner around 9:30 a.m. and they arrived at Presbyterian Urgent Care at approximately 10 a.m.

10. Petitioner was unable to provide a urine sample and eventually he and Sergeant Ojaniit left the facility. (Petitioner's Exhibits #2 & 3).

11. Petitioner testified that he suffers from what is called "Shy Bladder" and he was unable to urinate on demand.

12. Sergeant Ojaniit advised his supervisor, Lieutenant Jim Hummel, that the Petitioner was unable to provide a urine sample and was told that Petitioner's drug test would be rescheduled.

13. Sergeant Ojaniit testified that he had previously escorted the Petitioner for a drug test several months earlier, approximately in March or April, 2014, and it took Petitioner over two and a half hours to produce a urine sample.

14. Sergeant Ojaniit further testified that on August 28, 2014 Petitioner was visibly upset, embarrassed and apologetic about his inability to urinate on demand and asked him whether or not a blood test could be performed.

15. Sergeant Ojaniit testified that the Petitioner was not trying to be evasive, was calm prior to the test, cooperative and he noticed no indications of Petitioner being either impaired or under the influence of any controlled substances.

16. Petitioner testified that on September 2, 2014, he went to Walmart and bought a cup to hold urine.

17. On September 3, 2014, Petitioner was again asked to provide a urine sample for a drug test. (Petitioner's Exhibit #3).

18. Petitioner testified that he filled the cup he had purchased at Walmart with his urine and concealed it on his person, to take to the drug screen test.

19. Sergeant Dearing, has been a sergeant with the Charlotte Mecklenburg Police Department for twenty-three (23) years and has been with Internal Affairs Division for approximately two (2) years. The Internal Affairs Division of the CMPD is responsible for investigating incidents of employee misconduct.

20. On September 3, 2014, Lieutenant Harris, Sergeant Robert Fey, Sergeant Dearing and the Petitioner drove to the Wolfe Testing Facility around 7:15 p.m. The Wolfe Testing Facility is a drug screening company approved by the CMPD for random drug testing.

21. Sergeant Fey and Lieutenant Harris went to visually witness Petitioner provide urine for the drug test.

22. Petitioner was provided several glasses of water and everything appeared normal.

23. Petitioner stated to Lieutenant Harris that he "could not pee in public" and then tried to urinate again at approximately 8 p.m.

24. Lieutenant Harris turned his back and did not watch Petitioner urinate.

25. Petitioner testified that he poured the urine from the concealed cup into the cup provided by the lab because he was afraid he was not going to be able to urinate on demand.

26. When Petitioner came out of the bathroom with the cup of urine, his hand was shaking and he appeared to be visibly nervous.

27. A Wolfe Testing Facility technician opened the cup of urine, used a temperature gauge to test the urine in the cup, and stated that the sample was not acceptable.

28. Lieutenant Harris asked the Petitioner if there was anything he wished to tell him. Petitioner admitted that he brought his own urine which he collected the day before at home because he was afraid that he would not be able to urinate on demand.

29. Lieutenant Harris was not aware of any use of drugs or alcohol by the Petitioner and at no time did the Petitioner exhibit any signs of being under the influence of any alcohol or controlled substances. Lieutenant Harris believes Petitioner experienced "stage fright" and could not urinate on demand at the lab.

30. On September 3 and 4, 2014, Petitioner's breath tests were negative. (Petitioner's Exhibits 4 & 5)

31. On September, 4, 2014, Petitioner was again transported to the Wolfe Testingfacility. He was able to provide a valid urine sample, but it took two (2) hours and fifty seven (57) minutes, the limit being three (3) hours. This sample was negative for any controlled or banned substances. (Petitioner's Exhibit 6)

32. The CMPD's policy is not to obtain a blood test for individuals who are requested to submit a urine sample.

33. Petitioner has been seen by a physician and continues to receive treatment for Benign Prostatic Hyperplasia. (Petitioner's Exhibit 8)

34. Pursuant to the City of Charlotte Drug Free Workplace Requirements, the Petitioner had five (5) days to obtain a medical review of his failure to urinate and the Petitioner complied. (Petitioner's Exhibits 8, 15 & 16).

35. The CMPD took administrative action for Petitioner's conduct and he was suspended for one hundred and sixty (160) hours.

36. The Petitioner did not exercise his a right to appeal this suspension to the City of Charlotte Civil Service Board.

37. The Petitioner accepts responsibility for his conduct and chose to accept the CMPD suspension.

38. Petitioner has been in full compliance with the suspension and as of the date of this contested case hearing had returned to work at the CMPD.

39. From 1987 to 2014, Petitioner has been rated by the CMPD under what is called Performance Review and Development Evaluations (PRD). These PRD's are basically report cards from the supervisors who prepare and provide to subordinate officers regarding their job performance. Petitioner's PRD evaluations range from "above average" to "exceptional performance" with the last three (3) years, 2011-2014, being rated "exceptional performance." (Petitioner's Exhibit # 13)

40. Petitioner's Internal Affairs history reveals that he has two (2) sustained violations during his twenty-eight (28) years in law enforcement, to wit:

> failing to activate his emergency equipment or notify dispatch of pursuit in 1989; and
>
> in 1992, he improperly failed to document evidence as a result of a seizure of a gun and a knife.
>
> (Petitioner's Exhibit # 14)

41. The Petitioner has no honesty or moral turpitude violations during his twenty-eight (28) years with the CMPD.

42. Petitioner is a twenty-eight (28) year veteran of the CMPD and has been employed in the capacity of a school resource officer at E.E. Waddell High School for the past fifteen (15) years.

43. At the time of the contested case hearing, Petitioner was only 6 months away from retirement.

44. That Sergeant Dearing testified that it was her understanding that the type of conduct engaged by the Petitioner does not fall under the *Giglio* mandate that would require the CMPD to turn over the results of the Petitioner's actions to any defense lawyer in any criminal proceeding where the Petitioner would be called to testify.

BASED UPON the forgoing FINDINGS OF FACT, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify law enforcement officers and to revoke, suspend or deny such certification.

3. Respondent's Probable Cause Committee found that probable cause existed that Petitioner failed or refused to submit to a lateral or in-service drug screen as required and reported by the CMPD pursuant to 12 NCAC 09A .0204(b)(12) & (c) ; 12 NCAC 09A .0205(b)(2) and 12 NCAC 09C .0310.

4. That 12 NCAC 09A.0204 (Suspension: Revocation: or Denial of Certification) states, in pertinent part:

> (b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:
>
> (12) has refused to submit to an applicant or lateral transferee drug screen as required by the rules in this Chapter, 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; ….
>
> (c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended revoked, or denied.

5. That 12 NCAC 09A.0205 (Period of Suspension: Revocation: or Denial) states, in pertinent part:

> (b) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five (5) years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute of period of probation in lieu of suspension of certification following and administrative hearing, where the cause of sanction is:…
>
> (2) refusal to submit to the applicant or lateral transferee drug screen required by these Rules; …

6. That 12 NCAC 09C.0310 (Agency Reporting of Drug Screening Results) states that:

> (a) Each agency shall report in writing to the Criminal Justice Standards Division all refusals and all positive results of required drug screening obtained from applicants and lateral transfers unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.
>
> (b) Each agency, if it conducts a drug screen for in-service officers, shall report in writing positive results or refusals to submit to an in-service drug screening to the Criminal Justice Standards Division within 30 days of the positive result or refusal unless the positive result has been explained to the satisfaction of the agency's medical review officer to the extent the drug screen conducted conforms to the specifications of 12 NCAC 09B.0101(5)(a),(b),(c),(d) and (f).

(c) For reporting purposes, a result is considered "positive" only in those cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs and incorporated by reference in 12 NCAC 09B.0101(5)(d).

(d) All written reports required to be submitted to the Criminal Justice S Standards Division by this Rule shall contain the individual's name, date of birth and either the date the test was administered or the date of the refusal.

7. Respondent's Probable Cause Committee also found that Petitioner failed to comply with the minimum employment standard of good moral character as required by N.C. Gen. Stat. § 17C-10, 12 NCAC 09A .0204(b)(2), 12 NCAC 09B .0101(3), NCAC 09A .0205(c)(2).

8. N.C. Gen. Stat. §17C-10 states: "In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, shall fix other qualifications for the employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officer, and the Commission shall prescribe the means for presenting evidence of fulfillment of these requirements."

9. That 12 NCAC 09A.0204 (Suspension: Revocation: or Denial of Certification) states, in pertinent part:

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

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B.0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B.0200 or 12 NCAC 09B.0400 for the category of the officer's certification;

10. That 12 NCAC 09B.0101, states the minimum qualifications for criminal justice officers, in pertinent part: ....

(3) be of good moral character pursuant to G.S. 17C-10 and as determined by a thorough background investigation; ...

11. That 12 NCAC 09A.0205(c)(2) states: "When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period,

but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the case of sanction is…(2) failure to meet or maintain the minimum standards of employment."

12. That evidence supports the conclusion that the Petitioner willfully failed to submit to an in-service drug screen test.

13. That a preponderance of the evidence does not exist to support the conclusion that the Petitioner lacks good moral character required of law enforcement officers.

14. The Respondent has shown that Petitioner's refusal to submit to an in-service drug screen is supported by substantial evidence thereby subjecting him to possible suspension of his Law Enforcement Training certification.

15. The Petitioner has met this burden of proving that he has good moral character.

DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge, Selina M. Brooks, recommends that the Petitioner's law enforcement certification be suspended for a period of five (5) years but that the suspension be suspended pursuant to 12 NCAC 09A .0205(c)(2).

NOTICE

The N. C. Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED.

This the 3rd day of February, 2016.

Selina M. Brooks

Selina M Brooks
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/26/2016 12:54 PM

STATE OF NORTH CAROLINA
COUNTY OF HERTFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05371

Timothy Arnold Ruffin Petitioner, v. N C Criminal Justice Education And Training Standards Commission Respondent.	**PROPOSAL FOR DECISION**

THIS MATTER came on for hearing on December 14, 2015 before Administrative Law Judge William T. Culpepper, III in Elizabeth City, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Thomas B. P. Wood
Godwin & Godwin
Post Office Box 44
Gatesville, North Carolina 27938
Attorney for Petitioner

Respondent: Whitney H. Belich
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Attorney for Respondent

ISSUES

Does substantial evidence exist for Respondent to revoke Petitioner's correctional officer certification for the commission of the felony offense of knowingly possessing a gun on educational property?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. 14-269.2(b)
12 NCAC 09G .0504(a) & .0505(a)(1)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **FINDINGS OF FACT**.

In making the **FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and the Petitioner received, by certified mail, the proposed revocation letter mailed by Respondent.

2. Respondent has the authority, pursuant to Chapter 17C of the North Carolina General Statutes and Title 12, Chapter 09G of the North Carolina Administrative Code, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Petitioner is employed as a correctional officer with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.

4. Petitioner was awarded a probationary certification by Respondent on July 23, 2007, to serve as a correctional officer. He was awarded a general certification on July 28, 2008, and is currently certified with the Division of Adult Correction and Juvenile Justice.

5. Petitioner is, and has been for over 5 years, a member of the Security Threat Group (STG) of the Division of Adult Correction and Juvenile Justice that deals with gang members. He checks gang members in prison to make sure that they are not in possession of any contraband, cell phones, or social media devices. Over the course of years dealing with gang members, he has been threatened by high ranking gang members in the State of North Carolina, both inside and outside of prison. This is the main reason that he routinely openly carries his personal firearm, a black semiautomatic .40 caliber Taurus serial #35325 handgun, when he is off-duty, because he has actually encountered these gang members outside of prison.

6. The K. E. White Graduate & Continuing Education Center ("K. E. White Center", "K. E. White building", "White Center", "White facility", or "White building") is a part of Elizabeth City State University ("ECSU" or "university") located in Elizabeth City, North Carolina. The White facility is located on Weeksville Road adjacent to, but not within, the main campus of the university. The main campus of ECSU is enveloped by a brick and metal fence with flags. The White facility is not located within the confines of this area of the university. The main campus of the university and the White facility are separated by non-university buildings and

a street. The flags that are recognized as being present on the campus of ECSU do not extend out to the K. E. White Center.

7. The White building is used for both ECSU educational purposes and by outside groups that rent the building for private parties unrelated to the university.

8. There is letter signage on the front of the White building that identifies its affiliation with Elizabeth City State University; however, this signage is not illuminated at night.

9. There are 3 entrances to the K. E. White Center. One entrance is on Edgewood Drive. There is a sign at the Edgewood Drive entrance which has a small round courtesy-type frontal light as is shown in one of the photographs contained in Respondent's Exhibit 1. The words "Elizabeth City State University" on this sign are located at the bottom of the sign and are significantly smaller in letter size and area relative to the other lettering on this sign.

10. Another entrance to the K. E. White Center is located on Weeksville Road. Near this entrance is a larger brick sign with white lettering. A small frontal light is located some distance from this sign as is shown in one of the photographs contained in Respondent's Exhibit 1. The words "Elizabeth City State University" are again located at the bottom of this sign and are dwarfed by the size and area of the "K. E. White Graduate & Continuing Education Center" lettering on the sign.

11. There is another entrance to the White facility down Weeksville Road past the main Weeksville Road entrance, which is a third entrance. The sign at this entrance sits back from the entrance and is not illuminated at night.

12. On the night of April 20, 2014, a group of black biker organizations unrelated to the university were having a party at the K. E. White Center. Well over 400 people were present at this party, which began at 10:00 PM and ended at 2:00 AM. There was nothing about this party that, in and of itself, would lead a person to reasonably know that it was being held on educational property.

13. On the night of April 20, 2014, Petitioner received a call from his cousin, Wayne Hathaway, who stated that he was at a function at the K. E. White building and requested that Petitioner come over to see him. Prior to this night, Petitioner had never been to or heard about the K. E. White Center. Prior to obtaining his correctional officer certification, Petitioner had worked two years for a private security company doing security work for ECSU. During this period Petitioner never worked at, or had any knowledge of, the K. E. White building.

14. Petitioner telephoned his cousin when he arrived in Elizabeth City. Petitioner stayed on the phone with his cousin who was giving him directions to the White building, because Petitioner had never been there and did not know how to get there. Petitioner came to a stoplight and made a right turn to go to the K. E. White Center. After Petitioner made the right turn, he did not observe anything leading up to the White facility to indicate to him that he was on university property.

15. Petitioner did not park his vehicle close to the White building and did not park in the parking lot area. Petitioner had to park on the grass some distance past and away from the White building, because there were a high number of other vehicles already parked. When Petitioner parked, he did not observe any signage that related the White Center to ECSU. It was approximately 15 minutes before midnight at the time Petitioner parked his vehicle.

16. When Petitioner exited his vehicle, he was still on the phone talking to his cousin who was telling Petitioner where to walk to get to where the cousin was standing. Petitioner began walking up a sidewalk to get to where his cousin was located at the White building. At this time Petitioner was openly carrying his black .40 caliber Taurus handgun in a black holster attached to his belt.

17. As Petitioner approached his cousin, who was standing 3-5 feet from ECSU security officer John Williams ("Officer Williams"), and while Petitioner was continuing to walk along the sidewalk, the holster broke free from Petitioner's belt. Petitioner reached down to catch his gun to keep it from hitting the ground. Officer Williams observed that Petitioner was in possession of a weapon and yelled to Petitioner: "stop", "weapon", "place your hands over your head". Petitioner put his gun in his back pocket and raised his hands over his head like Officer Williams had told him to do.

18. Officer Williams escorted Petitioner, with his arms raised in the air, over to a police vehicle. At the vehicle Petitioner was handcuffed with his hands behind his back. Officer Williams asked Petitioner where his gun was located. Petitioner told Officer Williams that the gun was in his back pocket and turned his body toward Officer Williams to show him that the gun was in his back pocket. Officer Williams pulled the holster out of Petitioner's back pocket and showed it to Petitioner and said to Petitioner that the gun was not in his back pocket.

19. Petitioner told Officer Williams that if the gun was not in his back pocket, then his cousin must have it, because he had been standing next to him and there had been no one else standing near or beside Officer Williams and Petitioner other than Petitioner's cousin. Petitioner gave Officer Williams his cousin's name.

20. ECSU police officer Paul Cherry ("Officer Cherry") arrived on the scene. Officer Williams had control of Petitioner at that time. When Officer Cherry inquired as to what was going on, Officer Williams responded that Petitioner had a gun. Officer Cherry conducted his own body search of Petitioner and did not find a weapon on him, only an empty holster in Petitioner's right rear pocket. Officer Cherry then placed Petitioner in the rear of his patrol vehicle which was sitting in front of the White building.

21. At this time the police officers were still in search of the subject firearm. The officers were trying to find out who had the weapon and if the weapon was still on the ECSU campus. After approximately 10 minutes Petitioner's cousin, Wayne Hathaway, approached Officer Williams and handed him the .40 caliber Taurus handgun. Officer Williams handed the gun to Officer Cherry who then placed the weapon in the rear of his vehicle's trunk.

22. Petitioner was subsequently charged with the felony offense of "Possessing a Gun on Educational Property" on the campus of Elizabeth City State University in Pasquotank County, North Carolina, in violation of N.C. Gen. Stat. 14-269.2(b).

23. At the time of his detention by the officers, Petitioner was informed by them that he was being detained because he was in possession of a gun on educational property. At that time, the Petitioner explained to the officers that he did not know that he was on educational property.

24. During the hearing of this contested case, the Petitioner testified adamantly that he did not know that he was on educational property at the time of the subject incident. The testimony of the Petitioner in this regard is credible in light of all of the other facts and circumstances of this case.

25. Petitioner also testified that when he was taken before a magistrate for processing and the officers informed the magistrate that the Petitioner was to be charged with possession of a gun at the K. E. White Center, the magistrate remarked to the officers that they needed to "label that building, because a lot of people don't know that it is educational property". Petitioner further testified that the officers agreed with the magistrate's statement. Petitioner further testified that one of the officers with the Elizabeth City Police Department thereafter remarked that he would do everything he could to help Petitioner because "a lot of people don't know" that the K. E. White Center is educational property. Petitioner also testified that Officer Williams was one of the officers present at that time and that he also told Petitioner the same thing. The foregoing testimony of Petitioner corroborates all of the other facts and circumstances of this case that indicate that the Petitioner did not have knowledge that the K. E. White Center was educational property at the time of the alleged offense.

26. On April 20, 2014, when Petitioner was in possession of his .40 caliber Taurus handgun on the premises of the K. E. White Center, the Petitioner did not know that the K. E. White Center was a part of Elizabeth City State University.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G .0504(a) provides, in pertinent part, that the North Carolina Criminal Justice Education and Training Standards Commission may, based on the evidence for each case, revoke the certification of a correctional officer when the Commission finds that the certified officer has committed or been convicted of a felony offense.

4. 12 NCAC 09G .0505(a)(1) provides, in pertinent part, that when the North Carolina Criminal Justice Education and Training Standards Commission revokes the certification of a corrections officer pursuant to 12 NCAC 09G .0504, the period of the sanction shall be 10 years where the cause of sanction is commission of a felony offense.

5. N.C. Gen. Stat. 14-269.2(b) provides, in pertinent part, that it shall be a Class I felony for any person **knowingly** to possess or carry, whether openly or concealed, any gun, rifle, pistol, or any other firearm of any kind on educational property. (emphasis supplied).

6. In *State v. Huckelba,* 771 S.E. 2d 809 (2015) (Bryant, J. dissenting), the North Carolina Court of Appeals recently held that the word "knowingly", as used in N.C. Gen. Stat. 14-269.2(b), modifies *both* the "possess or carry" clause *and* the "on educational property" clause. Thus, a conviction under N.C. Gen. Stat. 14-269.2(b) cannot be had without proof that Petitioner *both* knowingly entered educational property *and* knowingly possessed a firearm or prohibited weapon. Whether the Petitioner had knowledge of his presence on educational property is determined by reference to the facts and circumstances surrounding this contested case.

7. The North Carolina Supreme Court subsequently reversed the Court of Appeals in *State v. Huckelba,* 780 S.E.2d 750 (2015) "For the reasons stated in the dissenting opinion". However, in pertinent part, that dissenting opinion (Bryant, J.) reads: "The question here regards whether the trial court committed **plain error when instructing the jury** on the felony charge of possessing a weapon on campus or other educational property in violation of N.C.G.S. 14-269.2(b). . . . The majority opinion carefully considers whether 'knowingly' modifies only 'possess or carry' or whether it extends to the phrase 'on educational property'. . . . [T]he majority holds that 'the "knowingly" mental state in N.C. Gen. Stat. 14-269.2(b) must modify both clauses – "possess or carry" and "on educational property".' **I do not necessarily take issue with the analysis of the statute.** However, . . . the critical inquiry here is whether in failing to instruct the jury they had to find the defendant was knowingly on educational property . . . the trial court's error amounted to plain error. I submit that it does not." (emphasis supplied). 771 S.E.2d at 827. Thus, the holding of the Court of Appeals described in Conclusion of Law 6 above remains the law of North Carolina.

8. On April 20, 2014, the Petitioner did not commit the felony offense of knowingly possessing a gun on educational property in Pasquotank County, North Carolina, on the campus of Elizabeth City State University, in violation of N.C. Gen. Stat. 14-269.2(b), because he did not know that he was on educational property at the time of the alleged offense.

9. Respondent may not properly revoke Petitioner's certification for the commission of a felony offense following his certification.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends that the Petitioner's certification as a correctional officer **not** be revoked for a period of 10 years for the commission of a felony criminal offense.

NOTICE AND ORDER

The agency making the final decision in this contested case may make its final decision only after this Proposal For Decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. N.C. Gen. Stat. 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 26th day of February, 2016.

William T Culpepper III
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/02/2016 11:46 AM

STATE OF NORTH CAROLINA COUNTY OF SCOTLAND	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 15 DOJ 07443
BRYAN KEITH EPPS Petitioner, v. NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.	**PROPOSAL FOR DECISION**

On January 12, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Fayetteville, North Carolina, pursuant to N.C.G.S. § 150B-40(e) and Respondent's requested designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

For Petitioner: Bryan Keith Epps, Pro Se, 11360 Stewartsville Cem Road, Laurinburg, North Carolina 28352

For Respondent: Matthew L. Boyatt, Assistant Attorney General, N.C. Department of Justice, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001

ISSUE

Whether Respondent's proposed revocation of Petitioner's justice officer certification is supported by a preponderance of the evidence presented at the administrative hearing?

APPLICABLE RULES

12 NCAC 10B .0204(d)(1)
12 NCAC 10B .0301(a)(8)
12 NCAC 10B .0204(b)(2)

FINDINGS OF FACT

After careful consideration of the witnesses' sworn testimony at hearing, the documents, and exhibits received and admitted into evidence, and the entire record in the proceeding, having weighed all the evidence and assessed the credibility of the witnesses by judging, including, but not limited to the demeanor of the witnesses, any interests, bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, the reasonableness of the witnesses' testimony, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of hearing.

2. By letter dated and mailed via certified mail on September 24, 2015, Respondent notified Petitioner that Respondent had found probable cause to revoke Petitioner's justice officer certification for the following reasons:

a. Committing the Class B misdemeanor offense of "Willful Failure to Discharge Duties" in violation of N.C.G.G. § 14-230 by knowingly and willfully consuming alcohol at the Maxton Police Department while on duty, in full uniform and carrying his weapon, while being subject to responding to calls for service, and in operating his patrol vehicle when he left the Maxton Police Department at the end of his shift.

b. Lacking good moral character required of all justice officers by engaging in the conduct which constituted "Willful Failure to Discharge Duties."

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as "The Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers, and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B .0204(d)(1) provides that the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a Class B misdemeanor which occurred after the justice officer's date of appointment.

4. Petitioner has been certified as a justice officer by Respondent for ten years, and employed as a Deputy with the Robeson County Sheriff's Office and as a patrol officer with Maxton Police Department during that period. Petitioner's duties as Deputy Sheriff include patrolling Robeson County along with nine other deputies on his squad, and responding to calls for various crimes, including domestic relations disputes, breaking and entering, and murders. Beginning in 2009 or 2010, Petitioner began working for the Maxton Police Department every day he was not working as a Deputy Sheriff.

5. On Saturday, January 24, 2015, Petitioner worked at the Maxton Police Department from 6:00 am until 8:00 pm. Since Petitioner was working on weekend duty, he wore his "dress down" uniform consisting of a polo shirt with "Police" written on the shirt, and khaki pants, and carried his duty weapon, and handcuffs. Petitioner responded to a call around 12:15 pm, and returned to the Police Department shortly thereafter.

6. Dispatcher Stephanie Lowry worked with Petitioner for most of the day. Lowry and Petitioner talked in the dispatch office of the police department while on duty. Around 12:30 p.m., Lowry left the police department for approximately ten minutes, then returned with two bottles of spirituous liquor, Crown Royal Apple, she had bought for an upcoming beach trip with friends. While working, Lowry drank one mixed drink consisting of Sprite and Crown Royal Apple. Petitioner drank part, but not all, of one alcoholic beverage from a white Styrofoam cup, while on duty. After drinking part of his drink, Petitioner realized he had made a bad mistake, and stopped drinking his alcoholic beverage. Petitioner did not check out of duty before he drank the mixed beverage, and did not respond to any police calls during or after he drank the mixed drink.

7. Around 6:00 pm, Officer Patrick Hunt responded to a call regarding a trespassing at Walgreens, while Petitioner stayed in the office. Dispatcher James Knight relieved Dispatcher Lowry from duty, and Lowry left work around 7:00 pm. Petitioner worked in the dispatch, talking with Knight until his shift was over at 8:00 pm. Petitioner drove his police-assigned vehicle home.

8. On Thursday, January 29, 2015, Maxton Police Chief Tammy Deese and Captain Jamie Oxendine reviewed the Maxton Police department's surveillance cameras of the past week's activities. They observed Dispatcher Lowry and Petitioner possibly drinking alcohol in white Styrofoam cups while working on January 24, 2015. Part of the video showed Lowry and Petitioner removing a bottle of what appeared to be spirituous liquor from a bag while standing in the dispatch office. Both Lowry and Petitioner admitted to drinking alcohol while on duty on January 24, 2015. Petitioner admitted he was wrong for consuming alcohol while on duty on January 24, 2015, and said he was sorry for what he had done. (Resp. Exh. 5) Chief Deese suspended Petitioner from working at Maxton Police Department until July 1, 2015.

9. The Robeson County Sheriff's Office investigated Petitioner's January 24, 2015 on-duty actions at the Maxton Police Department. Petitioner admitted to drinking alcohol while on-duty at the Maxton Police Department on January 24, 2015. Internal Affairs Investigator Randall Graham found that Petitioner was forthright in admitting his wrongdoing, and made no excuses for his action. There was no indication that Petitioner was intoxicated while on-duty on January 24, 2015, or that Petitioner drove a vehicle while under the influence of alcohol. Petitioner remained inside the Maxton Police Department for the duration of his January 24, 2015 shift, and had no contact with the public. Graham found that Petitioner did not blame any individual other than himself for his actions, and understood that he would have to deal with the consequences of his actions. (Resp. Exh. 3) The Robeson County Sheriff suspended Petitioner for one day without pay in

disciplining Petitioner for his actions. In disciplining Petitioner, the Sheriff considered Petitioner's 5-month suspension from the Maxton Police Department.

10. At hearing, Investigator Graham opined that other than the January 24, 2015 incident, Petitioner had no prior incidents or complaints while employed as a Deputy Sheriff. Petitioner is currently employed full-time as Robeson County Deputy Sheriff. Graham described Petitioner as an exemplary and seasoned police officer. Graham further explained that the Robeson County Sheriff felt a one-day suspension from the Sheriff's Office, along with the five-month suspension by the Maxton Police Department, was sufficient punishment for Petitioner's January 24, 2015 actions of drinking alcohol while on duty.

11. At the contested case hearing, Petitioner admitted to drinking alcohol while on duty at the Maxton Police Department on January 24, 2015. Petitioner acknowledged that he was wrong, and expressed remorse for his actions. He felt he had disgraced himself, and let down his Sheriff, the Robeson County Sheriff's Department, the Maxton Police Department, and his family. He acknowledged that his actions on January 24, 2015 were solely his fault, and understood that he must suffer the consequences of his actions. Petitioner is married, has two daughters, and wants to continue his law enforcement career and support his family. He asked that he receive a five-year probation, instead of a revocation of his certification.

12. Petitioner's certification is subject to denial pursuant to 12 NCAC 10B .0204 (d)(1) for committing the Class B misdemeanor offense of "Willful Failure to Discharge Duties" in violation of N.C.G.S. § 14-230 by knowingly and willfully consuming alcohol while on duty at the Maxton Police Department.

13. Having accepted responsibility for his actions, and sincerely expressed remorse for his actions, Petitioner poses no risk of repeating the January 24, 2015 on-duty action of drinking alcohol on duty. Petitioner's drinking alcohol while on duty was uncharacteristic of Petitioner, and was one bad choice on one particular day.

14. Pursuant to 12 NCAC 10B .0205(2)(g), Respondent has the discretion to issue a lesser sanction than revocation of Petitioner's justice officer certification where extenuating circumstances presented at the administrative hearing warrant such a reduction or suspension.

15. Petitioner submitted ten (10) letters from local law enforcement personnel who have known and worked with Petitioner for 8 to 10 years, and who show tremendous support for Petitioner keeping his justice officer certification. Maxton Police Chief Reese explained that Petitioner "always displayed a very professional demeanor with the public and the officers" that he interacts with on a day-to-day basis. She noted that she has had no other problems with Petitioner's work with her department other than his January 24, 2015 actions. His "integrity has been unquestionable in the community." (Pet. Exh 1)

16. Robeson County Sheriff Kenneth Sealey described how Petitioner has performed his duties as a field training officer well, is greatly respected by officers, and is a very dependable worker. Sealey would greatly appreciate Respondent allowing Petitioner to continue his law enforcement career, and save his certification. (Pet. Exh 1)

17. Robeson County Sheriff's Captain Brenda Thomas asked Respondent to place Petitioner on probation for his actions at Maxton Police Department on January 24, 2015. Thomas has the utmost respect for the excellent service Petitioner has provided as a Deputy Sheriff. Robeson County Sheriff's Major Howard Branch asked that Respondent not allow Petitioner's one mistake to interrupt Petitioner's previous stellar career. Branch explained that Petitioner has been an excellent role model and mentor for new deputies, is a reliable, efficient, and very good worker who exhibits a positive attitude. (Pet. Exh 1)

18. Robeson County Sheriff's Sgt. Lewis Woodard has worked and known Petitioner for 8 years. Woodard has always found Petitioner to be a hardworking, conscientious deputy. Woodard described how Petitioner always sets a good example to younger deputies on how to show respect to everyone, even when making an arrest. Petitioner "naturally displays the traits that I look for; traits that more often than not, have to be learned with years of on-the-job experience." (Pet. Exh 1)

19. Four other law enforcement officers expressed strong support for Petitioner maintaining his justice officer certification. These officers explained how Petitioner has turned one of the greatest challenges Petitioner has had to face, i.e. dealing with the professional consequences from drinking alcohol while on duty, into one of the greatest lessons of his professional and personal life. They opined that Petitioner is an exemplary asset to his employers, whose career should not be terminated for making one bad choice. (Pet. Exh. 1)

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.

2. 12 NCAC 10B .0204(d)(1) provides that the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a Class B misdemeanor which occurred after the justice officer's date of appointment. N.C. Gen. Stat. §14-230 is listed as a Class B misdemeanor in Respondent's Class B misdemeanor manual.

3. The evidence presented at the administrative hearing showed that Petitioner committed the Class B misdemeanor offense of "Willful Failure to Discharge Duties," in violation of N.C.G.S. § 14-230, by knowingly and willfully consuming alcohol at the Maxton Police Department while on duty on January 24, 2015, in full uniform and carrying his weapon, while being subject to responding to calls for service, and in

operating his patrol vehicle when he left the Maxton Police Department at the end of his shift.

4. However, pursuant to 12 NCAC 10B .0205(2)(g), Respondent may either reduce or suspend the period of sanction under this rule, or substitute a period of probation in lieu of revocation or denial of certification, after extenuating circumstances brought out at the administrative hearing warrant such a reduction.

5. 12 NCAC 10B .0301(a)(8) requires that every justice officer employed or certified in North Carolina shall be of good moral character.

6. In this case, Petitioner has demonstrated that he possesses the good moral character required of a criminal justice officer. Shortly after drinking some alcohol on duty on January 24, 2015, Petitioner realized his wrongdoing, and the gravity of his actions. He did not respond to any police calls while on duty. While Petitioner's actions were reprehensible, and inexcusable, there is no indication that Petitioner will engage in such behavior in the future. Petitioner's actions of drinking part of one cup of Sprite and spirituous liquor, while on duty at Maxton Police Department, was a one-time bad choice that Petitioner made on one day at work. Petitioner acknowledged that he drank alcohol while on duty, expressed remorse for his actions, and showed that he turned a bad choice into a learning opportunity both professionally and personally.

7. The overwhelming evidence from ten law enforcement officers, such as Petitioner's immediate supervisors, and the Robeson County Sheriff, and the Maxton Police Chief, demonstrated that Petitioner is an exemplary police officer, role model for younger deputies, and asset to his employer law enforcement departments.

PROPOSAL FOR DECISION

Based upon the foregoing Findings Of Fact and Conclusions Of Law, the undersigned recommends Respondent place Petitioner's law enforcement certification on probationary status for five years, given the extenuating circumstances brought out at the administrative hearing.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. That agency is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

This the 2nd day of February, 2016.

Melissa Owens Lassiter
Administrative Law Judge