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NORTH CAROLINA REGISTER

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September 15, 1995

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars ($120.00) for 24 issues. Individual issues may be purchased for ten dollars ($10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

(1) Single pages may be obtained at a minimum cost of two dollars and 50 cents ($2.50) for 10 pages or less, plus fifteen cents ($0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

(2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **10:01 NCR 1-67, April 3, 1995** refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, FAX (919) 733-3462.

NORTH CAROLINA REGISTER

Volume 10, Issue 12
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September 15, 1995

This issue contains documents officially filed through August 31, 1995.

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NORTH CAROLINA REGISTER
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Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing *15 days from notice*	* End of Required Comment Period *30 days from notice*	Last Day to Submit to RRC	** Earliest Effective Date
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
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10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95
10:13	10/02/95	09/11/95	09/18/95	10/17/95	11/01/95	11/20/95	01/01/96
10:14	10/16/95	09/25/95	10/02/95	10/31/95	11/15/95	11/20/95	01/01/96
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10:16	11/15/95	10/24/95	10/31/95	11/30/95	12/15/95	12/20/95	02/01/96

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

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

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

EXECUTIVE ORDER NO. 84
NORTH CAROLINA HOME FURNISHINGS EXPORT COUNCIL

WHEREAS, an advisory body is needed to develop plans and programs to increase home furnishings exports from North Carolina companies into the global market; and

WHEREAS, North Carolina furniture companies and craftsmen create some of the finest furniture in the world; and

WHEREAS, the home furnishings market is becoming more globally-oriented;

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

Section 1. Establishment.
The North Carolina Home Furnishings Export Council ("Council") is hereby established.

Section 2. Purpose.
The Council shall consist of not more than 30 voting members, with the Governor and the Secretary of Commerce serving as ex-officio members. All voting members shall be from either the public or private sector and have established connection to and genuine interest in the export of home furnishing products produced in North Carolina. The Governor shall appoint a Chair from among the voting membership. All members serve at the pleasure of the Governor. The Council shall meet at least twice a year at the call of the Chair.

Section 3. Duties of the Council.
The Council shall have the following duties:

(a) Advise the Division of International Trade of the Department of Commerce on matters related to the exportation of home furnishings;
(b) Serve as a liaison between the North Carolina export office and industry manufacturers; and
(c) Discover and explore ways to increase the level of exportation of North Carolina's home furnishings products.

Section 4. Administration.
The Department of Commerce shall provide administrative and financial support for the Council. Members shall receive a per diem allowance for their service and reimbursement for travel and other expenses in accordance with state law, subject to the availability of funds.

Done in Raleigh, this the 24th day of August, 1995.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 26G .0703 - .0705 and 26H .0508.

Proposed Effective Date: *December 1, 1995.*

A Public Hearing *will be conducted at 1:30 p.m. on October 17, 1995 at the NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Building, Room 132, Raleigh, NC.*

Reason for Proposed Action:
10 NCAC 26G .0703 - .0705 - To define the parameters and procedure for withholding payments to providers in cases of fraud or wilful misrepresentation.
10 NCAC 26H .0508 - The change will permit the establishment of reasonable rates by allowing adjustment to rates based on market and cost analysis.

Comment Procedures: *Written comments concerning this rule-making action must be submitted by October 17, 1995 to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing. A fiscal note statement is available upon written request from the same address.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26G - PROGRAM INTEGRITY

SECTION .0700 - ADMINISTRATIVE SANCTIONS AND RECOUPMENT

.0703 ADMINISTRATIVE SANCTIONS AND REMEDIAL MEASURES

(a) The following types of sanctions may be imposed, singly or in combination, by the Medicaid Agency in instances of program abuse by providers:

(1) Warning letters for those instances of abuse that can be satisfactorily settled by issuing a warning to cease the specific abuse. The letter will state that any further violations will result in administrative or legal action initiated by the Medicaid Agency.

(2) Suspension of a provider from further participation in the Medicaid Program for a specified period of time, provided the appropriate findings have been made and provided that this action does not deprive recipients of access to reasonable service of adequate quality.

(3) Termination of a provider from further participation in the Medicaid Program, provided the appropriate findings have been made and provided that this action does not deprive recipients of access to reasonable services of adequate quality.

~~(4) Suspension of payments in part or in whole, to ensure recovery of overpayments or to implement the penalty provision of the Patients' Bill of Rights.~~

(4) ~~(5)~~Probation whereby a provider's participation is closely monitored for a specified period of time not to exceed one year. At the termination of the probation period the Medicaid Agency will conduct a follow-up review of the provider's Medicaid practice to ensure compliance with the Medicaid rules. Notwithstanding his probation, a probationary provider's participation, like that of all providers, is terminable at will.

(5) ~~(6)~~Remedial Measures to include:

(A) placing the provider on "flag" status whereby his claims are remanded for manual review;

(B) establishing a monitoring program not to exceed one year whereby the provider must comply with pre-established conditions of participation to allow review and evaluation of his Medicaid practice, i.e., quality of care.

(b) The following factors are illustrative of those to be considered in determining the kind and extent of administrative sanctions to be imposed:

(1) seriousness of the offense;
(2) extent of violations found;
(3) history or prior violations;
(4) prior imposition of sanctions;
(5) period of time provider practiced violations;
(6) provider willingness to obey program rules;
(7) recommendations by the investigative staff or Peer Review Committees; and
(8) effect on health care delivery in the area.

When a provider has been administratively sanctioned, the Division shall notify the appropriate professional society, board of licensure, State Attorney General's Office, federal and state agencies, and appropriate county departments of social services of the findings made and the sanctions imposed.

Authority G.S. 108A-25(b); 42 C.F.R. Part 431; 42 C.F.R. Part 455.

.0704 PROVIDER LOCK-OUT

(a) The Division may restrict the provider, through suspension or otherwise, from participating in the Medicaid program, provided that:

(1) Before imposing any restrictions, the Division will give the provider notice and opportunity for

review in accordance with procedures established by the Division.

(2) The Division shows, before so restricting a provider, that in a significant number of proportion of cases, the provider has:

(A) ~~(a)~~provided care, services, and items at a frequency or amount not medically necessary, as determined in accordance with utilization guidelines established by the Division; or

(B) ~~(b)~~provided care, service, and items of a quality that does not meet professionally recognized standards of health care.

(3) The Division will assure that recipients do not lose reasonable access to services of adequate quality as a result of such restrictions.

(4) The Division will give general notice to the public of the restriction, its basis, and its duration.

(b) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment to the state agency. No claims may be submitted by or through any clinic, group, corporation, or other association for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the Medicaid program, except for those services or supplies provided prior to the suspension or termination effective date.

Authority G.S. 108A-25(b); 42 C.F.R. Part 431; 42 C.F.R. Part 455.

.0705 WITHHOLDING OF MEDICAID PAYMENTS

~~(a) When a provider has been administratively sanctioned, the Division shall notify the appropriate professional society, board of licensure, State Attorney General's Office, federal and state agencies, and appropriate county departments of social services of the findings made and the sanctions imposed.~~

~~(b) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment to the state agency. No claims may be submitted by or through any clinic, group, corporation, or other association for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the Medicaid program, except for those services or supplies provided prior to the suspension or termination effective date.~~

(a) The Medicaid Agency shall withhold Medicaid payments in accordance with the provisions of 42 CFR 455.23 which is hereby incorporated by reference including subsequent amendments and editions. A copy of 42 CFR 455.23 is available for inspection and may be obtained from the Division of Medical Assistance at a cost of twenty cents ($.20) a page.

(b) The Medicaid Agency shall withhold Medicaid payments in whole or in part to ensure recovery of overpayments, or to implement the penalty provision of the Patient's Bill of Rights.

Authority G.S. 108A-25(b); 42 C.F.R. Part 431; 42 C.F.R. Part 455.

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0500 - REIMBURSEMENT FOR SERVICES

.0508 DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES

(a) Effective August 1, 1991, payment for each claim for durable medical equipment and ~~associated~~ supplies will be equal to the lower of the supplier's usual and customary billed charges or the maximum fee established for each item of durable medical equipment or related supply. The maximum fees are set at the Medicaid fee schedule in effect on July 1, 1991. Fees for added equipment will be set at Medicare Part B fees. If a Medicare fee cannot be obtained for added equipment, then the fee will be based on ~~estimates a~~ an estimate of reasonable ~~costs~~ cost. The maximum allowable fee will be updated each August 1 ~~August 1, beginning August 1, 1991,~~ based on the Gross National Product (GNP) implicit price deflator, but not to exceed the percentage increase approved by the North Carolina State Legislature. (The maximum allowable fee may be adjusted for any changes resulting from market and cost analysis conducted by the Division of Medical Assistance.) There will be no retroactive payment adjustments for fee changes.

(b) Each equipment item will be assigned to one of the following categories of payment methods:

(1) Purchase fee paid for inexpensive, routinely purchased, and customized ~~equipment~~ equipment, and DME Supplies.

(2) Monthly rental paid up to purchase price but for no more than 15 continuous months. Monthly rental is paid for other types of equipment when the initial expected medical needs is less than six months, but not to exceed the purchase price if need extends beyond six months. Equipment with an initial expected medical need of six months or more may be paid as a purchase or a rental.

(3) Monthly rental payment for oxygen and oxygen equipment without any limitations.

(4) Servicing and repair fees ~~will~~ shall be established for appropriate items. Through a prior approval process, recipient owned equipment is repaired on an "as needed" basis if the repair estimate is less than the cost of replacement and if the equipment has not gone beyond its established life expectancy. Service contracts are not covered and manufacturer's warranties are expected to be honored when appropriate.

Rental equipment repairs are not reimbursed separately but are considered to be covered in the monthly rental fee.

(c) The changes to this Rule shall become effective when the Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCFA by the Director of the Division of Medical Assistance on or about August 1, 1995 as #MA 95-17, wherein the Director proposes amendments of the State Plan to amend Payments for Services - Durable Medical Equipment.

Authority G.S. 108A-25(b); 42 C.F.R. 447, Subpart D; Section 95 of Chapter 689, 1991 Session Laws.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 2D .0415.

Proposed Effective Date: *December 31, 1995.*

Instructions on How to Demand a Public Hearing *(must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.*

Reason for Proposed Action: *These amendments are proposed by the Department with prior approval of the United States Coast Guard. The amended rule will provide equitable service to both highway and marine traffic.*

Comment Procedures: *Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0400 - FIELD OPERATIONS - MAINTENANCE AND EQUIPMENT

.0415 GENERAL REGULATIONS FOR DRAWBRIDGES

(a) This Rule governs operation of drawbridges in North Carolina. All other drawbridges not specifically noted in this Rule operate under normal Coast Guard regulations which give preference to water-borne traffic. For purposes of this Rule, the term on signal means the boat operator sounds his signal as defined by standard navigational practices.

(b) The draw on the bridge on US 17 over the Neuse River at New Bern shall open on signal except that the draw may remain closed from Monday through Friday from 6:30 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. for pleasure vessels. However, the draw shall open at 7:30 a.m. and 5:00 p.m. for any vessel waiting to pass. The draw may remain closed on Sundays and Federal holidays from May 24 through September 8 from 2:00 p.m. to 7:00 p.m. for pleasure vessels except that the draw shall open at 4:00 p.m. and 6:00 p.m. for any vessels waiting to pass. The draw on this bridge shall always open on signal for public vessels of the United States, State, or local vessels used for public safety, tugs with tows and vessels in distress.

(c) ~~The rules applicable to the Trent River Bridge on US 70 at New Bern are the same as those for the Neuse River Bridge at New Bern as specified in Paragraph (b) of this Rule.~~ The draw on the bridge on US 70 Business over the Trent River at New Bern shall open on signal except that the draw may remain closed from Monday through Friday from 6:30 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. for pleasure vessels. However, the draw shall open at 7:30 a.m. and 5:00 p.m. for any vessel waiting to pass. The draw may remain closed on Sundays and Federal holidays from May 24 through September 8 from 2:00 p.m. to 7:00 p.m. for pleasure vessels except that the draw shall open on the hour and half hour for any vessels waiting to pass. The draw on this bridge shall always open on signal for public vessels of the United States, State, or local vessels used for public safety, tugs with tows, and vessels in distress.

(d) The draw on the US 17B/Perquimans River Bridge at Hertford shall open on signal except that from midnight to 8:00 a.m. from April 1 through September 30, and from 10:00 p.m. through 10:00 a.m., from October 1 through March 31, the draw shall not open for the passage of vessels.

(e) The bridge on US 17 over the Pamlico River at Washington shall open only upon 24-hour advance notice.

(f) The bridge on SR 1565 over the Tar River at Grimesland shall open only upon 24-hour advance notice.

(g) The bridge on US 117-NC 133 over Smith's Creek just north of Wilmington shall open only upon 24-hour advance notice.

(h) ~~The draw on the US70/Beaufort Channel Bridge in Beaufort shall open on signal except that from 7:30 a.m. to 7:30 p.m. the draw shall open for pleasure craft on signal every hour on the half hour.~~ The draw on the bridge on US 70 over Beaufort Channel in Beaufort shall open on signal except that from 6:00 a.m. to 10:00 p.m. the draw shall open for all vessels on signal every hour on the hour, 20 minutes past the hour, and 40 minutes past the hour.

(i) The draw on the NC 50/Intracoastal Waterway Bridge at Surf City shall open on signal, except that from 7:00 a.m. to 7:00 p.m. the draw shall open for pleasure craft if signaled only on the hour.

(j) The draw on the bridge on US 74/76 over Intracoastal Waterway at Wrightsville Beach shall open on signal, except that from 7:00 a.m. to 7:00 p.m. the draw shall open for pleasure craft if signaled only on the hour.

(k) The draw on the bridge on SR 1172 over Intracoastal Waterway at Sunset Beach shall open on signal, except that from 7:00 a.m. to 7:00 p.m. the draw shall open for pleasure craft if signaled on the hour from April 1 to ~~October 31~~ November 30.

Statutory Authority G.S. 136-18(5).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 2 - BOARD OF ARCHITECTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Architecture intends to amend rule cited as 21 NCAC 02 .0208.

Proposed Effective Date: *December 1, 1995.*

Instructions on How to Demand a Public Hearing *(must be requested in writing within 15 days of notice): Any person demanding that the Board hold a public hearing on the proposed amendment must submit a written request to the Board office, 127 W. Hargett St., Room 304, Raleigh, NC 27601, not later than October 2, 1995.*

Reason for Proposed Action: *Removes language governing standard design requirements which was moved to 21 NCAC 02 .0206.*

Comment Procedures: *Any person interested in this Rule may deliver written comments to the Board office not later than Monday, October 16, 1995.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

SECTION .0200 - PRACTICE OF ARCHITECTURE

.0208 DISHONEST CONDUCT

(a) Deception. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for registration renewal.

(b) Contributions. An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgement of an existing or prospective client in connection with a project in which the architect is interested.

(c) Registration of Others. An architect shall not assist the application for registration of a person known by the architect to be unqualified with respect to education, training, experience, or character.

(d) Knowledge of Violation. An architect possessing knowledge of a violation of these Rules by another architect shall report such knowledge to the Board.

~~(e) Misrepresentation.— It shall be deemed dishonest conduct for an architect to permit the use of his professional seal by others, or otherwise represent himself as the author of drawings or specifications which are not personally prepared by him or under his direct supervision. However, "standard design documents" prepared by architects who are registered in this state or in their state of origin may be sealed by a succeeding licensed architect registered in North Carolina provided:~~

~~(1) the seal of the original architect appears on the documents to authenticate authorship;~~

~~(2) the words "standard design document" appear on each sheet of the documents prepared by the original architect;~~

~~(3) the succeeding North Carolina architect clearly identifies all modifications to the standard design documents;~~

~~(4) the succeeding North Carolina architect assumes responsibility for the adequacy of the design for the specific application in North Carolina and for the design conforming with applicable building codes; and~~

~~(5) the succeeding North Carolina architect affixes his seal to the standard design documents and a statement substantially as follows: "These documents have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and I assume responsibility for the adequacy of the design for the specific application in North Carolina."~~

Statutory Authority G.S. 14-353; 83A-6; 83A-14; 83A-15.

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CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to adopt rule cited as 21 NCAC 14B .0604.

Proposed Effective Date: *December 1, 1995.*

Instructions on How to Demand a Public Hearing *(must be requested in writing within 15 days of notice): Anyone*

wishing to demand a public hearing may contact Linda Speight, Interim Executive Secretary, NC State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, NC 27609, (919) 850-2793. This demand must be in writing and received by October 3, 1995.

Reason for Proposed Action: *Senate Bill 966 states "The license fee for a registered cosmetologist shall be in an amount determined by the Board but not to exceed $39.00, etc. This Rule will state a specific amount.*

Comment Procedures: *The record shall be open for 30 days to receive written comments. Comments should be addressed to Dee Williams, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, NC 27609.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0600 - FEES

.0604 COSMETOLOGIST LICENSE FEE

In addition to the fees set by G.S. 88-21, the following fee shall be payable to the Board: the license fee and the renewal fee of a registered cosmetologist shall be thirty-nine dollars ($39.00) for three years payable in advance if the license is renewed before it becomes delinquent.

Statutory Authority G.S. 88-21.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend rules cited as 25 NCAC 1D .0401, .0406, .0504, .0510 - .0511, .0515, .0910, .1001, .1005, .1009 - .1010, .1928; 1E .0304 - .0305, .1001 - .1002, .1110; 1I .2301 - .2308; 1J .0401, .0404, .0406, .0501 - .0508, .0801 - .0802, .0805; 1K .0318, .0701 - .0703, .0705, .0708; 1L .0101 - .0104, .0106; adopt rules cited as 25 NCAC 1D .2601 - .2604; 1I .2309 - .2310; 1J .0509 - .0511; and repeal rules cited as 25 NCAC 1H .0628; 1J .0402 - .0403, .0405, .0407 - .0413, .0803 - .0804, .0806 - .0809; 1K .0704, .0707; 1L .0105.

Proposed Effective Date: *December 1, 1995.*

A Public Hearing *will be conducted at 9:00 a.m. on October 5, 1995 at the North Carolina A&T State University, B.C. Webb Hall, Greensboro, North Carolina 27411.*

Reason for Proposed Action: *These Rules are proposed to be amended, adopted and repealed in order to offer guidance and clarification to state agencies in administering the provisions of Demotion, Reduction-in-Force, Transfer, Reinstatement, Hours of Work and Overtime Compensation, In-Range Salary Adjustment, Sick Leave, Miscellaneous Leave (Jury Duty and Court Attendance or Job Related Proceeding), Other Leaves Without Pay, Employee Recognition Programs, Employee Grievances, Governor's Award for Excellence Program, Public Manager's Program, Educational Assistance Program (Tax Status) and Equal Opportunity Plans and Programs. Rules for 25 NCAC 1L .2300 are proposed to be amended and adopted in order to offer guidance and clarification to local government agencies in administering the discipline and dismissal procedures.*

Comment Procedures: *Interested persons may present statements either orally or in writing at the Public Hearing or by mail addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27603. All comments must be received by 5:00 p.m. on October 16, 1995.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0400 - DEMOTION OR REASSIGNMENT

.0401 DEFINITION

Demotion or reassignment is a change in status downward resulting from assignment to a position at a ~~of~~ lower salary grade. ~~It may result from the choice of the employee,~~ If the change results from inefficiency in performance or as a disciplinary action, the action is considered a demotion. ~~better utilization of individual ability.~~ If the change results from a mutual agreement between the employee and employer, the action is considered a reassignment.

Statutory Authority G.S. 126-4.

.0406 SALARY RATE

(a) When the employee's current salary falls within the range of the lower class, it may remain the same or be reduced to any salary in the lower range. ~~Exception~~ Exceptions are: When an employee is promoted ~~or reallocated upward~~ and subsequently demoted ~~demoted,~~ or reassigned, or is reallocated upward and subsequently reallocated downward, demoted or reassigned to any lower class within one year, the following shall apply:

(1) if to the same grade level before the promotion or reallocation, the salary shall revert to the salary being paid before the promotion or reallocation, plus any increases that would have been given had that promotion not occurred;

(2) if to a level higher than held before the promotion or reallocation, the salary shall revert to a salary that is permitted by 25 NCAC 1D, Section .0300, as though the previous promotion or reallocation had not occurred;

(3) if to a level lower than held before the promotion or reallocation, the salary shall be set in accordance with Paragraph (a)(1), but not to exceed the maximum.

(b) When the employee's current salary is above the maximum of the range for the lower class, the salary shall be reduced at least to the maximum of the lower range.

(c) When an employee has reduction-in-force priority consideration, the salary shall be set in accordance with G.S. 126-7.1(a2).

Statutory Authority G.S. 126-4.

SECTION .0500 - SEPARATION

.0504 REDUCTION IN FORCE

(a) ~~Policy~~. ~~An appointing authority~~ A State government agency ~~may~~ shall have the authority to separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position or other material change in duties or organization. Retention of employees in classes affected ~~shall~~ shall , as a minimum, be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on ~~protected group individuals~~ the diversity of the workforce and length of service. However, neither temporary, probationary nor trainee employees in their initial six months of training shall be retained in classes where ~~permanent employees~~ an employee with a permanent appointment ~~(those who have satisfactorily completed a probationary or equivalent trial period)~~ must be separated in the same or related class.

(b) Agency Responsibility.

(1) Each agency shall develop a written ~~guidelines~~ plan for reduction-in-force which ~~meet~~ meets its particular needs and ~~provide~~ provides assurance to employees that potential reductions shall be considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force plan. The ~~guidelines~~ plan of each ~~agency~~ department/agency/institution shall be filed with the Office of State Personnel as a public record.

(2) It is the employing agency's responsibility to inform the employee of separation as soon as possible and to inform the employee of the priority reemployment consideration available. The agency must provide employees with a minimum of ~~two weeks notice of separation~~ 30 calendar days written notification of separation prior to the effective date of the reduction in force. For persons desiring priority consideration, the releasing agency must submit an application to the Office of State Personnel requesting priority consideration. If the employee does not want assistance in finding another state job, the agency shall get a written statement to this effect and ~~share~~ file a copy with the Office of State Personnel.

(c) Appeals. A career state employee ~~or an employee with career status under competitive service~~ who is separated due to reduction-in-force shall have the right to appeal to the State Personnel Commission for a review to assure that systematic procedures were applied. ~~The term "career employee" shall mean a state employee in a primary position who has been continuously employed by the state for the immediate 12 preceding months; in a secondary level or professional position who has been continuously employed by the State for the immediate 24 preceding months; or in a management level or consultant position who has been continuously employed by the state for the immediate 36 preceding months. at the time of the act, grievance or employment practice complained of.~~ Provisions of the agency appeal procedure shall first be followed.

(d) ~~Affirmative Action~~ Equal Employment Opportunity. In accordance with federal guidelines affecting equal employment opportunity ~~and affirmative action~~, any application of the reduction-in-force ~~policy~~ plan must be analyzed to determine its impact in this area.

~~(e) Leave~~

~~(1) Vacation Leave. Employees are paid in a lump sum for accumulated vacation leave.~~

~~(2) Sick Leave. Employees separated due to reduction in force shall be informed that their sick leave shall be reinstated if employed reemployed in any agency within five years.~~

Statutory Authority G.S. 126-4(2).

.0510 PRIORITY REEMPLOYMENT CONSIDERATION

~~(a)~~ Priority reemployment consideration shall be provided to:

~~(1) Employees who have met the minimum service requirements of G.S. 126-1A, and who occupy or accept and are subsequently separated, for reasons other than just cause, from positions designated exempt as confidential or policy-making pursuant to G.S. 126-5(c)(2) and G.S. 126-5(d)(1).~~

~~(2)~~ (1) Employees with permanent appointments, employees and apprentices with trainee appointments who have completed six months of service, and employees who had a permanent appointment prior to entering a trainee appointment, who have received written notification of imminent separation due to shortage of funds or work, abolishment of a position or other material changes in duties or organization by the process commonly known as reduction-in-force. An employee who is separated

~~at the end of~~ from a time-limited appointment is not eligible for priority reemployment consideration.

~~(b) Employees separated from policy making/confidential exempt positions for reasons other than cause and employees with priority status due to reduction in force have equal priority.~~

~~(c) The intent of priority consideration for employees separated from exempt positions is to enable a return to the career service at a salary grade equal to that held in the most recent subject position. For employees receiving notification of separation through reduction in force, the intent is to continue or restore employment at a salary grade and salary rate equal to that held at the time of notification. In either instance, the salary grade and not the salary rate is the controlling factor.~~

~~(d)~~ (2) A ~~person~~ career state employee with priority status who has reason to believe priority consideration was denied in a selection decision may appeal directly to the State Personnel Commission through the established contested hearing process in accordance with G.S. 126-34.1(a)(5).

Statutory Authority G.S. 126-1A; 126-1.1; 126-5(c)(2); 126-5(d)(1).

.0511 REDUCTION IN FORCE PRIORITY CONSIDERATION

Upon written notification of imminent separation through reduction in force, an employee shall receive priority reemployment consideration for a period of 12 months pursuant to G.S. 126-7.1(c1). The following conditions apply:

~~(1) Within the agency or institution where the notification of separation occurred (parent agency), an employee scheduled to be separated through reduction in force shall be offered any available vacant position of a salary grade level equal or below that held at the time of notification, provided the employee meets the qualifications for the position and could perform the job in a reasonable length of time, including normal orientation and training given any new employees.~~

(1) If the applicants for reemployment for a position include state employees currently possessing priority reemployment consideration as a result of reduction-in-force, a RIF employee with more than 10 years of service shall receive priority consideration over a RIF employee having less than 10 years of service in the same or related position classification. This reemployment priority shall be given by all State departments, agencies, and institutions.

~~(2) Within all other state agencies and institutions, an employee with priority status and qualified for the vacant position, shall be interviewed and offered the position prior to employing anyone who is not a permanent state employee.~~

~~(3)~~ (2) For employees receiving notification of separation from trainee or flat-rate positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade level shall be the salary grade which has as its mid-point, a rate nearest the flat rate salary of the eligible employee. For employees in trainee status the salary grade level shall be the salary grade of the full class.

~~(4)~~ (3) An employee notified of imminent separation through reduction in force while actively possessing priority reemployment consideration shall retain the initial priority for the remainder of the twelve month priority period. A new priority period shall then be afforded at the salary ~~grade~~ grade, salary rate and appointment status of the position held at the most recent notification of separation. The length of this additional priority period shall be equal to the time between the expiration dates of the old and the new priority, assuming that the second twelve month period started on the date of the most recent notification.

~~(5)~~ (4) ~~Priority reemployment consideration will not be afforded to an~~ An employee who, after receiving formal notice of impending reduction-in-force, retires or applies for retirement prior to the separation date thereby waives the right to priority reemployment consideration. An employee who applies for retirement after being separated through reduction-in-force may exercise priority reemployment consideration.

~~(6)~~ (5) Priority reemployment consideration is intended to provide employment at an equal employment status to that held at the time of notification. Acceptance of a position at a lower appointment status will not affect priority. Employees notified of separation from permanent full-time positions shall have priority reemployment consideration to permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority reemployment consideration to permanent part-time positions only.

~~(7)~~ (6) Employees who have priority reemployment status at the time of application for a vacant position, and who apply during the designated agency recruitment period, will be continued as priority applicants until the selection process is complete.

~~(8)~~ (7) An employee with priority status may not decline interviews or offers for positions within 35 miles of the employee's original work station without losing ~~his~~ priority, if the position is at an appointment status ~~status, and~~ salary grade and salary rate equal to or greater than that held at the

time of notification.

~~(9)~~ (8) An employee with priority status may accept a temporary position at any level and retain ~~his/her~~ priority reemployment consideration.

~~(10)~~ (9) When priority has been granted for a lower salary grade and salary rate than that held at the time of notification, the employee retains priority for higher salary grades ~~between that of his current position and~~ up to and including that held at the time of ~~his~~ the notification of separation.

~~(11)~~ (10) An employee with priority reemployment consideration may accept employment outside state government or in a state position not subject to the State Personnel Act and retain such consideration through the twelve months priority period.

~~(12)~~ (11) Priority reemployment consideration is terminated when an eligible employee:

(a) refuses an interview or offer for a position within 35 miles of the employee's original work station if the position is at an appointment status and salary grade and salary rate equal to or greater than that held at the time of notification;

(b) accepts a position equal to or greater than the salary grade ~~level~~ level, salary rate and employment status of the position held at the time of notification; or

(c) has received 12 months priority reemployment consideration.

~~(13)~~ (12) Priority reemployment consideration for employees notified of or separated through reduction-in-force does not include priority to any policy-making/confidential exempt position.

~~(14)~~ (13) When an employee with priority status accepts a position at a lower salary grade and/or rate is subsequently terminated by disciplinary action, any remaining priority consideration ceases.

~~(15)~~ (14) An employee with priority status may be required to serve a new probationary period when the essential duties and responsibilities of the position into which ~~he/she~~ the employee is being reemployed are significantly different from those of the position held at the time of reduction in force notification, or when prior, documented performance history of the employee indicates performance failings on tasks in ~~his/her~~ the employee's previous position which bear a strong functional relationship to the essential tasks of ~~his/her~~ the employee's new position, or when the prior, documented personal conduct history of the employee includes instances of unprofessional or unbusiness-like behavior, and would make a probationary period a prudent protection of agency interests. A decision by an agency to require a new probationary period shall not, however, nullify the employee's right to a future period of priority reemployment status should that employee receive reduction-in-force ~~reduction in force~~ notification again while serving in probationary status.

Statutory Authority G.S. 126-4(6),(10).

.0515 AGENCY RESPONSIBILITIES

(a) It is the employing agency's responsibility to notify the employee of impending separation as soon as possible in accordance with G.S. 126-7.1(a1), and to inform the employee of the priority reemployment consideration to be afforded. If the employee does not want assistance in finding another State job, the agency shall get a written statement to that effect, and file a copy with the Office of State Personnel. For employees wishing to be advantaged by the automated priority referral system operated by the Office of State Personnel, the separating agency must submit an application to the Office of State Personnel ~~simultaneous with employee notification~~ immediately. ~~The application shall be designated as "reduction in force" or "policy making exempt".~~

(b) It is also an agency responsibility to notify the Office of State Personnel in writing when:

(1) An eligible ~~person~~ employee accepts a position which ~~satisfied~~ satisfies ~~his~~ the priority reemployment consideration.

(2) ~~A person~~ An employee with priority status due to reduction-in-force is offered a lateral transfer or promotion and refuses, unless the position offered is more than thirty-five miles from the employee's original work station.

(3) An eligible employee separated from a policy-making or confidential exempt position exercises ~~his~~ priority and then refuses an employment offer.

(4) Other conditions which would satisfy or terminate an eligible employee's priority reemployment consideration are discovered.

Statutory Authority G.S. 126-4(6),(10).

SECTION .0900 - TRANSFER

.0910 SALARY RATE

(a) If an employee transfers to a position having the same salary grade, the salary shall remain unchanged. ~~(Exception:~~ Exception: The salary may be reduced if there is a lack of sufficient funds or if it results in the creation of a serious internal salary ~~inequity.)~~ inequity. This exception does not apply to employees with reduction-in-force priority consideration, in which case the salary shall remain unchanged in accordance with G. S. 126-7.1(a2).

(b) If the transfer is to a higher class and results in a promotion, the Promotion Policy ~~will~~ shall apply. (See 25 NCAC 1D .0300.)

(c) If the transfer is to a lower class and results in a demotion or reassignment, the Demotion /Reassignment

Policy ~~will~~ shall apply. (See 25 NCAC 1D .0400.)

(d) If an employee is in an agency not utilizing an authorized special entry rate and transfers to an agency which does, the special entry rate cannot be used as justification for a salary increase if both work stations are within the same geographic area ~~area, i.e., Research Triangle~~.

(e) If an employee is receiving a higher rate of pay by virtue of working in a position to which a geographic differential applies and transfers to a position to which a geographic differential does not apply, whether ~~apply (whether~~ in the same geographic area to a position without a differential, or to the same job in a geographic area without a ~~differential)~~ differential, the employee's pay rate must be reduced by the amount of the differential the employee had been receiving.

Statutory Authority G.S. 126-4.

SECTION .1000 - REINSTATEMENT

.1001 DEFINITION

Reinstatement is:

(1) the reemployment with a ~~permanent~~ permanent, trainee or time-limited permanent appointment of a former employee with a full-time or part-time (20 hours or more) permanent, trainee or time-limited permanent appointment ~~with~~ who has been on leave without pay or who had a break in service ~~and within five years following the date of separation~~. ~~Although the employee is eligible for reinstatement to permanent appointment~~ Except for employees who have reduction-in-force priority consideration, the agency head ~~my~~ may choose to offer reemployment with a probationary appointment. The employee ~~will~~ shall meet all requirements of the probationary period the same as for original appointments;

(2) the reemployment with a probationary appointment of a former employee with a full-time or part-time (20 hours or more) probationary appointment who has been on leave without pay or who had a break in service. The employee must serve either the remainder of the probationary period or a new probationary period;

~~(2)~~ (3) the return to a nonpolicy-making position of an employee who transferred to or occupied a position designated as policy-making exempt.

Statutory Authority G.S. 126-4.

.1005 EFFECTIVE DATE

A reinstatement may be made effective on any scheduled workday in the pay period. When the first day of a pay period falls on a nonworkday and the employee begins work on the first workday, the date to begin work ~~will~~ shall be shown as the first day of the pay period. However, if the position requires work on such days, the date ~~will~~ shall be the day the employee actually begins work.

Statutory Authority G.S. 126-4.

.1009 VETERANS

Veterans. Employees with a permanent, probationary, ~~or~~ trainee or time-limited permanent appointment who resigned or were granted leave without pay to serve in the Armed Services of the United States and are reinstated within the provisions of the Military Leave Policy ~~are eligible for reinstatement~~ shall be reinstated to the same position or one of like status, seniority and pay regardless of length of previous service. If, during military service, an employee is disabled to the extent that duties of the original position cannot be performed, the employee shall be reinstated to a position for which the employee is qualified and in which the employee would be able to perform the essential job functions, ~~with duties commensurate with the disability,~~ if any such position is available.

Statutory Authority G.S. 126-4.

.1010 SALARY RATE UPON REINSTATEMENT

(a) When an employee is reinstated within one year, the following shall apply:

(1) If reinstated to the same salary grade within one year ~~from the separation date to the same classification level~~, the ~~new~~ maximum salary shall be the employee's previous salary plus ~~is determined by adjusting the previous salary of that individual by~~ any legislative increase or other general adjustments in level which has occurred since the separation. A lower salary may be paid except as provided in Subparagraph (a)(4) of this Rule. A higher salary shall not be paid unless justified by intervening employment and equity considerations.

~~(1)~~ (2) If reinstated to a higher salary grade within one year, the maximum salary shall be the employee's previous salary, adjusted by any legislative increase or other general adjustment in level, plus a promotional increase determined in accordance with the Promotion Policy. A lower salary may be paid except as provided in Subparagraph (a)(4) of this Rule. ~~or lower classification level, the adjusted previous salary becomes the basis for determining the new starting salary in accordance with the policies on promotion or demotion as is appropriate.~~

~~(2)~~ (3) If reinstated to a lower salary grade within one year, the maximum salary shall be the employee's previous salary, adjusted by any legislative increase or other general adjustment in level, but not to exceed the maximum allowed by the Demotion or Reassignment Policy. A lower salary may be paid except as provided in Subparagraph (a)(4) of this Rule. ~~A salary~~

~~lower than allowed under Subparagraph (a)(1) of this Rule may be paid; however a higher salary may not be paid unless it is justified by intervening employment.~~

(4) If the employee has reduction-in-force priority consideration and accepts a position at the same or a lower grade than held at the time of separation, the salary shall be set in accordance with G.S. 126-7.1(a2). If the employee accepts a position at a higher grade, the salary shall be at least the same salary rate as in the previous position and may be higher in accordance with the provisions of Subparagraph (a)(2) of this Rule. If the employee accepted a position at a lower grade with a reduction in salary and is subsequently promoted, the following shall apply:

(A) If to the same salary grade as held at the time of separation, the salary shall be determined in accordance with G.S. 126-7.1(a2).

(B) If to a higher salary grade than held at the time of separation, the salary shall be at least the same salary rate as in the previous position and may be higher in accordance with Subparagraph (a)(2) of this Rule.

(C) If to a lower salary grade than held at the time of separation, the salary shall be the employee's salary at the time of separation or the new salary grade maximum whichever is less.

(D) If reinstated with a lower salary than held at the time of separation, the agency shall increase the salary as soon as funds are available retroactive to the date of reinstatement.

(b) When an employee is reinstated after one year from the separation date, the new salary ~~may~~ shall be determined as outlined under Subparagraphs (a)(1),(a)(2) ~~and (2)~~ or (a)(3) of this Rule or as a new appointment and justified accordingly when required.

(c) Upon reinstatement from military leave, an employee's salary shall be based on the last salary plus any general increases due while on leave. The addition of performance salary increases may be considered by the agency head if appropriate. If the employee was in trainee status at the time of military leave, the addition of trainee adjustments may be considered if it can be determined that the military experience directly related to the development in the area of work to be performed.

Statutory Authority G.S. 126-4.

SECTION .1900 - HOURS OF WORK AND OVERTIME COMPENSATION

.1928 COMPENSATION

(a) The employee is to receive straight-time pay for a standard 40-hour workweek, with the provision that an additional amount equal to time and one-half the employee's regular hourly rate multiplied by the number of hours worked in excess of 40 will be added to the base pay. Such payment must be made in form of monetary compensation or compensable time off. It is the policy of the State of North Carolina, whenever possible, to give compensatory time off, in lieu of monetary compensation for hours worked in excess of 40 hours per work week. The decision as to whether to give compensatory time off, rather than monetary compensation, for overtime worked is solely within the discretion of management. Compensatory time off shall be scheduled by management, although reasonable effort shall be made to accommodate the employee as to such scheduling.

(b) An employee shall be given compensatory time off on the basis of one and one-half times the amount of time worked beyond 40 hours during a week. Compensatory time may be accumulated up to a maximum of 240 hours (160 hours straight time) and shall be taken within 12 months ~~; but such time off must be taken within 30 days~~ from the date the overtime is performed ~~or by the end of the following calendar month, whichever is longer~~. If compensatory time off is not given by the end of the 12-month ~~calendar month following the 30 day~~ period, the overtime pay ~~must~~ shall be included in the employee's next regular paycheck. Any overtime worked above this amount shall be paid in the employee's next regular paycheck. Overtime worked shall be recorded and compensated in units of one-tenth of an hour.

NOTE: The preceding provisions are not applicable to persons in law enforcement or fire protection activities and in residence employees.

(c) Prior to employment, each successful candidate for state employment in a position subject to hours of work and overtime pay standards must sign a form acknowledging that it has been explained to him that it is the state's policy to give time off in lieu of monetary compensation, wherever possible, for hours worked beyond 40 in a work week. Agreement to this is a condition of employment with the state; failure or refusal to sign such agreement will prevent employment of that person. This signed form shall be a part of the employee's personnel file; it must be kept for at least three years following that person's separation from state employment.

(d) Upon transfer to another agency or termination of employment, an employee shall be paid for unused compensatory time off at a rate of compensation not less than either the average regular rate received by such employee during the last three years of the employee's employment or the final regular rate received by such employee, whichever is higher.

Statutory Authority G.S. 126-4.

SECTION .2600 - IN-RANGE SALARY ADJUSTMENT

.2601 PURPOSE

Agencies are authorized to grant in-range salary adjustments to their current employees with permanent position appointments. Prior to granting increases pursuant to this Rule, agencies shall petition the State Personnel Commission for approval of an in-range salary adjustment plan. Salary increases provided by this Rule shall not be allowed with inter-agency employee transfers. Upon approval of an in-range salary adjustment plan, agencies are authorized to grant in-range salary adjustments under the following circumstances:

(1) To compensate employees for changes in duties and responsibilities as documented by position descriptions and work plans which shall be revised and retained by the agency where significant changes have occurred in duties and responsibilities which:

(a) are at a higher level, but are not substantial enough to justify a higher salary grade through reclassification or a salary range revision; or

(b) are at the same level, but the changes increase the variety and scope of duties, and/or accountability of the employee.

If the change in duties and responsibilities exists only for a limited time period, the employee's salary shall be reduced to the previous level when the additional duties and responsibilities are removed.

(2) To establish equitable salary relationships among employees performing the same type and level of work considering education, skill, related work experience, length of service and performance level. A salary inequity is defined as a situation where the salaries of employees in positions of the same classification differ by more than 10% when considering education, skill, related work experience, length of service and performance level.

(3) To increase employees' salaries in order to reduce turnover due to market or other conditions that may affect retention. Conditions to be met are:

(a) Serious salary inequities would not be created by a special salary adjustment.

(b) The position duties are key to agency or program mission accomplishment. The knowledge, skills, and abilities required of an incumbent are clearly identified as difficult to recruit, or the occupational group is acknowledged by the Office of State Personnel as having a critical labor market shortage.

(c) The agency must confirm that the use of established personnel policies/actions are not feasible alternatives to a special salary adjustment (promotion, position reallocation, salary range revision, performance increase).

(d) The agency must confirm that other management alternatives are not feasible.

(e) The employee for whom the special salary adjustment is proposed must have an above satisfactory performance level.

Statutory Authority G.S. 126-4.

.2602 AGENCY RESPONSIBILITIES

Agencies shall:

(1) Develop and submit to the Office of State Personnel an in-range salary adjustment plan that shall:

(a) Document management's commitment to the fair and equitable implementation of salary adjustments.

(b) Provide a mechanism for plan policies and procedures that ensures employee understanding.

(c) Establish a procedure for identifying the need for, and determining the priority and fiscal feasibility of, implementing in-range salary adjustments. This shall include a method for determining individual salary adjustments considering internal equity, salary history, consistency, fairness within the work unit and organization, and salary increases granted under other rules in this Subchapter.

(d) Ensure that no employee shall be granted more than a 10% salary increase under this Rule within a one-year period.

(e) Ensure that salary increases granted to an employee under other salary administration rules after an in-range adjustment shall be offset by the amount of the in-range increase to the extent that the factors used to justify the subsequent increase were the same as those used to justify the in-range increase.

(f) Ensure that the amount of an in-range salary adjustment for an employee who has previously received a salary adjustment under other salary administration rules shall be offset by the amount of the previous increase to the extent that the factors used to justify the previous increase are the same as those being used to justify the in-range increase.

(g) Provide that the amount of a promotional increase of an employee transferring from another agency shall be offset by the amount of any previous in-range adjustment based upon the same factors.

(h) Provide for the administration of these Rules such that the agency does not engage in unlawful discrimination.

(i) Establish procedures to document the justification of all in-range adjustments including placing a summary of the justification on the Personnel Action Form (PD-105) and; establish procedures to monitor, analyze and report trends annually including the impact on all demographic groups in granting increases, exceptions granted and the fiscal impact of administering these Rules on the agency budget.

(j) Designate a plan administrator who shall review and monitor agency administration and provide technical assistance in the administration of the plan to agency management.

(k) Establish a procedure for updating and revising the plan in response to changing budgetary and organizational priorities.

(2) Review the plan annually and submit any proposed revisions to the Office of State Personnel.

(3) Administer in-range adjustments according to their plan and Office of State Personnel requirements.

(4) File a report annually, or as requested, with the Office of State Personnel, regarding the administration of compensation and related personnel policies.

Statutory Authority G.S. 126-4.

.2603 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

The Office of State Personnel shall:

(1) Provide training and technical assistance in the development of the agency plan.

(2) Review agency in-range adjustment plans and recommend disposition to the State Personnel Commission.

(3) Monitor and audit agency adherence to their plan and State Personnel Commission requirements.

Statutory Authority G.S. 126-4.

.2604 STATE PERSONNEL COMMISSION RESPONSIBILITIES

Beginning in April 1996, the State Personnel Commission shall:

(1) Approve all plans and all plan changes prior to implementation by any agency.

(2) Review the agency reports for compliance with these Rules and agency in-range adjustment plan.

(3) Impose sanctions on agencies that fail to comply with these Rules. Such sanctions shall include but not be limited to:

(a) letters of warning;

(b) limitations on agency authority to grant in-range salary adjustments; and

(c) withdrawal of agency authority to grant the in-range salary adjustments.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0300 - SICK LEAVE

.0304 VERIFICATION

To avoid the abuse of sick leave privileges, the appointing authority may require:

(1) a statement from a medical doctor or other ~~acceptable proof~~ evidence satisfactory to the agency that the employee was unable to work due to personal illness, family illness, or death in the family; or

(2) evidence satisfactory to the agency in support of an employee's request for sick leave for adoption-related purposes.

Statutory Authority G.S. 126-4.

.0305 USE OF SICK LEAVE

Sick leave may be used for:

(1) illness or injury which prevents an employee from performing usual duties;

(2) the actual period of temporary disability connected with childbearing or recovery therefrom as defined in this Rule:

(a) the ~~natural~~ biological mother may use accumulated sick leave for the actual period of temporary disability caused or contributed to by pregnancy and childbirth.

(b) a member of the employee's immediate family may request sick leave to care for the mother and newborn infant during the ~~natural~~ biological mother's period of temporary disability. Since there is no certainty as to when disability actually begins and ends, a doctor's certificate or other evidence satisfactory to the agency shall be required verifying the employee's period of temporary disability.

(3) medical appointments of the employee's immediate family (this includes dependents);

(4) the illness of a member of the employee's immediate family;

Note: It is not required that the immediate family be living in the employee's household.

(5) the death of a member of the employee's immediate family;

(6) donation to a member of the employee's immediate family who qualifies for Voluntary Shared ~~Leave.~~ Leave;

(7) adoption of a child, limited to a maximum of 30 workdays for each parent.

Statutory Authority G.S. 126-4.

SECTION .1000 - MISCELLANEOUS LEAVE

.1001 JURY DUTY

(a) A full-time or part-time employee with a permanent, probationary, ~~or~~ trainee or time-limited permanent appointment ~~employee~~ who serves on a jury is entitled to civil leave with pay ~~and regular compensation,~~ plus fees received for jury duty. The employee should report back to work as soon as jury duty is completed, or no later than the day following completion of duty. If the jury duty occurs on a scheduled day off, the employee ~~he~~ is not entitled to

additional time off.

(b) When serving on jury duty a second shift employee ~~serves on a jury duty, he~~ shall ~~will~~ not be required to work on the day that jury duty occurs. When serving on jury duty a third shift employee ~~serves on a jury duty, he~~ shall ~~will~~ not be required to work the shift that begins on the day prior to the day that jury duty occurs. This applies to all employees, regardless of the length of shift.

Statutory Authority G.S. 126-4.

.1002 COURT ATTENDANCE OR JOB RELATED PROCEEDING

~~(b)~~ (a) When an employee as defined in Rule .1001(a) of this Section is subpoenaed or directed by proper authority to appear as a witness, civil leave with pay shall be granted. Any fees received shall be turned in to the agency. The employee may use vacation leave rather than take civil leave with pay in which case any fees received may be retained.

(b) A job related proceeding is a management approved quasi judicial function arising out of and in the course and scope of the employment for which leave with pay is approved.

~~(a)~~ (c) When an employee as defined in Rule .1001(a) of this Section or an employee with a temporary appointment attends court or a job related proceeding in connection with official duties, leave with pay shall be granted. ~~no leave is required~~. Fees received as a witness while serving in an official capacity shall be turned in to the agency. ~~(When~~ When an employee is required to attend court on a day that would normally be an off day, the time ~~is to~~ shall be considered as working time and included in the total hours worked per ~~week.)~~ week.

Statutory Authority G.S. 126-4.

SECTION .1100 - OTHER LEAVES WITHOUT PAY

.1110 SPECIAL PROV/PARENTAL LEAVE/EMPL NOT ELIGIBLE/FAMILY/MEDICAL LEAVE

(a) The ~~natural~~ biological parents of a newborn infant and the parents of a newly-adopted child ~~under five years of age~~ may request leave without pay under provisions of this Subchapter. ~~The natural mother may use~~ Accumulated sick leave may be used:

(1) by the parents or a member of the immediate family for the actual period of temporary disability caused or contributed to by pregnancy and childbirth; or

(2) by the parents for adoption purposes, limited to 30 workdays.

See "Uses of Sick Leave" in Rule .0305 of this Subchapter.

(b) The agency head shall grant leave without pay to the ~~natural~~ biological mother for all of the time of personal disability not covered by sick leave, ~~(~~either because the employee has exhausted all sick leave or prefers to retain it~~)~~. Since there is no certainty as to when disability actually begins and ends, a doctor's certificate shall be required verifying, on a prescribed form, the employee's period of temporary disability.

~~(c) The natural mother may desire to be on leave from work prior to and/or after the time of actual disability. Leave without pay may be granted for this purpose under the provisions of the Subchapter.~~

~~(d) Leave without pay for the parent of an adopted child can begin no earlier than one week prior to the date the parent receives custody of the child.~~

Statutory Authority G.S. 126-4.

SUBCHAPTER 1H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0628 RESOLUTION OF CONFLICT BETWEEN EMPLOYMENT PRIORITIES

~~(a) In the event that the applicant group includes both a qualified non state employee veteran and a qualified current state employee with career status as defined by G.S. 126-1A, who is seeking a promotional opportunity, the current state employee shall be offered the position if the appointing authority determines, consistent with the promotional priority policy, that the qualifications of the veteran and the current state employee are substantially equal.~~

~~(b) The same priority over any non state employee applicant shall apply to state employees separated from policy making exempt positions for reasons other than cause, state employees notified or separated by reduction in force and on active priority reemployment status, and employees returning to state employment following a disability due to on the job injury.~~

Statutory Authority G.S. 126-1A; 126-4; 126-7.1; 126-39.

SUBCHAPTER 1I - SERVICE TO LOCAL GOVERNMENT

SECTION .2300 - DISCIPLINARY ACTION: SUSPENSION, DISMISSAL AND APPEALS

.2301 JUST CAUSE FOR DISCIPLINARY ACTION

(a) Any ~~permanent~~ employee, regardless of occupation, position, or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against employees with permanent status, as defined in 25 NCAC 1I .2002(a)(2), only for just cause. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule. When just cause exists the only disciplinary actions provided for under this Section are:

(1) Written warning;

(2) Disciplinary suspension without pay;

(3) Demotion; and

(4) Dismissal.

(b) There are two bases for the discipline or dismissal of employees under the statutory standard of "just cause" as set out in G.S. 126-35. These two bases are:

(1) Discipline or dismissal imposed on the basis of ~~unacceptable~~ unsatisfactory job performance, including grossly inefficient job performance.

(2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

~~(c) The term "unacceptable job performance" means the failure to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by management of the work unit or agency. Satisfactory performance is that performance which is reasonable under all the circumstances. Determination of satisfactory performance shall be made by the supervisor; there is a presumption that the determination is proper and factually supported.~~

~~(d) The term "unacceptable personal conduct" is defined as:~~

~~(1) conduct for which no reasonable person should expect to receive prior warnings;~~

~~(2) job related conduct which constitutes a violation of state or federal laws;~~

~~(3) conviction of a felony or an offense involving moral turpitude;~~

~~(4) the willful violation of known or written work rules; or~~

~~(5) conduct unbecoming an employee that is detrimental to the agency.~~

(c) ~~(e)~~ Either ~~unacceptable~~ unsatisfactory or grossly inefficient job performance or unacceptable personal conduct, as defined in 25 NCAC 11 .2302(a); .2303(a); and .2304(b), constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

(d) The imposition of any disciplinary action shall comply with the procedural requirements of this Section.

Statutory Authority G.S. 126-5; 126-35.

.2302 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

~~(a) This category covers all types of performance related inadequacies. This policy does not require that progressive warnings all concern the same type of unsatisfactory performance. Warnings related to personal conduct may be included in the progressive system for performance related dismissal provided that the employee receives at least the number of warnings, regardless of the basis of the warnings, required for dismissal on the basis of inadequate performance. Warnings administered under this policy are intended to bring about a permanent improvement in job performance; should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance at the next level of discipline.~~

~~(b) Employees who are dismissed for unsatisfactory job performance shall receive at least three warnings: First, one or more oral warnings; second, a written warning to the employee documenting all relevant points covered in the disciplinary discussion; third, a final written warning which notifies the employee that failure to make the required performance improvements may result in dismissal.~~

~~(c) In administering this policy, supervisors shall be aware that, in part, the intent of this policy is to assist and promote improved employee performance, rather than to punish.~~

~~(1) Oral Warning:~~

~~(A) The supervisor is responsible for assuring the satisfactory performance work assigned to his unit. When, in the judgment of the supervisor, unsatisfactory performance occurs, then use of the disciplinary process may be appropriate.~~

~~(B) In a private discussion with the employee, the supervisor/or designated management representative shall do the following:~~

~~(i) Inform the employee that this is a warning, and not some other non-disciplinary process such as counseling;~~

~~(ii) Inform the employee of the specific performance deficiencies that are the basis for the warning;~~

~~(iii) Tell the employee what specific improvements must be made to correct the unsatisfactory performance;~~

~~(iv) Let the employee know what time is being allowed to make the required improvements;~~

~~(v) Tell the employee of the consequences of failing to make the required improvements.~~

~~Note: It is a recommended personnel practice to allow the employee to respond to the specific reasons for the warning. In some cases this may affect the supervisor's decision on whether to discipline an employee. Supervisors may also record the date and specifics of the warning for possible future use.~~

~~(2) Written Warning. In a private meeting with the employee the supervisor/or designated management representative shall:~~

~~(A) Conduct a disciplinary conference with the employee; this disciplinary conference may follow the same steps as set forth for an oral warning;~~

~~(B) Tell the employee he will receive a written warning covering all significant points of this conference;~~

~~(C) Prepare and send to the employee a written warning covering significant points of the~~

~~disciplinary conference; care shall be taken to include the specific reasons for the warning.~~

~~Note: Reference may be made in this warning to document an earlier oral warning.~~

~~(3) Final Written Warning:~~

~~(A) Before issuing the final written warning, the supervisor and appropriate agency management shall review the contents of the warning. The following steps shall be taken in issuing a final written warning:~~

~~(i) Prepare a final written warning to the employee; care shall be taken to include the specific reasons for the warning;~~

~~(ii) In private, conduct a disciplinary conference with the employee; at this conference, the specific reason for the action, the necessary improvements and the time allowed to make improvements should be discussed;~~

~~(iii) Present the warning to the employee at the end of the conference; the employee shall be informed, either orally in the warning, that failure to correct the unsatisfactory performance may result in dismissal.~~

~~(B) During the period after the final written warning has been given, management, in its discretion, may choose to counsel with the employee concerning his employment status before a decision to dismiss is made. Such counseling shall involve a discussion of the necessity for the employee's commitment to improve performance. As a part of this counseling, management may request the employee to take up to a day's leave with pay to consider whether or not the employee wishes to continue his employment with the agency. This time away from the job site shall not be charged to the employee's vacation or sick leave; it shall be considered as the employee's assignment for that time not at the normal job site. It shall be stressed to the employee that a decision to continue employment with the agency will require a commitment to improve performance, and that a lack of improvement will lead to dismissal. Clearly, such a procedure is not suitable in all situations; management is expected to use its discretion to determine where such a procedure would benefit the employee and the agency.~~

(a) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency.

(b) In administering this Section, supervisors should be aware that, in part, the intent of this Section is to assist and promote improved employee performance, rather than to punish. This category covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance; should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.

(c) In order to be dismissed for a current incident of unsatisfactory job performance an employee must first receive at least two prior disciplinary actions: First, one or more written warnings; followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(d) Prior to the decision to dismiss an employee, the agency director must conduct a pre-dismissal conference with the employee in accordance with the procedural requirements of this Section.

(e) An employee who is dismissed must receive written notice of the specific reasons for the dismissal, as well as, notice of any applicable appeal rights.

(f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Statutory Authority G.S. 126-4; 126-35.

.2303 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

~~Before an employee may be dismissed, the following shall occur:~~

~~(1) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a pre-dismissal conference with the employee. The purpose of the pre-dismissal conference is to review the recommendation with the affected employee, and by listening to and considering information put forth by the employee, to insure that such a significant personnel action is not based on mistaken or erroneous information and conclusions.~~

~~(2) The designated management representative shall schedule and conduct a pre-dismissal conference with the employee. Advance notice of the pre-dismissal conference must be given to the~~

~~employee. A second management representative or security personnel may be present at management's discretion. No attorneys representing either side may attend the conference. In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments to support his position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any information in his possession in opposition to his dismissal prior to the end of the conference.~~

~~(3) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal shall be prepared containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should normally not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-dismissal conference. The employee shall be informed of the decision and furnished, either in person or by mail, a copy of the letter of dismissal, receipt of which shall constitute dismissal. A management decision not to dismiss the employee may be communicated to the employee at any time following the conclusion of the conference.~~

~~(4) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A permanent employee who is to be dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.~~

(a) Gross Inefficiency (Grossly Inefficient Job Performance) occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and that failure results in:

(1) the creation of the potential for death or serious harm to a client(s), an employee(s), members of the public or to a person(s) over whom the employee has responsibility; or

(2) the loss of or damage to agency property or funds that result in a serious impact on the agency and/or work unit.

(b) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(c) Prior to dismissal of an employee with permanent status on the basis of grossly inefficient job performance, there shall be a pre-dismissal conference between the employee and the agency director. This conference shall be held in accordance with the provisions of 25 NCAC 1I .2308.

(d) Dismissals for grossly inefficient job performance require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitutes procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Statutory Authority G.S. 126-4(7a).

.2304 DISMISSAL FOR PERSONAL CONDUCT

(a) Employees may be dismissed for a current incident of ~~demoted, suspended, or warned on the basis of~~ unacceptable personal conduct ~~discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior warning to the employee. Oral or written warnings given for unacceptable personal conduct according to this Rule cannot be used to shorten the progressive warning process required to dismiss an employee on the basis of unsatisfactory job performance.~~

(b) ~~Disciplinary demotions, suspensions or dismissals for personal conduct require written notification to the employee. Such notification must include specific reasons for the discipline and notice of the employee's right of appeal.~~ Unacceptable Personal Conduct is:

(1) conduct for which no reasonable person should expect to receive prior warning; or

(2) job related conduct which constitutes a violation of state or federal law; or

(3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts

the employee's service to the agency; or

(4) the willful violation of known or written work rules; or

(5) conduct unbecoming an employee that is detrimental to the agency's service; or

(6) the abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the agency; or

(7) falsification of an employment application or other employment documentation; or

(8) insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning; or

(9) absence from work after all authorized leave credits and benefits have been exhausted.

(c) Prior to dismissal of ~~a permanent~~ an employee with permanent status on the basis of unacceptable personal conduct, there shall be a pre-dismissal conference between the employee and ~~the person recommending dismissal~~ the agency director. This conference shall be held in accordance with the provisions of 25 NCAC 1I ~~.2303~~ .2308.

(d) Dismissals for unacceptable personal conduct require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights or failure to conduct a pre-dismissal conference constitutes procedural violations with remedies as provided for in 25 NCAC 1B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Statutory Authority G.S. 126-1; 126-4; 126-35.

.2305 WRITTEN WARNING

~~Investigatory or disciplinary suspension may be used by management in appropriate circumstances. However, the following provisions shall control its use:~~

~~(1) An employee who has been suspended for either investigatory or disciplinary reasons must be placed on compulsory leave of absence without pay.~~

~~(2) Investigatory suspension without pay may be used to provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision. Investigatory suspension without pay may be appropriately used to provide time to schedule and hold a pre-dismissal conference. Also, management may elect to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property. An investigatory suspension without pay shall not exceed 45 calendar days. However, an agency may, in the exercise of its discretion, extend the period of investigatory suspension without pay beyond the 45 day limit. The employee must be informed in writing of the extension, the length of the extension, the specific reasons for the extension and his right of appeal. If no action has been taken by management by the end of 45 calendar days, and no extension has been made, one of the following must occur: Reinstatement of the employee with full backpay; appropriate disciplinary action based on the results of the investigation; reinstatement of the employee with up to three days pay deducted from the backpay.~~

~~(3) Investigatory suspension of an employee shall not be used for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.~~

~~(4) An employee who has been suspended for investigatory reasons may be reinstated with up to three days pay deducted from his salary. Such determination is to be based upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for the suspension. This period constitutes a disciplinary suspension without pay and must be effected in accordance with Paragraphs (5) and (6) of this Rule.~~

~~(5) An employee may be suspended without pay for disciplinary purposes for causes relating to any form of personal conduct or in conjunction with a final written warning for performance of duties. However, a disciplinary suspension without pay must be for at least one full working day, but not more than three working days. Prior to placing an employee on disciplinary suspension without pay, a management representative shall conduct a pre-suspension conference with the employee. This conference shall be carried out in the same fashion as a pre-dismissal conference.~~

~~(6) An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights. A pre-suspension conference is required only when the employee is suspended without pay for a disciplinary reason; a pre-suspension conference is not required where an employee is suspended without pay for the purpose of an investigation.~~

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and acceptable standards of personal conduct. All types of perfor-

mance-related job inadequacies can constitute unsatisfactory job performance under this Section. Unacceptable personal conduct can be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee must receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning must:

(1) Inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;

(2) Inform the employee of the specific issues that are the basis for the warning;

(3) Tell the employee what specific improvements, if applicable, must be made to address these specific issues;

(4) Tell the employee the time frame allowed for making the required improvements/corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance. Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;

(5) Tell the employee the consequences of failing to make the required improvements/corrections.

(b) A written warning must be issued in accordance with the procedural requirements of this Section, including any applicable appeal rights.

Statutory Authority G.S. 126-4.

.2306 DISCIPLINARY SUSPENSION WITHOUT PAY

~~(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory job performance or unacceptable personal conduct.~~

~~(1) Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least two prior warnings on his performance. At least one of the warnings prior to demotion must be in writing.~~

~~(2) Personal Conduct. An employee may be demoted for unacceptable conduct without any prior warning. Cause for demotion on the basis of personal conduct does not have to be as serious as cause for dismissal.~~

~~(3) Notice. An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of his appeal rights.~~

~~(b) Disciplinary demotions may be accomplished in several ways. The employee may be demoted to a lower classification with or without a loss in pay. Or, the employee may be reduced to a lower step in the same pay grade with a corresponding loss of pay. In no event shall an employee's pay be lowered below step one of his current pay grade, unless the employee is demoted to a lower classification. Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-demotion conference with the employee. This pre-demotion conference shall be accomplished in the same fashion as the pre-dismissal conference.~~

(a) An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks. The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without pay the agency director shall conduct a pre-suspension conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

(b) An agency has the option of imposing the same periods of disciplinary suspension without pay for all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

Statutory Authority G.S. 126-4(6); 126-35.

.2307 DEMOTION

~~(a) By statute, some duties assigned to positions may be performed only by persons who are duly licensed, registered or certified as required by the relevant law.~~

~~(b) Employees in such classifications are responsible for maintaining current, valid credentials as required by law. Failure to maintain the required credentials is a basis for immediate dismissal without prior warning. An employee who is dismissed shall be given a written statement of the reason for the action and his appeal rights.~~

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis or either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

(1) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.

(2) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary

action.

(3) Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.

(4) An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

(b) Disciplinary demotions may be accomplished in three ways:

(1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary range for the new lower pay grade;

(2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the salary rate does not exceed the maximum of the salary range for the new lower pay grade; or

(3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade or the special entry rate, if in effect.

(c) Prior to the decision to demote an employee for disciplinary reasons, the agency director must conduct a pre-demotion conference with the employee in accordance with the procedural requirement of this Section.

Statutory Authority G.S. 126-4(6); 126-35.

.2308 PROCEDURAL REQUIREMENTS

~~(a) A permanent employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency/county grievance procedure. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 and within 30 calendar days of receipt of the final agency decision.~~

~~(b) Grievances which allege discrimination may, at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a recommended decision by that agency to the SPC) alleging discrimination must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.~~

~~(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36 and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed.~~

The following procedural requirements must be followed to issue disciplinary action under this Section:

(1) WRITTEN WARNING - to issue a written warning to an employee a supervisor must issue the employee a written warning, detailing the matters referenced in 25 NCAC 1I .2305, and including any applicable appeal rights.

(2) DISCIPLINARY SUSPENSION WITHOUT PAY - to place an employee on disciplinary suspension without pay, the agency director must comply with the following procedural requirements:

(a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct no prior disciplinary actions are required so an employee may be suspended without pay for a current incident of grossly inefficient job performance or unacceptable personal conduct;

(b) Schedule and conduct a pre-suspension conference. Advance oral or written notice of the appropriate disciplinary conference must be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice should be as much as is practical under the circumstances;

(c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;

(d) Advise the employee of any applicable appeal rights in the document affecting the suspension.

(3) DEMOTION - to demote an employee the agency director must comply with the following procedural requirements:

(a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action;

(b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;

(c) Advance oral or written notice of the appropriate pre-disciplinary conference must be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice should be as much as is practical under the circumstances;

(d) An employee who is demoted must receive written notice of the specific acts or omissions

that are the reasons for the demotion;

(e) An employee must be advised of how and to what extent the demotion will affect the employee's salary rate or pay grade; and

(f) The employee must also be advised of any applicable appeal rights in the document affecting the demotion.

(4) DISMISSAL - Before an employee may be dismissed, a supervisor must comply with the following procedural requirements:

(a) The supervisor recommending dismissal shall discuss the recommendation with the agency director who shall conduct a pre-dismissal conference with the employee. The person conducting the pre-dismissal conference must have the authority to decide what, if any, disciplinary action should be imposed on the employee.

(b) The supervisor or designated management representative shall schedule a pre-dismissal conference with the employee.

(c) Advance written notice of the pre-dismissal conference must be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice should be as much as is practical under the circumstances.

(d) The agency director shall conduct a pre-dismissal conference with the employee, limiting attendance to the employee and the person conducting the conference; a second management representative may be present at management's discretion. The purpose of the pre-dismissal conference is to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference.

(e) In the conference, management shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by management to assure that the employee has a full opportunity during the conference to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity does not include the option to present witnesses.

(f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee in accordance with this Sub-item, prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference.

(g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. An employee with permanent status who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks working notice of his dismissal. Instead of providing up to two weeks working notice and at the discretion of management an employee may be given up to two weeks pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.

Statutory Authority G.S. 126-4; 126-35.

.2309 SPECIAL PROVISIONS

(a) GRANDFATHER PROVISIONS - The following Grandfather provisions establish the force and effect of disciplinary actions in existence upon the effective date of the Section.

(1) Oral warnings - any oral warning existing upon the effective date of this Section is deemed void and has no further force or effect upon the disciplinary status of any employee.

(2) All other disciplinary actions existing at the time this Section is adopted shall remain in full force and effect as if the warnings or other disciplinary actions had been imposed under this Section. No written warning or other disciplinary action

imposed prior to the effective date of this Section shall be deemed inactive by operation of the provisions of this Section until more than 18 months after the effective date of this Section or until the disciplinary action is deemed inactive in accordance with 25 NCAC 1I .2309(b), whichever occurs first.

(3) Extension of Disciplinary Actions - any written warning or disciplinary action imposed prior to the adoption of this Section may be extended in accordance with the provision of this Section as if the warning or disciplinary action had been imposed after the effective date of the Section. No unresolved written warning or disciplinary action issued under the prior Section shall become inactive if within 18 months of the effective date of this Section, another disciplinary action or warning is imposed on the employee. Notice of the extension of the active status of a disciplinary action can be given at any time within 18 months of the effective date of the disciplinary action.

(4) Resolution of disciplinary actions under prior agency - any warning or disciplinary action existing at the time that this Section is adopted shall be deemed inactive if it would have been resolved under the agency procedure existing at the time of the adoption of this Section

(b) INACTIVE DISCIPLINARY ACTION - Any disciplinary action issued after the effective date of this Section, is deemed inactive for the purpose of this Section in the event that:

(1) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected; or

(2) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months and the agency has not, prior to the expiration of the 18 month period, issued to the employee written notice, including reasons, of the extension of the period.

(c) PLACEMENT ON INVESTIGATION - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written notice of extension by the agency director. When an extension beyond the 30-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the 30 day period and no further extension has been imposed, the agency must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstances is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee. It is permissible to place an employee in investigation status with pay only under the following circumstances:

(1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;

(2) To provide time within which to schedule and conduct a pre-disciplinary conference; or

(3) To avoid disruption of the work place and/or to protect the safety of persons or property.

(d) CREDENTIALS - By statute, regulation, and administrative rule, some duties assigned to positions may be performed only by persons who are duly licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission and/or in the position description for the position.

(1) Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law, rule, or regulation. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

(2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with an agency, disciplinary action shall be administered as follows:

(A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure, or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 1I .2304.

(B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action will be taken, but the severity of the

disciplinary action shall be at the discretion of the agency head.

(C) When credential or work history falsification is discovered before employment with an agency, the applicant shall be disqualified from consideration for the position in question.

(e) OTHER SPECIAL PROVISIONS -

(1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.

(2) Warnings, extension of disciplinary actions and periods of placement on investigation, and placement on investigation with pay are not grieveable unless an agency specifically provides for such a grievance in its agency grievance procedure. Allegations of a violation of G.S. 153A-98, 130A-42, 122C-158 shall be processed in compliance with procedures established in accordance with these statutory requirements.

(3) An agency shall furnish to an employee, as an attachment to the written documentation of a grievable disciplinary action, a copy of the agency grievance procedure.

Statutory Authority G.S. 126-4; 126-35.

.2310 APPEALS

(a) An employee with permanent status who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency/county grievance procedure, whichever is applicable. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 and within 30 calendar days of receipt of the final agency decision.

(b) Grievances which allege discrimination may, at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a recommended decision by that agency to the SPC) alleging discrimination must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36, and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed.

Statutory Authority G.S. 126-35; 126-36; 126-38; 150B, Article 3.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0400 - EMPLOYEE RECOGNITION PROGRAMS

.0401 STATE PERSONNEL RESPONSIBILITY

~~The employee relations section in cooperation with state agencies and institutions administers a State Personnel Commission policy which recognizes the continued service of its employees through a program of service awards.~~

The Office of State Personnel shall establish Employee Recognition Programs. Agencies shall establish and maintain employee recognition programs that, at a minimum, recognize employee excellence, years of dedicated service, and other employee recognition. Agencies shall develop a plan for employee recognition programs that includes administration in an equitable manner and incorporates how the program will be communicated to employees statewide.

Statutory Authority G.S. 126-4.

.0402 POLICY: SERVICE AWARDS PROGRAM

~~The service awards program is designed to recognize full-time and part-time (20 hours or more) permanent employees. On each fifth anniversary of employment with the State of North Carolina, the state will present the employee with an emblem mounted as fine jewelry. The two-piece design emblem is made of an antiqued yellow gold-filled crest mounted on a white gold base. Jewels on the design indicate the number of years of service; the designation being as follows:~~

~~(1) 5 years of service.....one ruby~~

~~(2) 10 years of service.....two rubies~~

~~(3) 15 years of service.....three rubies~~

~~(4) 20 years of service.....three blue sapphires~~

~~(5) 25 years of service.....three emeralds~~

~~(6) 30 years of service.....one full-cut diamond and two rubies~~

~~(7) 35 years of service.....one full-cut diamond and two emeralds~~

~~(8) 40 years of service.....two full-cut diamonds and one ruby~~

~~(9) 45 years of service.....three full-cut diamonds~~

~~(10) 50 years of service.....four full-cut diamonds~~

Statutory Authority G.S. 126-4.

.0403 TYPES OF AWARDS

~~For employees, the following types of jewelry are available:~~

~~(1) brooch,~~

~~(2) charm bracelet,~~

~~(3) combination tie tac and lapel pin,~~

~~(4) necklace,~~

~~(5) tie bar.~~

Statutory Authority G.S. 126-4.

.0404 AGENCY RESPONSIBILITY

~~Each department is~~ Agencies are responsible for the administration of ~~its~~ their programs which shall, as a minimum, recognize employee's service beginning with five years of service and in increments of five years thereafter. ~~This includes:~~

~~(1) the establishment of the department cut off eligibility date,~~

~~(2) the identification of eligible employees as defined by the Office of State Personnel,~~

~~(3) the purchasing of the awards through the division of purchase and contract, and~~

~~(4) the determination of the time and method of presentation of these awards.~~

Statutory Authority G.S. 126-4.

.0405 EXEMPT EMPLOYEES

~~The program was designed to recognize state employees within the provisions of the State Personnel Act. However, the program may be extended to employees exempt from this statute, as long as the agency administers its awards by these same regulations.~~

Statutory Authority G.S. 126-4.

.0406 ELIGIBILITY REQUIREMENTS

~~(a) Awards will be presented on the basis of an employee's total state service.~~

~~(b) Total state service is the time of full time or part time (half time or over) permanent, trainee, probationary or provisional employment, whether subject to or exempt from the State Personnel Act. If an employee so appointed is in pay status or is on authorized military leave for one half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period.~~

Employees with full-time or part-time (20 hours or more) permanent appointments shall be eligible for awards based on the employees' total state service. The calculation shall be based on the definition in 25 NCAC 1E .0204 for total state service.

Statutory Authority G.S. 126-4(10).

.0407 ADDITIONAL CREDIT

~~Credit toward total state service shall also be given for the following:~~

~~(1) Employment with other governmental units which are now state agencies. (Example: county highway maintenance forces, War Manpower Commission, Judicial System).~~

~~(2) Authorized military leave from any of the governmental units for which service credit is granted provided the employee is reinstated within the time limits outlined in the State Military Leave policies.~~

~~(3) Employment with the county Agricultural Extension Service; Community College system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year.~~

~~(4) Employment with a local Mental Health, Public Health, Social Services, or Emergency Management agency in North Carolina if such employment is subject to the State Personnel Act.~~

~~(5) Employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees will be counted; and the full legislative terms of the members.~~

Statutory Authority G.S. 126-4(10).

.0408 OTHER PROVISIONS

~~Credit for the total state service requirement shall not be given for temporary employment and periods of leave without pay in excess of one half the workdays and holidays in a pay period. (Exception: military leave and workers' compensation). Service in one or more state agencies counts toward total number of years service for this program.~~

Statutory Authority G.S. 126-4(10).

.0409 SELECTING THE SERVICE EMBLEMS

~~Selection brochures which highlight the program and provide space for the jewelry selection are available to the agencies from the employee relations section, Office of State Personnel.~~

Statutory Authority G.S. 126-4.

.0410 PURCHASING

~~Standard state purchasing procedures must be used in obtaining the service awards. Contracts for bulk purchasing are in the Division of Purchase and Contract and inquiries concerning purchasing should be directed to that office.~~

Statutory Authority G.S. 126-4.

.0411 RECORDS

~~Each department shall maintain records of the employment history of eligible employees. These records are not to be submitted to the Office of State Personnel but shall be available for audit.~~

Statutory Authority G.S. 126-4.

.0412 FUNDS

~~All purchasing of awards are dependent upon availability of departmental funds. Since no appropriations are made, the program must be financed from various subheads. Any~~

~~agency not having sufficient funds to finance the program shall notify the division of state budget and management.~~

Statutory Authority G.S. 126-4.

.0413 GUARANTEE

~~The companies under contract with the state guarantee the jewelry from loss of stones and attachment of the crest to the jewelry. If these faults occur, the department shall correspond directly with the company stating:~~

~~(1) the fault,~~

~~(2) the purchase order number and~~

~~(3) the contract number.~~

~~This repair work is to be free of charge.~~

Statutory Authority G.S. 126-4.

SECTION .0500 - EMPLOYEE GRIEVANCES

.0501 GENERAL PROVISIONS

(a) For the purpose of this Section, the term "agencies" shall mean all departments, universities, offices, boards and commissions with employees subject to Article 8 of the State Personnel Act.

(b) An employee who has access to ~~his department or university~~ the agency grievance procedure shall initiate the grievance proceeding no later than 15 calendar days after the last act which constitutes the basis of the grievance.

(c) ~~(b)~~ For the purpose of Rules 1J .0502, .0503, and .0505 of this Section, ~~Section except for positions subject to competitive service and~~ except for appeals brought under G.S. 126-25, the ~~terms "permanent state employee", "permanent employee", "state employee", "former state employee", or "employee"~~ term "career state employee" as used in this Section shall have the meaning assigned to ~~them~~ it by ~~G.S. 126-39~~ the State Personnel Act. ~~The service requirements of this Paragraph must be met at the time of the act, grievance or employment practice complained of.~~ The employee must have attained career status at the time the act, grievance or employment practice that is the basis of the grievance occurs.

~~(c) An employee who has attained permanent status as defined in G.S. 126-39 will not lose such status when personnel sanctions result in promotions, salary range revisions or position allocations.~~

(d) For the purpose of this Section, the phrase "a reasonable period of time" shall mean:

(1) In cases involving the dismissal or demotion of a career state employee, 90 days from the date the grievance was filed unless the employee and agency mutually agree to additional time.

(2) In cases not involving the dismissal or demotion of a career state employee, 120 days from the date the grievance was filed unless the employee and agency mutually agree to additional time.

(e) Neither the agency nor the employee shall be represented by any outside parties during any internal grievance or alternative dispute resolution proceedings.

Statutory Authority G.S. 126-1A (until 7/1/96), then 126-1.1; 126-4(17); 126-25; 126-34; 126-35; 126-39.

.0502 AGENCY RESPONSIBILITIES

(a) ~~Each department shall submit its grievance procedure no later than January 1 of each even-numbered year to the Office of State Personnel which shall review departmental procedures and may render assistance prior to review by the State Personnel Commission. The Office of State Personnel shall review each proposed grievance procedure for conformity with applicable laws, personnel policies, and good employee relations practices. After such review and following resolution of any areas of disagreement, the Office of State Personnel shall forward the grievance procedure to the State Personnel Commission for consideration and approval at its next scheduled meeting.~~ The agency grievance procedure shall be implemented and continuously evaluated by the agency. Each agency shall, on or before January 1 of each even-numbered year, submit to the Office of State Personnel either:

(1) the current agency grievance procedure for approval; or

(2) a statement that its grievance procedure has not changed since January 1 of the last prior even-numbered year, including a certification that the current agency procedure is in compliance with current state law and rules and the effective date of the last change to the agency procedure.

(b) ~~The Office of State Personnel will work in cooperation with agencies in preparing materials, explaining procedures to employees and developing materials and instructions helpful to supervisors, and assist, as requested, in training and developing grievance committees.~~ The Office of State Personnel shall review the reports of each agency as required by Rule .0509 of this Section and the grievance procedures of each agency for compliance with applicable law, rules and good employee relations practices. After such review and following resolution of any areas of disagreement, the Office of State Personnel shall forward the grievance procedure to the State Personnel Commission for reaffirmation of an unchanged agency grievance procedure previously approved or for approval of a new or modified agency grievance procedures. No agency grievance procedure is applicable to any employee until it has been approved by the State Personnel Commission.

Statutory Authority G.S. 126-4(9).

.0503 MINIMUM PROCEDURAL REQUIREMENTS

The following ~~procedure~~ provisions are the ~~is representative of the~~ minimum ~~provisions which will be considered in a review~~ requirements for approval by the State Personnel Commission. ~~Departmental procedures may vary from the following procedure to provide greater safeguards for~~

~~employees or to reflect the structure and needs of the agency:~~

(1) An employee with a grievance that does not allege unlawful discrimination as defined by G.S. 126-16 or G.S. 126-36 shall be required to first discuss ~~his~~ the problem with ~~his~~ the immediate ~~supervisor~~ supervisor. The agency grievance procedure must outline those issues in addition to contested case issues under G.S. 126-34.1, if any, that are grievable under each agency's internal grievance procedure and whether and to what extent persons who have not attained career status under G.S. 126-1A-1 may utilize the agency grievance procedure.

~~(a) The supervisor may call higher level supervisors into the discussion if the employee agrees.~~

~~(b) The supervisor may consult with higher level supervisors to seek any needed advice or counsel from his administrative superiors before giving him an answer.~~

~~(c) The employee shall receive an answer within five working days or be advised as to the conditions which prevent an answer within five working days and when an answer may be expected.~~

(2) ~~If the employee is not satisfied with the decision of his supervisor or if he fails to receive an answer within the designated period as provided above, he shall request the departmental personnel officer to consider the matter:~~ The employee shall have the right to have the decision of the immediate supervisor reviewed. The step or steps after the immediate supervisor's step must include a step at which the employee has the right to orally present the grievance and where the reviewer is outside the employee's chain of command.

~~(a) The request may be presented either in person or in writing.~~

~~(b) The personnel officer shall determine the extent to which facts shall be required to be written. The employee may request the assistance of the personnel officer in reducing the facts to written form.~~

~~(c) The request by the employee shall be presented within five working days after receipt of the supervisor's decision.~~

~~(d) The supervisor and employee shall provide all pertinent information the personnel officer who will review the facts and hold whatever discussions he deems desirable or the employee or supervisor may request.~~

~~(e) The personnel officer shall provide a recommendation to the proper administrators or superiors within five working days after all necessary discussions are held and shall at the same time advise the employee of his recommended course of action.~~

~~(f) In the absence of objection or appeal by either the supervisor or the employee, the recommendation of the personnel officer shall be carried out within a reasonable period of time.~~

(3) ~~If the decision reached above is not satisfactory to the employee or is not promptly implemented, the matter may be referred by the employee or the personnel officer to the departmental grievance committee or the departmental hearing officer.~~ Any decision rendered after the step of the supervisor's decision shall be issued in writing and the final agency decision shall be issued within a reasonable period of time as defined in this Section.

~~(a) Any request for review shall be submitted within five working days after the personnel officer has presented his recommendation.~~

~~(b) The party requesting the review shall provide a written summary of the specific facts of the complaint, copies of which shall be provided at the same time to all other parties concerned.~~

~~(c) If the employee so desires, he may ask the personnel officer for help in preparing the request and the written summary of facts upon which the grievance is based.~~

~~(d) A request from the employee or the supervisor for a hearing shall be made to the personnel officer who shall transmit the request to the grievance committee or the departmental hearing officer.~~

~~(e) At the conclusion of hearings, it will be the responsibility of the chairman of the grievance committee or the departmental hearing officer to inform the department head or this designee of the details of the problem, the reasons why it was not resolved at lower levels, and the recommendations of the committee or the departmental hearing officer.~~

~~(f) The department head or his designee will make the decision for the department within five working days, and his decision will be announced immediately to all parties concerned.~~

~~(g) Constitution of the departmental grievance committee:~~

~~(i) Each grievance committee within a department shall consist of three or more persons.~~

~~(ii) The department head or his designee shall appoint the members of the department's grievance committee(s).~~

~~(iii) Committees shall include an employee from the same division, section or functioning unit as the appealing employees.~~

~~(iv) Committees shall not include consist entirely of supervisory or administrative personnel.~~

~~(v) No committee shall include two employees from the same division, section or functioning unit.~~

~~(vi) No personnel officer shall serve in any capac-~~

~~ity on an employee grievance committee except as an advisor on personnel policy, nor shall any personnel officer participate in the deliberations of the committee.~~

(4) ~~If the employee is not satisfied with the final decision of the department head, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, he may appeal within 30 days of receipt of the department's decision by requesting a hearing by the Office of Administrative Hearings and a decision by the State Personnel Commission.~~ At the step involving the reviewer (person or body) outside of the employee's chain of command, the employee shall have the right to challenge whether the reviewer can render an unbiased decision. The agency grievance procedure shall establish a process for challenging the reviewer's impartiality and the process for the selection of a replacement when necessary.

~~(a) The employee's request for hearing must be filed with the Office of Administrative Hearings.~~

~~(b) If the employee so desires, he may ask the department for help in submitting the appeal. Such assistance is also available from the Office of State Personnel, Employee Relations Division; this assistance may be requested in writing at 116 West Jones Street, Raleigh, North Carolina 27611 or orally at (919) 733-7112.~~

(5) ~~At any point in the department/university grievance procedure, the grievant may request the assistance of the Office of State Personnel in an attempt to mediate the differences of the two parties. Both parties must join in the request for mediation.~~ For matters that are contested case issues under G.S. 126-34.1, if the employee is not satisfied by the final decision of the agency head, the employee shall have the right to appeal to the State Personnel Commission within 30 days of receipt of the final agency decision. If the employee is unable within a reasonable period of time to obtain a final agency decision, the employee's right of appeal is governed by G.S. 150B-23(f).

(6) The agency shall state the methods of notifying current employees and newly appointed employees of any change to the agency grievance procedure no later than 30 days prior to the effective date of the change.

(7) The agency shall establish the time limit for the agency and employee to respond at each step in the grievance procedure. No time limit for an agency to respond or to act shall be more than twice the time limit for the employee.

(8) The grievance procedure shall include the effective date of the procedure and of any changes to the procedure.

(9) All agencies shall submit to the Office of State Personnel the names of agency employees who meet the eligibility requirements for conducting ADR procedures, in a form and as requested by the Office of State Personnel.

(10) The grievance procedure shall comply with the requirements of 25 NCAC 1J .0615.

Statutory Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23.

.0504 ALTERNATIVE DISPUTE RESOLUTION

~~A state employee who has the right of direct appeal to the Commission (such direct appeal consisting of a contested case hearing and a recommended decision by an administrative law judge of the Office of Administrative Hearings and a decision by the Commission) has the option of using the grievance procedure established within his department if he so desires. An employee or applicant must appeal an alleged act of discrimination within the time frames set by his department's internal grievance procedure and appeal to the Office of Administrative Hearings for a contested case hearing and a recommended decision) must do so within 30 calendar days of the alleged discriminatory action.~~

(a) Each agency is granted the authority to create an alternative dispute resolution procedure. Any agency creating an alternative dispute resolution procedure shall include the procedure as a part of the grievance procedure.

(b) For matters that do not constitute a contested case issue as defined in G.S. 126-34.1, the employee is authorized to use the internal grievance procedure or the alternative dispute resolution procedure only to the extent allowed by the agency grievance procedure. A state employee or applicant who has the right to appeal to the State Personnel Commission is authorized to use the internal grievance procedure or the alternative dispute resolution procedure, if the agency provides an alternative dispute resolution procedure.

(c) Final resolution of a dispute through use of the alternative dispute resolution procedure must take place within a reasonable period of time, as defined in Rule .0501(d) of this Section.

Statutory Authority G.S. 126-4(17); 126-34.1; 126-34.2.

.0505 MINIMUM PROCEDURAL REQUIREMENTS

~~An employee shall be allowed time off from his regular duties as may be necessary and reasonable for the processing of a grievance under the procedures adopted within his agency without loss of pay, vacation or other time credits. Necessary and reasonable time for pursuing a complaint outside the department should be granted upon request to the employee's supervisor or personnel officer without loss of pay, vacation or other time credits.~~

The following are the minimum requirements for approval of an alternative dispute resolution procedure:

(1) The alternative dispute resolution procedure shall state the point or points at which a participant may request to utilize alternative dispute resolution.

(2) The agency shall use an neutral party to conduct alternative dispute resolution options. In order to be eligible to conduct an alternative dispute resolution procedure a person shall:

(a) Have no personal, financial, or business interest or relationship with any participant in the dispute or with regards to the dispute. Status as an employee of the agency, alone, does not preclude an agency employee from being a neutral party for the purposes of this Rule.

(b) Have no prior knowledge of or have conducted no actual review of the evidence and facts regarding any participant or the merits of the dispute that would impact the decision.

(c) Be a certified mediator or have comparable credentials in another type of alternative dispute resolution medium.

(d) Have minimum of two years experience in administering policies and procedures under the North Carolina Personnel System as a supervisor or personnel specialist.

(3) The alternative dispute resolution procedure shall provide:

(a) That any employee may request to have a dispute addressed through the agency alternative dispute resolution procedure. The other parties to the dispute shall be notified in written form of the request.

(b) That there shall be written procedures outlining the alternative dispute resolution process to be used which includes the circumstances under which the procedure is binding or non-binding. The alternative dispute resolution procedure begins when the employee and the designated agency representative have agreed to use the procedure and both parties have signed the ADR consent form.

(c) The employee and the representative designated by the agency shall agree on the person to conduct the alternative dispute resolution procedure. If the participants fail to agree on a person to conduct the alternative dispute resolution procedure within 10 days after signing the ADR consent form, the alternative dispute resolution procedure shall be considered to have been abandoned and the dispute shall revert to and be resolved at the appropriate level in the agency grievance procedure.

(d) That neither party shall be represented by legal counsel or other agent during any alternative dispute resolution proceedings.

(e) At the conclusion of the alternative dispute resolution procedure, any resolution shall be documented in an written agreement which shall be signed by both parties. The resolution agreement shall be kept in a confidential agency file for not less than three years and shall not be transferred to any other agency. All other documents pertaining to the resolution of a dispute through the agency ADR that are not official personnel action forms or other required parts of the official personnel file shall be destroyed at the conclusion of the process.

(f) That each party shall receive a copy of the signed resolution agreement no later than five working days after the conclusion of the alternative dispute resolution procedure.

(g) That when alternative dispute resolution is utilized in connection with non-contested case issues or when the employee does not otherwise have a statutory basis for appeal to the State Personnel Commission, any resolution of the dispute through the agency ADR procedure shall be binding.

(h) That if resolution is not achieved, the person conducting the alternative dispute resolution procedure shall write a summary of the contentions of each of the participants, and shall submit the summaries to the agency head or designee along with notification of failure of ADR. Within five days of receipt of notification of failure of ADR, the agency head or designee shall issue a final agency decision (FAD). When the dispute involved contested case issues under G.S. 126-34.1 or when other statutory grounds for appeal exist, this FAD shall be appealable to the State Personnel Commission.

(i) That the request to utilize the alternative dispute resolution procedure; the failure of the alternative dispute resolution procedure; the elements or components of any of the discussions, sessions, hearings, investigations, or other activities in connection with the alternative dispute resolution procedure; and any communications shared in connection with the alternative dispute resolution procedure, shall not be admissible as evidence in any proceeding subsequent to the conclusion of the alternative dispute resolution effort.

(j) That any costs associated with the use of an alternative dispute resolution procedure shall be borne by the agency.

(4) Any issues of noncompliance with resolution agreements or noncompliance with a decision reached through a binding resolution procedure shall be enforceable only as available in the general courts of justice of North Carolina.

Statutory Authority G.S. 126-4(17); 126-34.1; 126-34.2.

.0506 DISCRIMINATION

~~This policy shall be posted in a permanent and conspicuous manner in as many work areas as may be necessary and shall be covered fully during the orientation procedure for all new employees.~~

(a) A state employee ~~who~~ has the right of direct appeal to the Commission ~~(such direct appeal consisting of a contested case hearing and a recommended decision by an administrative law judge of the Office of Administrative Hearings and a decision by the Commission)~~ has the option of using the grievance procedure established within ~~his~~ their ~~department~~ agency if ~~he~~ they so desire. If an employee elects to utilize the agency grievance procedure, the ~~An~~ employee ~~or applicant~~ must appeal an alleged act of discrimination within the time frames set by ~~his~~ their ~~departmental~~ agency grievance procedure. An employee who chooses to bypass ~~his department's~~ their agency's internal grievance procedure and appeal directly to the Commission ~~(by directing such appeal to the Office of Administrative Hearings for a contested case hearing and a recommended decision)~~ must do so within 30 calendar days of notice the alleged discriminatory action.

(b) An employee who alleges sexual harassment and elects to utilize the agency grievance procedure, shall have the right to bypass any step in the agency grievance procedure or alternative dispute resolution procedure involving discussions with or review by the alleged harasser.

Statutory Authority G.S. 126-4(9); 126-4(17); 126-7.2; 126-16; 126-34.1; 126-34.2; 126-36; 126-38.

.0507 LEAVE IN CONNECTION WITH GRIEVANCES

(a) ~~Every department, agency or university which operates a grievance procedure shall, on a quarterly basis, compile information in the format required by the Office of State Personnel on employee grievances. This information shall be sent to the Office of State Personnel, Employee Relations Division. These reports shall be due on the first business day of each of the following months: January, April; July; October.~~ An employee shall be allowed time off from regular duties as may be necessary and reasonable up to a maximum of eight hours for the preparation of an internal grievance under the procedures adopted within their agency without loss of pay, vacation leave or other time credits.

(b) ~~The Office of State Personnel shall make reports to the full State Personnel Commission at its first scheduled meeting of the fiscal year and of the calendar year based on information supplied by departments, agencies and universities in (a) of Rule 1J .0507.~~ Necessary and reasonable time for participation in contested case hearings and other administrative proceedings outside the agency in connection with employment, as a party, shall be granted upon request to the employee's supervisor or personnel officer without loss of pay, vacation leave or other time credits. Management may require prior official notice of the scheduling of and documentation by the presiding official or designee of the time the employee spent in attendance at these administrative proceedings.

Statutory Authority G.S. 126-4(9).

.0508 SPC APPROVAL OF ADR AGREEMENT

~~(a) In every employee grievance I which the grievant has the right of appeal to the State personnel Commission (SPC), the final decision of the agency head must inform the grievant in writing that any appeal from the final departmental/university decision must be made to the SPC. Further, the grievant shall be informed in writing that an appeal to the SPC shall be made by filing a request for hearing with the Office of Administrative Hearings, P.O. Box 11666, Raleigh, North Carolina 27604.~~

~~(b) In every case in which the grievant appeals the final agency decision to the State Personnel Commission, the agency shall transmit a record of the case to the Office of State Personnel for procedural review and approval. This transmittal shall be done within five working days of the agency being informed in writing of the grievant's appeal to the State Personnel Commission. The record transmitted shall include at least copies of the following: the final agency decision; the report of the grievance committee; the action (letter of dismissal, etc.) which the grievance is based upon; any other information necessary to a procedural review of the matter.~~

~~(c) The Office of State Personnel shall conduct a procedural review of the matter to insure compliance with appropriate laws and policies. The Office of State Personnel shall, within five working days of receipt of the record, issue to the agency a notice that all appropriate laws and policies have been complied with. In the event that there is some procedural inadequacy, the Office of State Personnel shall notify the agency in witing of the specific problem, including a citation of the law or policy involved, together with a recommendation the grievance is based upon; any other information necessary to a procedural review of the matter receipt of the record. This review shall be on procedural matters only and shall not be a review of the merits of the agency decision.~~

Any resolution or agreement reached during the alternative dispute resolution procedure shall, to the extent that it involves a grievance or contested case issue, be treated as a settlement/consent agreement for the purposes of the required State Personnel Commission approval under 25 NCAC 1B .0436.

Statutory Authority G.S. 126-4(9); 126-4(17); 126-34.2; 126-35; 150B-23.

.0509 AGENCY GRIEVANCE REPORTS

(a) Every agency shall, semi-annually and as otherwise requested, compile information in the format required by the Office of State Personnel on employee grievances. These reports shall be due on the first business day of each of the following months: January and July.

(b) The Office of State Personnel shall make reports to the full State Personnel Commission at its February and August meetings based upon the information supplied in these semi-annual agency reports.

Statutory Authority G.S. 126-4(9).

.0510 FINAL AGENCY ACTION

In every employee grievance in which the grievant has the right of appeal to the State Personnel Commission (SPC), the final decision of the agency head must inform the grievant in writing that any appeal from the final agency decision must be made to the SPC within 30 days after receipt of notice of the decision or action which triggers the right of appeal. Further, the grievant shall be informed in writing that an appeal to the SPC shall be made by filing a petition for contested case hearing with the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447.

Statutory Authority G.S. 126-4(9); 126-7.2; 126-35; 126-37; 126-38; 150B-23(a).

.0511 GRANDFATHER CLAUSE

Agencies are authorized to continue to use their existing approved grievance procedure, except to the extent that it is inconsistent with the law, until a procedure consistent with this Section is approved by the State Personnel Commission (SPC). All agency procedures shall be submitted to the State Personnel Commission beginning in January 1996 and approved by the State Personnel Commission by October 15, 1996. Any agency without an approved procedure that complies with these Rules after October 15, 1996 shall use the procedures adopted by the Office of State Personnel to administer grievances within that agency.

Statutory Authority G.S. 126-4(9).

SECTION .0800 - GOVERNOR'S AWARD FOR EXCELLENCE

.0801 PURPOSE

~~The State of North Carolina has long been noted for loyal, efficient and dedicated employees who provide valuable services in all areas of state government. The Governor's Award for Excellence was created to acknowledge and express appreciation for outstanding achievements made by the employees of the state. This award is the highest honor that a state employee may receive for dedicated service to state government and the people of North Carolina.~~

The Office of State Personnel shall establish and administer a Governor Awards recognition program to recognize the highest achievements of State employees.

Statutory Authority G.S. 126-4(15).

.0802 AWARDS COMMITTEE

~~(a) The Awards program is administered by the State Personnel Commission with administrative support provided by the Office of State Personnel. A Governor's Awards for Recognition of State Employees' Committee shall make annual selection of those State employees to receive the Governor's Awards for Excellence. The Committee shall consist of five members, four appointed by the Governor and one appointed by the State Personnel Commission Chairperson from the Commission members. Of the four appointed by the Governor, two members shall be current or former State employees and two shall be from private business sector or the public at large. Beginning in 1993, terms of appointment of the Governor's appointees will be staggered, with two terms being for two years and two terms being for four years. Subsequent appointments shall be for four years or for the duration of an unexpired term. The State Personnel Commission appointee shall serve as the Awards Committee Chair and will serve at the pleasure of the Commission Chairperson.~~

~~(b) The awards shall be presented annually each fall. The Committee will select the employees to receive the Governor's Award for Excellence from among the nominations submitted by each department and university.~~

~~(c) The Office of State Personnel shall recommend to the Governor the week to be proclaimed as "North Carolina State Employees Appreciation Week" and coordinate a date for the awards ceremony.~~

(a) A Governor's Awards of Excellence Committee shall be appointed by the Governor to make an annual selection of State employees to receive the awards of excellence. The committee shall consist of five members, four appointed by the Governor and one appointed by the State Personnel Commission Chairperson from the Commission members. Of the four appointed by the Governor, two members shall be current or former State employees and two shall be from the private business sector or the public at large. Terms of appointment are for four years, with two members rotating off the Committee each year. Appointments for unexpired terms shall be for the duration of the term. The State Personnel Commission appointee shall serve as the Award's Committee Chair.

(b) The awards shall be presented annually. The Committee shall select the employees to receive the Awards of Excellence from among the nominations submitted by agencies.

Statutory Authority G.S. 126-4(15).

.0803 NOMINATIONS

~~(a) Nomination may be made for meritorious or distinguished accomplishments made by any permanent state employee at any level of employment with consideration given to the relative opportunities for accomplishment afforded by the individual's position. A prescribed nomination form will be furnished to each department and university to be used to submit their nominations for the Governor's Awards. A deceased employee, a retired employee,~~

~~or an employee on leave without pay may also be nominated. Employees may nominate peers and/or managers and vice versa. Employees who were nominated, but who did not receive the Governor's Award of Excellence, may be nominated again in a succeeding year.~~

~~(b) This program is for all permanent employees including the managerial and administrative levels such as:~~

~~(1) Deputy and Assistant Department Head;~~

~~(2) Division Directors;~~

~~(3) Deputy and Assistant Directors of major divisions in the larger departments;~~

~~(4) Key assistants to the Department Head or University Chancellor who exert major policy influence.~~

~~However, it does not include elected officials and University Chancellors. It does not include those employees who work in the public school system or community colleges.~~

~~(c) The accomplishments need not fall entirely within the scope of normal duties, but shall be in the nature of a major contribution reflecting credit on the person and state service. The meritorious service or accomplishment must be so singularly outstanding that special recognition is justified.~~

Statutory Authority G.S. 126-4(15).

.0804 AWARDS CATEGORIES

~~Awards may be made in the following categories:~~

~~(1) Devotion to Duty. Through unselfish devotion to duty, far and above normal requirements, employee has contributed significantly to the advancement of state service to the citizens of the state.~~

~~(2) Innovations. Through fruitful study and investigation employee has initiated and successfully established new and outstanding methods, practices, plans or designs having fundamental values. (Such as pioneering or research and development work in administration, engineering, productivity, agriculture, medicine, natural resources, the social sciences, etc.)~~

~~(3) Public Service. Employee has made outstanding contributions to the public service.~~

~~(4) Safety/Heroism. Employee has demonstrated outstanding judgement, courage, self possession or ability in an emergency, meritorious action to prevent injury, loss of life or to prevent damage to or loss of property.~~

~~(5) Human Relations. Employee has made outstanding contributions to the field of human relations, employee-management relations, or any of the allied fields.~~

~~(6) Other Achievements. Employee has made other significant achievements for services which deserve recognition.~~

Statutory Authority G.S. 126-4(15).

.0805 AGENCY, DEPARTMENT OR UNIVERSITY RESPONSIBILITY

~~Each department or university shall adopt policies and procedures monitored by the State Personnel Commission that will:~~

~~(1) Establish a program to recognize annually within the department or university outstanding and meritorious achievements within the six categories set out under the Awards section. The program may provide for one or more awards depending on the organizational structure and size of divisions or major programs within the department or university.~~

~~(2) Provide for an Awards Committee to be responsible for the processing of awards; suitable ceremonies for presentation of awards; and, to promote participation in the program by all eligible employees.~~

Agencies submitting nominations to the Governor's Awards Committee shall commit by signing the nomination form to support the nominees/recipients by providing time and travel to attend the Governor's Awards Ceremony.

Statutory Authority G.S. 126-4(15).

.0806 NUMBER OF NOMINATIONS

~~The number of nominations that may be submitted from each department or university for the Governor's Awards for Excellence is based on the total number of permanent employees in the classes that are eligible as of the end of the last calendar year.~~

Statutory Authority G.S. 126-4(15).

.0807 CRITERIA FOR SELECTION

~~The criteria for the Governor's Award are outstanding service, accomplishment, and contribution to the state. The performance upon which the selection is based must be clearly above and beyond that which would be expected from dedicated employees who are fully and competently discharging all of the duties and satisfying all of the requirements of their job. When the accomplishment is closely connected with the performance of normal duties, it will be necessary to consider how it was beyond the scope of normal activity. It is evident that administration of a program of awards for superior performance cannot be reduced to an absolute science. A large measure of good and consistent judgement is essential.~~

Statutory Authority G.S. 126-4(15).

.0808 TYPE OF AWARD

~~The award will be a mounted plaque inscribed with an appropriate message of recognition and appreciation signed by the Governor and displaying the Seal of The State of North Carolina. Each will receive an appropriately designed piece of personal jewelry which can be worn as a~~

~~recipient of the Governor's Award for Excellence.~~

Statutory Authority G.S. 126-4(15).

.0809 PROCEDURES

~~(a) Nominations will be ranked independently by each member of the committee. Selection of the award recipients will then be made by majority vote of the committee after complete evaluation of all eligible candidates.~~

~~(b) The committee will recommend an appropriate ceremony in keeping with the significance of the awards. Awards will be presented annually by the Governor at a ceremony during the week proclaimed by the Governor as "North Carolina State Employees Appreciation Week".~~

Statutory Authority G.S. 126-4(15).

SUBCHAPTER 1K - PERSONNEL TRAINING

SECTION .0300 - EDUCATIONAL ASSISTANCE PROGRAM

.0318 TAX STATUS

~~The U.S. Internal Revenue Service Code specifies that employer reimbursed educational assistance is subject to all withholding taxes if the reimbursement is for courses which prepare an employee to meet minimum job requirements or to qualify for a new job. Agencies/universities and employees are advised that these rules on reimbursement comply with the IRS Code regarding employee tax liability. To determine employee tax liability for reimbursement under this program, the agency/university should apply the following tests:~~

~~(1) Does the employee meet the minimum educational requirements for the job?~~

~~(a) No. Then the employee is ineligible for educational assistance.~~

~~(b) Yes. Then see Subparagraph (2).~~

~~(2) Is the requested course(s) a graduate (post baccalaureate) course?~~

~~(a) Yes. Then reimbursement is subject to withholding tax and FICA.~~

~~(b) No. Then see Subparagraph (3).~~

~~(3) Is each requested course to maintain or improve current job skills or to comply with law/regulation/rule or to comply with the employer's requirements in order for employee to retain his job?~~

~~(a) No. Then reimbursement is subject to withholding and FICA.~~

~~(b) Yes. Then see Subparagraph (4).~~

~~Note: Internal Revenue Service Code and Regulations supersede all other State laws and rules.~~

~~(4) Would completion of the course(s) qualify the employee for a new position (change in status or pay) or make the employee eligible to take an examination which would qualify him for a new position?~~

~~(a) Yes. Then reimbursement is subject to withholding and FICA.~~

~~(b) No. Then no taxes are withheld.~~

~~Note: This test is also applicable to tuition waiver programs in University of North Carolina institutions.~~

The U.S. Internal Revenue Service Code (IRS) requires payment of all withholding taxes on educational assistance reimbursements unless there is a specific exemption in the IRS Code for educational assistance. Consistent with the IRS Code, the Office of the State Controller shall issue in January, for that calendar year, procedures for withholding taxes from educational assistance reimbursements. These procedures shall be sent to the Chief Fiscal Officer of each department, agency and university.

University tuition waiver programs are different from educational assistance in both state law and the IRS Code. However, the withholding provisions of the IRS Code are applicable to tuition waiver programs.

Statutory Authority G.S. 126-4.

SECTION .0700 - PUBLIC MANAGER PROGRAM

.0701 PROGRAM ADMINISTRATION

(a) ~~Policy regulations for the Public Manager Program are established by the State Personnel Commission. General guidance for the program is provided by the Governor's Advisory Committee. The Advisory Committee appointed by the Governor consists of representatives of the executive branch of North Carolina State Government, the University of North Carolina, and other appropriate interests. The committee maintains advisory oversight of the Public Manager Program - its design, development, financing, and operation and advises the director of the program and other parties with respect to the program.~~ It is the intent of the State of North Carolina to provide competency based training for mid-level managers through the Public Manager Program.

(b) The Public Manager Program is a joint effort of North Carolina State Government and The University of North Carolina System. The program is based in and administered by the Office of State Personnel. ~~Program development requirements and administration shall be provided by a program director and staff under the direction of the State Personnel Director. In addition to this staff, each department, agency or university within state government shall designate a coordinator with responsibility for program communication and support within the department, agency, or university.~~

Statutory Authority G.S. 126-4.

.0702 PURPOSE

(a) The Public Manager Program is intended to provide state government managers with practical training that will

assist them in performing the increasingly difficult tasks they face as managers. The program seeks to increase the competence and broaden the managerial capacity of participants. With improvements in the performance of management, it is expected that the manager's work unit will function more productively and that the organization as a whole will be beneficially changed by the presence of trained managers in increasing numbers. The ultimate goal is to impact the quality, efficiency and productivity of state government operations.

(b) The focus of the program is upon middle managers employed in various state agencies. Most middle managers in North Carolina State Government have their training and experience in technical, specialty or professional fields. These managers excelled in their field before being promoted to management roles; however, many lack the formal training needed to manage modern government operations or lack opportunities for management development. Thus, the program is designed to improve the managerial competence of middle managers.

~~(c) Managers are entrusted with responsibilities for developing plans, implementing new services, managing continuing programs, monitoring the quality of performance and results and reporting to the public on the efficiency and effectiveness of the process. The need for improved competence of governmental managers to meet these growing demands is the basis for the development of the North Carolina Public Manager Program.~~

Statutory Authority G.S. 126-4.

.0703 PROGRAM ACCREDITATION

~~(a)~~ The North Carolina Public Manager Program is conducted in accordance with the curriculum requirements specified by the National Certified Public Manager Program Consortium and is in full compliance with the program accreditation standards of the Consortium. ~~The Consortium is composed of the following states as of February 1, 1982: Georgia, Arizona, Florida, Louisiana, Vermont, and North Carolina.~~

~~(b) The Consortium has been established with the purpose of facilitating program expansion, ensuring content quality and providing an information clearinghouse.~~

Statutory Authority G.S. 126-4.

.0704 PROGRAM CURRICULUM

~~Principles to guide the development of the curriculum for the program shall include:~~

~~(1) courses will be skill specific and relevant to managerial functions;~~

~~(2) courses will provide diagnostic, self awareness and feedback methodologies;~~

~~(3) courses will contain opportunities for participants to apply learnings;~~

~~(4) courses selected by participants will be individually relevant.~~

Statutory Authority G.S. 126-4.

.0705 PROGRAM PARTICIPATION

(a) To allow agencies an opportunity to participate on an equitable basis, the program director shall allocate a maximum number of slots to each agency. The number of slots allocated is ~~primarily~~ based on a consideration of such factors as percentage of total employment in each ~~agency~~ agency, percentage of managers to total employees, ~~Other factors such as~~ adjustments to ensure that smaller agencies are ~~represented~~ represented, and adjustment caused by cancellations ~~may be utilized in the allocation process~~.

(b) ~~Through the allocation of slots, the~~ The responsibility for selection of and recommendations of applicants rest with ~~the~~ agency management. Final Approval of participants rests with the Office of State Personnel. ~~The program director shall develop guidelines for selection of participants which agencies may adapt to their specific circumstances. Managers interested in the program should contact their interdepartmental coordinator or the North Carolina Public Manager Program, 101 W. Peace Street, Raleigh, North Carolina 27603 to obtain an application form.~~

(c) Records of each participant, to be kept by the employing agency and the Director of the Public Manager Program, should include the completed application form, agency approval, and program accomplishments. Record of Program participation becomes part of the ~~The~~ employee's personnel file ~~shall include a record of program participation~~.

Statutory Authority G.S. 126-4.

.0707 PRINCIPLES RELEVANT TO CURRICULUM DESIGN

~~(a) Several principles shall guide the development of the curriculum for the Public Manager Program, all aimed at providing a quality developmental program which is practical, relevant, and challenging.~~

~~(b) The courses which comprise the major component of the program shall be defined by determining the most important functions performed by middle managers in state government. The design of courses may not attempt to cover topics; rather, course design emphasis will be placed upon the most useful skills, both cognitive and behavioral, which will enable managers to effectively perform managerial functions.~~

~~(c) Each course is intended to provide the following:~~

~~(1) at least one diagnostic method to assess the current situation or level of performance of the participants;~~

~~(2) one or more tools, models, or techniques to effectively perform a function and criteria for choosing the most effective way to perform the function;~~

~~(3) an opportunity to apply learning during the course in exercises and simulations;~~

~~(4) the development of strategies to apply learnings~~

~~to one's job.~~

~~(d) The challenge of learning by doing involves participants in real tasks as well as classroom exercises. Several courses should require on job projects as well as of participants' situations and problems as the focus of discussions and exercises.~~

~~(e) The program provides an opportunity for participants to select courses which are most relevant to the individual. Planning processes should promote thoughtful assessment by participants as well as their immediate supervisors concerning job requirements and current performance. These processes should insure that choices of courses are based upon recognized developmental needs.~~

~~(f) The commitment to quality should be operationalized through a variety of evaluation processes. Each participant should be assessed by the instructor who determines that the essential learnings of the course have been achieved. Each course should be thoroughly evaluated by participants and observed by periodic intervals from participants and their supervisors to determine whether learnings have been applied on the job and to assess the value of performance improvements.~~

Statutory Authority G.S. 126-4.

.0708 FUNDING FOR PROGRAM

~~(a)~~ Unless fully funded by the General Assembly, funds for the operation of the Public Manager Program are to be derived from fees charged to ~~assessments provided by the various state~~ agencies with approved ~~which select~~ participants ~~to enroll in the courses. Monies collected will comprise a receipts-based fund, to be administered by the program staff~~. Fees will be based on actual costs of development, instruction, materials and administration.

~~(b) Prior to the beginning of operations for a fiscal year, projected costs for the program will be compiled. A budget will then be prepared by the program staff. It shall be reviewed and approved by the Advisory Committee and the State Personnel Director; thereafter, established state budgeting procedures shall apply. Each participating agency will be assessed an equitable proportion of the total operating budget based upon current and projected enrollments for the particular fiscal year.~~

~~(c) If space in a specific course exists, agencies may enroll additional employees in individual courses. The costs for these enrollments may be charged to the agencies through the established fee schedule. Agencies may also request that courses from the program curriculum be conducted for groups of managers within the agency. Fees will be based on actual costs of development, presentation and administration.~~

Statutory Authority G.S. 126-4.

SUBCHAPTER 1L - EQUAL OPPORTUNITY

SECTION .0100 - EQUAL EMPLOYMENT OPPORTUNITY PLANS AND PROGRAMS

.0101 DUTIES OF SECTION

~~The affirmative action section of the~~ The Office of State Personnel is responsible for developing and administering a program to ensure that employees are provided with equal employment opportunities at all occupational levels ~~greater utilization of all persons by identifying previously underutilized groups in the workforce, such as minorities, women, and handicapped persons; and making special efforts toward their recruitment, selection, development and upward mobility~~.

Statutory Authority G.S. 126-4; 126-16; 126-19.

.0102 PURPOSE

(a) The State is committed to equal employment opportunity and recognizes that effective and efficient government requires the talents, skills and abilities of all available human resources. It is the official policy of the State of North Carolina to provide all current employees and applicants for state employment with equal employment opportunities, without discrimination on the basis of race, color, religion, national origin, sex, age, or handicapping condition as defined by G.S. 168A or disability as defined by the Americans With Disabilities Act. All personnel policies, practices and programs shall be administered and implemented in a non-discriminatory manner by all state agencies and universities.

(b) The commitment to equal employment ~~career~~ opportunity shall be undertaken by state government through an equal employment opportunity plan ~~a continuing program of affirmative action~~ in order to:

(1) assure that all personnel policies and practices relevant to total employment in state government will guarantee and preserve equal employment opportunities for all persons of the state;

(2) assure diversity at all occupational levels of the state's workforce ~~assure more equitable representation of women, minorities, and handicapped persons throughout all aspects of the state's workforce~~.

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

.0103 PROGRAM IMPLEMENTATION: STATE LEVEL

(a) The Office of State Personnel ~~in cooperation with the several departments of state government~~ shall develop and implement a State Equal Employment Opportunity ~~Affirmative Action~~ Plan to promote equal employment opportunity to include, but not be limited to, a policy statement and the following elements:

(1) recruitment,

(2) disciplinary processes, ~~interviewing,~~

(3) selection processes,

(4) hiring,

(5) promotion,
(6) training,
(7) compensation and benefits,
(8) performance appraisal, ~~(WPPR)~~
(9) reduction-in-force,
(10) harassment prevention,
(11) evaluation mechanism,
(12) reporting mechanism,
(13) transfer and/or separation, and
(14) grievance procedures.

(b) The Office of State Personnel shall provide:

(1) technical assistance, training, oversight, monitoring, evaluation, and support programs to each state ~~department~~ agency and university ~~of state government~~.

(2) develop systems to review, analyze and evaluate trends regarding all personnel policies affecting the elements in the State EEO Plan.

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

.0104 PROGRAM IMPLEMENTATION: AGENCY AND UNIVERSITY LEVEL

(a) Each state agency ~~department~~ head ~~of state government~~ and University Chancellor shall develop and implement an agency ~~a departmental~~ or university equal employment opportunity ~~affirmative action~~ program and plan ~~designed to solve problems in those areas that adversely affect minorities, women and handicapped persons~~.

(b) Each state agency ~~department~~ and university shall submit ~~present~~ a plan by March 1 of each year ~~for this affirmative action program~~ to the Office of State Personnel for review, technical assistance and approval by the Director of State Personnel.

(c) Each state agency's ~~department's~~ and university's equal employment opportunity ~~affirmative action~~ plan and program shall include but not be limited to the following elements: ~~meet all requirements of the administrative EEO/AA Planning and Resources Guide and shall include but not be limited to the following elements.~~

(1) policy statement, ~~a workforce analysis designed to examine the number and levels at which it employs minorities, women and handicapped persons;~~

(2) assignment of responsibility and accountability, ~~a set of objectives, goals and timetables;~~

(3) dissemination procedures, ~~a recruitment program designed to attract minorities, women and handicapped persons to all levels of employment;~~

(4) workforce analysis, ~~an interviewing program that includes, for each vacancy, the interviewing of at least three applicants representative of the ethnic, sex and handicapped composition of available applicants;~~

(5) program objectives, ~~a program of promotion and career ladders for present employees;~~

(6) ~~a program of training to enhance employee development and advancement opportunities. Such programs shall include a process to ensure that minorities, women and handicapped persons have adequate representation and participation in internal and external training programs such as Supervisory Training, Public Managers Program, and Educational Assistance Program;~~ program activities addressing the following:

(A) recruitment,
(B) disciplinary process,
(C) selection processes,
(D) hiring,
(E) promotion,
(F) training and development,
(G) compensation and benefits,
(H) performance appraisal,
(I) transfer and/or separation, and
(J) grievance procedures,

(7) evaluation mechanism, ~~A program of orientation and training in equal employment opportunity and affirmative action compliance for all managers, supervisors and others authorized to make or recommend personnel actions;~~

(8) report mechanism, ~~Reduction in force procedures are designed to maintain the proportion of protected group members in the departmental or university workforce and preserves gains made in utilizing protected group members;~~

(9) prevention and correction of harassment, ~~An annual internal evaluation system (WPPR) to hold managers to all levels accountable for the progress of the department's and university's affirmative action program;~~

(10) reduction-in-force procedures, and ~~an internal reporting system to measure total program effectiveness.~~

(11) procedures for monitoring.

(d) Each state agency head and university chancellor shall designate an official at the deputy secretary, assistant secretary or vice-chancellor or assistant vice-chancellor level or high level official with a direct reporting relationship to the agency head, or chancellor, to assume responsibility for the operation and implementation of their equal opportunity plan and program. ~~Each department head shall assign responsibility and authority for the affirmative action program to a high level official or an equal employment opportunities officer (EEOO). Division heads and appropriate supervisors shall participate in developing the program and shall be responsible for implementing it in the work unit.~~

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

.0105 PROGRAM PLAN REVIEW

~~(a) Each state department/agency and university employing SPA employees shall submit annually an Affirmative Action Plan (update of entire plan or revisions as specified)~~

~~or shall submit an application for a three year EEO/AA planning cycle and a Three year Affirmative Action plan to the Office of State Personnel for review, technical assistance, and approval by the State Personnel Director. The submission date will be January 31 for annual plans or January 31 of the year immediately following the last year for which the previously approved three year plan ended.~~

~~(b) Each state department/agency and university applying for three year Affirmative Action Plan approval shall, in the judgement of the State Personnel Director, meet each of the preliminary requirements for three year EEO/AA plan approval stated in the Standards For Three Year Plan Approval issued by the Equal Opportunity Services Division of the Office of State Personnel.~~

~~(c) All reports submitted to the Office of State Personnel shall be reviewed by the department head or university chancellor and signed by the EEO Officer, verifying the process of program implementation.~~

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

.0106 REPORTS

~~(a)~~ To assist in the evaluation of the State's Equal Employment Opportunity ~~Affirmative Action~~ Program, each state agency, and university ~~or institution~~ shall ~~provide~~ submit reports in a format provided by the Office of State Personnel. ~~Commission with the following compliance information concerning investigations or other review made by the Equal Employment Opportunity Commission, or through court proceedings:~~

~~(1) A copy of all correspondence to the EEOC concerning a "negotiated settlement," more recently referred to as a no-fault settlement;~~

~~(2) A copy of "position statements" prepared by the department or institution which outlines an analyses of the facts and makes a recommendation to EEOC that they make a finding of no reasonable cause;~~

~~(3) where investigations are conducted by the EEOC, a statement as to the nature of the complaint, a copy of the agreement, conciliation, or other settlement reached between the EEOC or the courts and the state department or institution, including the cost of settlement to the state, if any.~~

~~(b) The Office of State Personnel will provide staff assistance to agency EEO officers in the investigation and preparation of responses to the EEOC.~~

Statutory Authority G.S. 126-4; 126-16.

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

Key:

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

NORTH CAROLINA ADMINISTRATIVE CODE

AUGUST 95

TITLE	DEPARTMENT
4	Commerce
15A	Environment, Health, and Natural Resources
18	Secretary of State
21	Occupational Licensing Boards 14 - Cosmetic Art Examiners 32 - Medical Examiners 46 - Pharmacy 50 - Plumbing, Heating and Fire Sprinkler Contractors
25	Personnel

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4 NCAC 10A .0502					✓		
15A NCAC 2B .0211					✓		
.0304		✓		✓		11/01/95	
2H .0103		✓		✓		09/01/95	
.0201 - .0203		✓		✓		09/01/95	
.0204		✓				09/01/95	
.1001 - .1003		✓		✓		09/01/95	
.1004			✓			09/01/95	
.1005 - .1009	✓			✓		09/01/95	
.1010 - .1012	✓					09/01/95	
.1013	✓			✓		09/01/95	
2Q .0800					✓		
10B .0202		✓				09/01/95	
10D .0003		✓				09/01/95	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A NCAC 10F .0313		✓		✓		10/01/95	
16A .1103					✓		
18 NCAC 6 .1310		✓		✓		09/01/95	
.1402		✓		✓		09/01/95	
.1405		✓		✓		09/01/95	
.1407		✓				09/01/95	
.1409		✓				09/01/95	
.1412		✓				09/01/95	
.1413		✓		✓		09/01/95	
.1416	✓			✓		09/01/95	
.1704		✓				09/01/95	
.1713		✓		✓		09/01/95	
.1801		✓		✓		09/01/95	
.1901		✓		✓		09/01/95	
.1902 - .1903		✓				09/01/95	
21 NCAC 14B .0604	✓					08/17/95	180 DAYS
32A .0001		✓				09/01/95	
.0006		✓				09/01/95	
32B .0214		✓				09/01/95	
.0309		✓				09/01/95	
.0705		✓				09/01/95	
.0808		✓				09/01/95	
32C .0003 - .0004		✓				09/01/95	
.0006		✓				09/01/95	
32H .0102		✓				07/01/96	
.0201		✓				07/01/96	
.0408	✓					07/01/96	
.0601		✓				09/01/95	
.0602		✓				07/01/96	
.0801		✓				07/01/96	
.1001		✓				07/01/96	
32I .0003 - .0004		✓				09/01/95	
32J .0001 - .0002		✓				09/01/95	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21 NCAC 32N .0003 - .0004		✓				09/01/95	
21 NCAC 46 .1317		✓		✓		09/01/95	
.1601		✓		✓		09/01/95	
.1603		✓		✓		09/01/95	
.1604 - .1605		✓				09/01/95	
.1606		✓		✓		09/01/95	
.1608	✓			✓		09/01/95	
.1609 - .1610	✓					09/01/95	
.1611	✓			✓		09/01/95	
.1704		✓				09/01/95	
.1801		✓				09/01/95	
.1804		✓				09/01/95	
.1806		✓		✓		09/01/95	
.1807		✓				09/01/95	
.1809		✓				09/01/95	
.1810	✓			✓		09/01/95	
.2006		✓				09/01/95	
.2007		✓		✓		09/01/95	
.2008		✓				09/01/95	
.2102		✓				09/01/95	
.2109	✓					09/01/95	
.2504		✓				09/01/95	
.2505	✓					09/01/95	
.2603 - .2606		✓		✓		09/01/95	
.2608	✓					09/01/95	
.2609 - .2610	✓			✓		09/01/95	
.2803		✓		✓		09/01/95	
50 .0402		✓				09/01/95	
25 NCAC 1D .2001			✓			08/08/95	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

DEPARTMENT OF COMMUNITY COLLEGES

Community Colleges

23 NCAC 2C .0604 - Program Review	*RRC Objection*	*06/14/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2B .0202 - Definitions	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters	*RRC Objection*	*07/13/95*
Agency Revised Rule (Noticed in 9:23, 1979)	*Obj. Removed*	*07/13/95*
15A NCAC 2H .1003 - Coastal Stormwater Disposal	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
15A NCAC 2H .1008 - Design of Stormwater Management Measures	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

Health: Epidemiology

15A NCAC 19A .0202 - Control Measures - HIV	*RRC Objection*	*06/14/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

Wildlife Resources and Water Safety

15A NCAC 10F .0313 - Hyde County	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

HUMAN RESOURCES

Facility Services

10 NCAC 3C .3001 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3C .3108 - Suspension of Admissions	*RRC Objection*	*07/13/95*
10 NCAC 3C .3205 - Discharge of Minor or Incompetent	*RRC Objection*	*07/13/95*
10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights	*RRC Objection*	*07/13/95*
10 NCAC 3C .3502 - Bylaws	*RRC Objection*	*07/13/95*
10 NCAC 3C .3602 - Responsibilities	*RRC Objection*	*07/13/95*
10 NCAC 3C .3603 - Personnel Policies and Practices	*RRC Objection*	*07/13/95*
10 NCAC 3C .3607 - Personnel Health Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3C .3608 - Insurance	*RRC Objection*	*07/13/95*
10 NCAC 3C .3704 - Status	*RRC Objection*	*07/13/95*
10 NCAC 3C .3902 - Manager	*RRC Objection*	*07/13/95*
10 NCAC 3C .3904 - Patient Access	*RRC Objection*	*07/13/95*
10 NCAC 3C .4003 - Policies and Procedures	*RRC Objection*	*07/13/95*
10 NCAC 3C .4102 - Classification of Optional Emergency Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .4104 - Medical Director	*RRC Objection*	*07/13/95*
10 NCAC 3C .4203 - Nursing Staff	*RRC Objection*	*07/13/95*
10 NCAC 3C .4303 - Nursing Services Maternal Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .4307 - Nursing Staff of Neonatal Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .4401 - Organization	*RRC Objection*	*07/13/95*

10 NCAC 3C .4502 - Pharmacist	*RRC Objection*	*07/13/95*
10 NCAC 3C .4512 - Medications Dispensed	*RRC Objection*	*07/13/95*
10 NCAC 3C .4702 - Organization	*RRC Objection*	*07/13/95*
10 NCAC 3C .4703 - Sanitation and Safety	*RRC Objection*	*07/13/95*
10 NCAC 3C .4704 - Distribution of Food	*RRC Objection*	*07/13/95*
10 NCAC 3C .4705 - Nutritional Support	*RRC Objection*	*07/13/95*
10 NCAC 3C .4801 - Organization	*RRC Objection*	*07/13/95*
10 NCAC 3C .4905 - Tissue Removal and Disposal	*RRC Objection*	*07/13/95*
10 NCAC 3C .5002 - Delivery of Care	*RRC Objection*	*07/13/95*
10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules	*RRC Objection*	*07/13/95*
10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs.	*RRC Objection*	*07/13/95*
10 NCAC 3C .5205 - Seclusion	*RRC Objection*	*07/13/95*
10 NCAC 3C .5302 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision	*RRC Objection*	*07/13/95*
10 NCAC 3C .5315 - Dental Care	*RRC Objection*	*07/13/95*
10 NCAC 3C .5318 - Activities and Recreation	*RRC Objection*	*07/13/95*
10 NCAC 3C .5319 - Social Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services	*RRC Objection*	*07/13/95*
10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care	*RRC Objection*	*07/13/95*
10 NCAC 3C .5325 - Ventilator Dependence	*RRC Objection*	*07/13/95*
10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients	*RRC Objection*	*07/13/95*
10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures	*RRC Objection*	*07/13/95*
10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3C .5501 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units	*RRC Objection*	*07/13/95*
10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration	*RRC Objection*	*07/13/95*
10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req.	*RRC Objection*	*07/13/95*
10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients	*RRC Objection*	*07/13/95*
10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients	*RRC Objection*	*07/13/95*
10 NCAC 3C .6102 - List of Referenced Codes and Standards	*RRC Objection*	*07/13/95*
10 NCAC 3C .6208 - Obstetrical Department Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3H .2001 - Definitions	*RRC Objection*	*07/13/95*
10 NCAC 3H .2201 - Administrator	*RRC Objection*	*07/13/95*
10 NCAC 3H .2202 - Admissions	*RRC Objection*	*07/13/95*
10 NCAC 3H .2203 - Patients Not to be Admitted	*RRC Objection*	*07/13/95*
10 NCAC 3H .2206 - Medical Director	*RRC Objection*	*07/13/95*
10 NCAC 3H .2209 - Infection Control	*RRC Objection*	*07/13/95*
10 NCAC 3H .2212 - Quality Assurance Committee	*RRC Objection*	*07/13/95*
10 NCAC 3H .2301 - Patient Assessment and Care Planning	*RRC Objection*	*07/13/95*
10 NCAC 3H .2302 - Nursing Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements	*RRC Objection*	*07/13/95*
10 NCAC 3H .2401 - Maintenance of Medical Records	*RRC Objection*	*07/13/95*
10 NCAC 3H .2501 - Availability of Physician's Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients	*RRC Objection*	*07/13/95*
10 NCAC 3H .2601 - Availability of Pharmaceutical Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2604 - Drug Procurement	*RRC Objection*	*07/13/95*
10 NCAC 3H .2605 - Drug Storage and Disposition	*RRC Objection*	*07/13/95*
10 NCAC 3H .2606 - Pharmaceutical Records	*RRC Objection*	*07/13/95*
10 NCAC 3H .2607 - Emergency Drugs	*RRC Objection*	*07/13/95*
10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2801 - Activity Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .2802 - Social Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services	*RRC Objection*	*07/13/95*
10 NCAC 3H .3003 - Ventilator Dependence	*RRC Objection*	*07/13/95*

10 NCAC 3H .3004 - Brain Injury Long-Term Care	*RRC Objection*	*07/13/95*
10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care	*RRC Objection*	*07/13/95*
10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures	*RRC Objection*	*07/13/95*
10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit	*RRC Objection*	*07/13/95*
10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units	*RRC Objection*	*07/13/95*
10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units	*RRC Objection*	*07/13/95*
10 NCAC 3H .3021- Physician Req. for Inpatient Rehab. Facilities or Units	*RRC Objection*	*07/13/95*
10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req.	*RRC Objection*	*07/13/95*
10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients	*RRC Objection*	*07/13/95*
10 NCAC 3H .3103 - Site	*RRC Objection*	*07/13/95*
10 NCAC 3H .3201 - Required Spaces	*RRC Objection*	*07/13/95*
10 NCAC 3H .3401 - Heating and Air Conditioning	*RRC Objection*	*07/13/95*
10 NCAC 3H .3404 - Other	*RRC Objection*	*07/13/95*
10 NCAC 3O .0305 - Persons Subject to Licensure	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3O .0607 - License Year	*RRC Objection*	*05/18/95*
Agency Revised Rule	*Obj. Removed*	*05/18/95*
10 NCAC 3U .0705 - Special Training Requirements	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 3U .1403 - Aquatic Activities	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 3U .1717 - Health, Safety and Sanitation Requirements	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

RRC has Objected to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:
***10 NCAC 3C** .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033, .2101 - .2105.*
***10 NCAC 3H** .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.*

Medical Assistance

10 NCAC 26H .0302 - Reporting Requirements	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 26H .0304 - Rate Setting Methods for Non-state Facilities	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 26H .0305 - Allowable Costs	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
10 NCAC 26H .0308 - Rate Appeals	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board

24 NCAC 5 .0414 - Alliance Participation Fee		
Rule Withdrawn by Agency		*06/14/95*
Agency Resubmitted Rule	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

JUSTICE

Criminal Justice Education and Training Standards

12 NCAC 9B .0202 - Responsibilities of the School Director	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
12 NCAC 9B .0206 - Basic Training -- Correctional Officers	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
12 NCAC 9D .0104 - Intermediate Law Enforcement Certificate	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
12 NCAC 9D .0105 - Advanced Law Enforcement Certificate	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

LICENSING BOARDS AND COMMISSIONS

Board of Certified Public Accountant Examiners

21 NCAC 8M .0102 - Registration Requirements	*RRC Objection*	*07/13/95*
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 8M .0104 - Firms Deemed in Compliance	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
21 NCAC 8N .0307 - Firm Names	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

Board of Medical Examiners

21 NCAC 32H .0102 - Definitions	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 32H .0506 - Certification Requirement: Emergency Medical Dispatcher	*RRC Objection*	*08/10/95*
21 NCAC 32N .0002 - Continuances	*RRC Objection*	*08/10/95*

Board of Nursing Home Administrators

21 NCAC 37 .0302 - Initial Licensure Fee		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 37 .0404 - Continuing Education Programs of Study		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 37 .0502 - Application to Become Administrator-In-Training	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
21 NCAC 37 .0904 - Biennial Registration Requirements		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 37 .0914 - Duplicate Licenses		
Rule Withdrawn by Agency		*07/13/95*

Board of Pharmacy

21 NCAC 46 .1601 - Pharmacy Permits	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .1608 - Device and Medical Equipment Permits	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2601 - Dispensing and Delivery	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
21 NCAC 46 .2602 - Orders		
Rule Withdrawn by Agency		*08/10/95*
21 NCAC 46 .2603 - Education and Training	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2604 - Records	*RRC Objection*	*08/10/95*

Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2605 - Registration of Non-Pharmacists	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2606 - Conveying Warnings	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2609 - Rehabilitation Equipment	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
21 NCAC 46 .2803 - Req/pharmacies Dispensing Sterile Parenteral Pharmaceuticals	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

SECRETARY OF STATE

Securities Division

18 NCAC 6 .1209 - Nonprofit Securities	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
18 NCAC 6 .1314 - Escrow Agreements	*RRC Objection*	*08/10/95*
18 NCAC 6 .1401 - Application for Registration of Dealers	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
18 NCAC 6 .1402 - Application for Registration of Salesmen	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
18 NCAC 6 .1413 - Salesman Examination Required	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
18 NCAC 6 .1702 - Application for Investment Adviser Registration	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Cont'd*	*08/10/95*
18 NCAC 6 .1713 - Invest Adviser Merger/Consolidation/Acquisition/Succession	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*
18 NCAC 6 .1901 - Application for Registration of Athlete Agents	*RRC Objection*	*08/10/95*
Agency Revised Rule	*Obj. Removed*	*08/10/95*

STATE PERSONNEL

Office of State Personnel

25 NCAC 1C .0405 - Temporary Appointment	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
25 NCAC 1C .0407 - Temporary Part-Time Appointment	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*
25 NCAC 1D .2001 - Coverage	*RRC Objection*	*07/13/95*
Agency Repealed Rule	*Obj. Removed*	*07/13/95*
25 NCAC 1K .0312 - Eligibility	*RRC Objection*	*07/13/95*
Agency Revised Rule	*Obj. Removed*	*07/13/95*

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

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ADMINISTRATION				
Division of Purchase and Contract				
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Alexander Douglas Jones v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0101	Morrison	06/13/95	10:07 NCR 627
Marilyn Jean Britt v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0172	Gray	08/03/95	
Antonio Tremont Davis v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0298	Phipps	08/08/95	
Amy Rebecca Batcheler v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0364	West	08/16/95	
Richard Dan Wuchte v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 0401	Nesnow	06/07/95	
Henry Roger Judd v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0431	Nesnow	08/02/95	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Mark Jason Smith v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0795	Gray	08/14/95	
Jeffrey Andre Jenkins v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 1408	Phipps	07/31/95	
Private Protective Services Board				
Lewis Austin Saintsing v. Private Protective Services Board	94 DOJ 1000	Chess	03/03/95	
Marcus T. Williams v. Private Protective Services Board	94 DOJ 1064	Chess	02/24/95	
Melvin Ray Cooper v. Private Protective Services Board	94 DOJ 1635	Reilly	03/09/95	
Donnell E. Morrow, Jr. v. Private Protective Services Board	94 DOJ 1823	Reilly	03/09/95	
Private Protective Services Board v. James C. Purvis	95 DOJ 0018	Chess	05/15/95	
Private Protective Services Board v. Samuel O. Smith	95 DOJ 0133	Chess	05/09/95	
Jann Mitchell Stanley v. Private Protective Services Board	95 DOJ 0420	Morrison	05/24/95	
Donald Wayne Clark v. Private Protective Services Board	95 DOJ 0444	Phipps	07/14/95	10:09 NCR 805
Richard Frank v. Private Protective Services Board	95 DOJ 0610	Phipps	08/10/95	
Marvin E. Shackleford v. Private Protective Services Board	95 DOJ 0611	Phipps	07/18/95	
Julius T. Fairley v. Private Protective Services Board	95 DOJ 0612	Phipps	07/20/95	
James L. McLeary, Jr. v. Private Protective Services Board	95 DOJ 0613	Phipps	07/18/95	
Bobby E. Smithey v. Private Protective Services Board	95 DOJ 0717	West	08/23/95	10:12 NCR 1039
Daniel C. Inglese v. Private Protective Services Board	95 DOJ 0767	Morrison	08/30/95	
LABOR				
Occupational Safety & Health Division				
Lenoir County Public Schools v. Department of Labor, OSHA	95 DOL 0218	Nesnow	05/01/95	
Private Personnel Service Division				
Employment Consultants, Inc. v. Private Personnel Service Division	95 DOL 0209	Morrison	07/07/95	
Wage and Hour Division				
R.J. Scott, Pres. Pirate Enterprises, Inc. v. Labor, Wage & Hour Div.	94 DOL 1524	West	03/23/95	
PUBLIC INSTRUCTION				
Glenn II, on behalf of Glenn II, and Glenn II, Individually v. Charlotte-Mecklenburg County Schools	93 EDC 0549	Chess	03/16/95	
S.M. on Behalf of J.A.M., and S.M., Individually, and J.M. v. Davie County Board of Education	93 EDC 0742	Phipps	05/30/95	
William Hewett v. State Board of Education	94 EDC 0533	Gray	03/31/95	10:02 NCR 179
James Midgette v. State Board of Education	94 EDC 1401	Reilly	05/02/95	
Deborah R. Crouse v. State Board of Education	95 EDC 0003	Chess	04/10/95	
Bobby G. Little v. Department of Public Instruction	95 EDC 0168	Phipps	03/20/95	
Tonya Marie Snipes and Robert Leon Snipes v. Orange County Schools	95 EDC 0225	Mann	05/15/95	
Vance County Schools v. Haywood Yarborough	95 EDC 0235	Mann	08/04/95	
Laverne K. Suggs v. Department of Public Instruction	95 EDC 0384	Nesnow	07/12/95	
Lavern K. Suggs v. Guilford County Schools	95 EDC 0385	Nesnow	06/02/95	
Kenneth G.H. Leftwich v. State Board of Education	95 EDC 0405	Nesnow	05/25/95	
STATE BAR				
Phillip S. Banks, III v. North Carolina State Bar	95 BAR 0861	Morrison	08/18/95	
STATE PERSONNEL				
Caswell County Health Department				
Della Brown v. Caswell County Health Department	94 OSP 0834	Nesnow	06/12/95	
Julie R. Johnson v. Caswell County Health Department	94 OSP 0865	Reilly	03/15/95	
N.C. Central University				
Peter A. Fore v. N.C. Central University	93 OSP 0189	Nesnow	06/13/95	
Department of Commerce				
T. Sherwood Jernigan v. Dept. of Commerce, Savings Institution Div.	94 OSP 0775	West	05/25/95	

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Department of Correction				
Nancy Gilchrist v. Department of Correction	94 OSP 0121	West	03/09/95	
Howard Gray Sadler v. Correction, Div. of Adult Probation/Parole	94 OSP 0332	West	05/15/95	
Thomas Wayne Smathers v. Department of Correction	94 OSP 0590	West	03/23/95	
George J. McClease, Jr. v. Department of Correction	94 OSP 0644	Gray	04/19/95	
Nancy C. Walker v. Department of Correction	94 OSP 1206	Gray	08/18/95	
Ruth Kearney v. Department of Correction	94 OSP 1807	Becton	03/13/95	
Ann R. Fletcher v. Department of Correction	95 OSP 0123	Chess	08/21/95	
James W. Hughes v. Department of Correction, Blue Ridge Unit Avery	95 OSP 0334	Becton	07/25/95	
William E. Norwood, Jr. v. Department of Correction	95 OSP 0500	Gray	08/16/95	
Department of Crime Control and Public Safety				
Betty Sue Whitley v. National Guard Dept. Crime Control & Public Safety	94 OSP 1399	Chess	06/13/95	
Robert W. Beasley v. Crime Control & Public Safety, St. Highway Patrol	94 OSP 1821	Morrison	08/10/95	10:11 NCR 965
Office of the District Attorney				
Shannon Caudill v. Office of the District Attorney for Judicial District 17-B, and Administrative Office of the Courts	95 OSP 0188	Nesnow	03/20/95	
Dorothea Dix Hospital				
Paul E. Hunter v. Dorothea Dix Hospital	95 OSP 0504	Gray	07/12/95	
Durham County Health Department				
Laurie A. Gerhard v. Durham County Health Department	95 OSP 0220	Phipps	08/17/95	10:12 NCR 1043
East Carolina University				
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0038*[7]	Becton	06/08/95	
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0057*[7]	Becton	06/08/95	
Edgecombe County Health Department				
Ronald E. Wooten v. Edgecome County Health Department	94 OSP 1209	Gray	07/10/95	
Department of Environment, Health, and Natural Resources				
Babette K. McKemie v. EHNR, Div. of Environmental Management	94 OSP 0358	Chess	05/31/95	
Fayetteville State University				
George Benstead v. Fayetteville State University	94 OSP 1597	Nesnow	04/04/95	
Lt. Bobby McEachern v. FSU Police Department	95 OSP 0042*[9]	Reilly	07/05/95	
Officer Gregor A. Miles v. FSU Police Department	95 OSP 0058*[9]	Reilly	07/05/95	
Forsyth Stokes Mental Health Center				
Michael Howell v. Forsyth Stokes Mental Health Center	94 OSP 0499	Chess	03/24/95	
Department of Human Resources				
April Benfield v. Department of Human Resources and Western Carolina Center	94 OSP 1758	Nesnow	06/07/95	
Eugene Hightower, Jr. v. Department of Human Resources, EEO	94 OSP 1811	West	05/04/95	
Rebecca Johnson v. Human Resources, Special Care Center	95 OSP 0138	West	03/31/95	
Black Mountain Center				
James Harrison v. Black Mountain Center, Dept. of Human Resources	94 OSP 0994*[11]	Gray	07/31/95	
James Harrison v. Black Mountain Center, Dept. of Human Resources	95 OSP 0190*[11]	Gray	07/31/95	

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Cherry Hospital				
William H. Cooke v. DHR, Cherry Hospital	93 OSP 1547	Gray	03/16/95	
Deloris L. Johnson v. Cherry Hospital, DHR	95 OSP 0409	Gray	08/25/95	
Durham County Department of Social Services				
Delores H. Jeffers v. Durham County Department of Social Services	94 OSP 0939	Morrison	06/12/95	
Gaston County Department of Social Services				
Bobbie J. Gilliam v. Gaston County Department of Social Services	94 OSP 0770	West	05/24/95	
Iredell County Department of Social Services				
Vernon E. Grosse v. Iredell County Department of Social Services	94 OSP 0282	Becton	03/09/95	
Bonnie N. Bellamy v. Iredell County Department of Social Services	94 OSP 0739	Chess	03/01/95	10:01 NCR 48
Richmond County Department of Social Services				
Emma Jane Bradley v. Richmond County Dept. of Social Services	95 OSP 0055	Reilly	07/18/95	10:09 NCR 809
Wake County Department of Health				
Regina K. Crowder v. Wake County/Health Dept., Caroline E. Lee, Dir.	94 OSP 1032*[8]	Nesnow	06/12/95	
Sabrina R. Crowder v. Wake County/Health Dept., Richard Stevens	94 OSP 1072*[8]	Nesnow	06/12/95	
Thomasine D. Avery v. Wake County/Health Department	94 OSP 1074*[8]	Nesnow	06/12/95	
Wake County Department of Social Services				
Olivia L. Jordan v. Wake County/Department of Social Services	94 OSP 1179*[8]	Nesnow	06/12/95	
Department of Labor				
Michael Robert Smith v. Department of Labor	94 OSP 0610	Nesnow	06/09/95	
Lee-Harnett Area Mental Health, Developmental Disabilities, and Substance Abuse Authority				
Julie Dyer v. Lee-Harnett Area MH/DD/SA Authority	94 OSP 0750	Gray	03/20/95	
North Carolina Special Care Center				
Lynn Banasiak Bass v. North Carolina Special Care Center	95 OSP 0419	Phipps	08/01/95	
North Carolina State University				
Artelia S. Clark v. N.C. State University	89 OSP 0612	Nesnow	07/07/95	
Wesley Brown v. N.C. State University	94 OSP 1173	Reilly	06/30/95'	10:08 NCR 700
David L. Bauer v. North Carolina State University	95 OSP 0044	Morrison	04/25/95	
Billy Ray Kelly v. NCSU Physical Plant	95 OSP 0130	West	03/22/95	
Heather Ann Waskiowicz v. NCSU, Dept. of Public Safety	95 OSP 0213	Phipps	07/06/95	
Orange-Person-Chatham Mental Health				
Patricia A. Harris v. Orange-Person-Chatham Mental Health	95 OSP 0162	West	04/11/95	
Department of Transportation				
Michael E. Kornegay v. Department of Transportation	93 OSP 1700	Gray	03/24/95	
Robert F. Goins v. Department of Transportation	94 OSP 0281	Chess	05/30/95	
Esther Doe Murphy v. Department of Transportation	95 OSP 0114	Gray	07/10/95	
Judy H. Arnold v. Department of Transportation, Div. of Motor Vehicles	95 OSP 1075	Becton	07/31/95	
University of North Carolina				
Beth Ann Miller v. UNC Student Health	94 OSP 0800	Nesnow	05/25/95	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
UNC Hospitals				
David Patrick Malone v. Univ. of NC Hospital at Chapel Hill	94 OSP 0771	Becton	03/14/95	
Lillian C. Daniels v. UNC Hospital	95 OSP 0056	Morrison	05/11/95	
Wake County				
Mark Morgan v. Wake County	94 OSP 0937	Nesnow	04/28/95	10:04 NCR 287
STATE TREASURER				
John W. Parris v. Bd. of Trustees//NC Local Gov. Emp. Retirement Sys.	91 DST 1093	Nesnow	05/04/95	
Channie S. Chapman v. Bd/Trustees//NC Local Gov. Emp. Ret Sys.	94 DST 0443	Morrison	05/15/95	
Bryan L. Basden v. Retirement Systems Division	95 OSP 0171	Chess	06/21/95	
Wayne La Broad v. Bd./Trustees//Teachers/St. Emp. Retirement Sys.	95 DST 0219	Morrison	07/14/95	
Tammy Evonne Ashcroft Brownv. Bd/Tr.//NC Local Gov. Emp. Ret Sys.	95 DST 0404	Phipps	07/27/95	10:10 NCR 872

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
95 DOJ 0717

BOBBY E. SMITHEY Petitioner, v. NORTH CAROLINA PRIVATE PROTECTIVE SERVICES BOARD Respondent.	))))))))	PROPOSAL FOR DECISION

This contested case was heard on July 25, 1995 in Raleigh, North Carolina, by Administrative Law Judge Thomas R. West.

APPEARANCES

Petitioner represented himself at the hearing.

Respondent was represented by Charles F. McDarris, Esq.

ISSUE

Petitioner Bobby Eugean Smithey applied with the Private Protective Services Board for registration as an unarmed security guard.

The application for registration was denied by the Administrator of the Board for "Cause." Specifically, the Administrator denied the application because of Smithey's several criminal convictions between January 20, 1971 and January 9, 1989; and because Smithey allegedly falsified his application for registration. Smithey appealed.

The issues are:

(1) whether Smithey is of good moral character and temperate habits as required by G.S. 74C-8(d)(2), G.S. 74C-12(a)(25), and 12 NCAC 7D .0703(3);

(2) whether the Private Protective Services Board (hereafter "Board") should deny registration, pursuant to G.S. 74C-12(a)(9) because Petitioner has committed an unlawful assault;

(3) whether the Board should deny registration, pursuant to G.S. 74C-12(a)(1), because Petitioner falsified his application for certification.

BURDEN OF PROOF

The burden of proof is on Petitioner to prove by the greater weight of the evidence that the Board's Administrator denied Petitioner's application for registration as an unarmed security guard.

WITNESSES

For Petitioner:

Petitioner testified on his own behalf.
In addition, letters from Petitioner's employer (P2) and landlord (P1) were received into evidence without objection by the Board.

For Respondent:

Helen Parker - employee of the Private Protective Services Board

EXHIBITS

The following exhibits were received into evidence:

R1	-	Application for registration as an unarmed security guard
R2	-	Letter from Administrator of the Board denying registration
R3	-	Criminal Record Check from 1989 to date of application
R4	-	Criminal Record Check from 1985 to date of application
P1	-	Letter of recommendation from Darrell Moser, Petitioner's landlord
P2	-	Letter of recommendation from Mary Moser, Petitioner's employer

Based upon a preponderance of the evidence, the undersigned finds the following to be the facts:

FINDINGS OF FACT

1. Petitioner went to the offices of The Wackenhut Corporation in Greensboro, North Carolina, on March 30, 1995 for the purpose of applying for registration as an unarmed security guard under Wackenhut's license.

2. Petitioner filled out the top of the application for registration which was received into evidence as Exhibit R1. The portion of the application above the printed words, "MAILING/RESIDENT ADDRESS FOR PAST FOUR YEARS:" is in Petitioner's handwriting.

3. Petitioner's address is in Petitioner's handwriting, but is stricken through. Petitioner's address is written above the strike-through in the handwriting of a secretary at Wackenhut.

4. The company telephone number, date of Petitioner's employment, his position, and the name of his supervisor are written in the secretary's handwriting.

5. On the bottom half of the application, it is represented that Petitioner has never pled guilty or been convicted of any crime. It is also represented that during the last five years Petitioner has not been convicted, served time, been paroled or placed on probation.

6. The application is signed by Petitioner and a representative of Wackenhut, Malcolm C. Burchett.

7. A Criminal Record Check for Smithey was attached to his application. The Criminal Record Check was received into evidence as Exhibit R3. The Check is for Alamance County and for the period from and after 1989. No convictions appear on the Criminal Record Check.

8. After the Board received Petitioner's application, routine investigation showed that Petitioner had been convicted of numerous crimes:

a.	1/20/71	-	Robbery - common law
b.	1/31/78	-	Assault on a Female
c.	2/8/82	-	Assault on a Female (2 counts)
d.	8/27/84	-	Assault on a Female
e.	3/14/85	-	Assault with a deadly weapon
f.	3/6/87	-	Assault with a deadly weapon
g.	6/19/87	-	Misdemeanor Assault and Battery
h.	7/13/88	-	Assault with a deadly weapon
i.	1/9/89	-	Assault on a Female

9. The staff of the Board contacted either Wackenhut or Petitioner regarding the convictions. As a result, Wackenhut sent to the Board the Criminal Record Check received into evidence as Exhibit R4. The document shows convictions from and after 1985.

10. Petitioner testified that when he filled out the application for registration, an employee of Wackenhut, Pete Webster, told Petitioner that the Board was only concerned about convictions during the last five years and that this is the reason a Criminal Records Check was submitted for only the past five years.

11. Petitioner also testified that he did not write on the application the "No" answers.

12. Administrative Rule 12 NCAC 7D .0703(3) provides that convictions within the past five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits. The rule lends credibility to Smithey's testimony that an employee of Wackenhut told him the Board is only interested in convictions within the past five years.

13. Smithey has been employed as the caretaker of a cemetery in Graham, Providence Memorial Association, for the past twelve years. The secretary of the cemetery Association, Mary Moser, is a retired school teacher, and has been the secretary of the Association for fifteen years. Moser believes Smithey to be dependable, cooperative, trustworthy, and one who takes pride in his work.

14. Smithey has rented a house from Darrell Moser since 1975. Darrell Moser is Mary Moser's son. Darrell Moser wrote a letter received into evidence as Exhibit P1. Darrell Moser writes in the letter that he considers Smithey to be one of the hardest and most reliable workers he has ever employed.

15. Smithey is interested in working part time as an unarmed security guard for Wackenhut, and maintaining his employment as a caretaker for the cemetery in Graham.

16. Smithey is an alcoholic.

17. All but the last of Smithey's criminal convictions occurred during the time he was abusing alcohol. The assaults on a female were assaults on Smithey's wife, who passed away on July 5, 1989 during open heart surgery.

18. Smithey testified that he has not consumed alcohol since 1988. Darrell Moser writes in his letter that Smithey has not consumed any alcohol since 1988.

19. The dates of Smithey's convictions and the lack of any since January 9, 1989, lends credibility to the evidence that the crimes were related to Smithey's abuse of alcohol.

20. On the other hand, most of the crimes related to Smithey's abuse of his wife, who has been deceased since July 1989.

Based upon the foregoing, the undersigned reaches the following:

CONCLUSIONS OF LAW

1. There is no showing, pursuant to G.S. 74C-8(d) and 12 NCAC .0703 (3), of a prima facie case that Smithey is not of good moral character and temperate habits.

> Clearly, Smithey has the kinds of convictions contemplated by the statute and administrative rule as a prima facie showing of lack of good moral character and temperate habits. But when you compare the statute, which has no time restriction regarding the relevant convictions, and the rule, which has a restriction of five years, you must conclude that the Commission made a policy decision when it promulgated the rule that it considers only convictions within five years of the application to be relevant to show a prima facie case that an applicant lacks good moral character and temperate habits.

2. For the reasons stated hereinabove in Conclusion #1, there can be no showing that the Board may, in its discretion, deny Smithey registration pursuant to G.S. 74C-12(a)(25).

3. It is more likely than not that the "No" answers written on Smithey's application were not placed on the application by Smithey. There is no evidence regarding when Smithey signed the application, either before the "No" answers were written or after.

4. The Board has discretion, pursuant to G.S. 74C-12(a)(1), to deny registration to Smithey because the application, which is signed by Smithey, does give false information regarding whether he has ever been convicted of any crime.

5. The Board has discretion, pursuant to G.S. 74C-12(a)(9), to deny registration to Smithey because of the numerous convictions for assault.

Based upon the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The Private Protective Services Board has discretion to deny Smithey registration as an unarmed security guard as the result of his numerous convictions for assault. See G.S. 74C-12(a)(9). The Board has discretion to deny Smithey registration as the result of his signature on an application which provides false information. See G.S. 74C-12(a)(1). If the Board denies registration, the Board's action would be supported by the evidence and well within its discretion.

The Board should not deny Smithey registration pursuant to any other ground stated in the Administrator's letter to Smithey for the reasons stated hereinabove in the Conclusions of Law.

I recommend to the Board that it register Smithey as an unarmed security guard. Smithey's convictions appear to be related to his alcoholism. The fact that there have been no convictions since 1989 is evidence that the alcoholism is under control.

I am influenced that Smithey has lived in the same residence and held the same job for over a decade. I tend to believe that if Smithey were continuing to abuse alcohol, he would not have been able to do either. The Board must be concerned that Smithey signed an application that indicates he has never pled guilty to or been convicted of any crime. However, over the years, I have seen that this incorrect information is more likely the result of sloppy procedure by licensees or lack of appreciation by licensees of the importance of being accurate than intent by registrants to mislead the Board. I believe that to be the case here.

Finally, I am influenced by the fact Smithey came from Graham to Raleigh for the hearing and represented himself. Not many people who have been denied registration for the reasons Smithey was make an appearance. Smithey did. The fact that he appeared at the hearing lends credibility to his testimony that alcoholism was the root of his convictions and that his alcoholism is under control.

ORDER

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

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Private Protective Services Board.

This the 23rd day of August, 1995.

Thomas R. West
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
95 OSP 0220

LAURIE A. GERHARD Petitioner,	)	
v.	)	RECOMMENDED DECISION
DURHAM COUNTY HEALTH DEPARTMENT Respondent.	)	

This contested case was heard by Administrative Law Judge Meg Scott Phipps on August 3 and 7, 1995 in Durham, North Carolina. The Petitioner submitted proposed findings of fact and conclusions of law on August 9, 1995. The record closed on August 16, 1995.

APPEARANCES

For Petitioner: Frederick A. Burke
Suite 2007
3622 Lyckan Parkway
Durham NC 27707

For Respondent: Lowell L. Siler
Durham County Attorney's Office
PO Box 3508
Durham NC 27702-3508

ISSUE

Did the Respondent have just cause to dismiss the Petitioner from employment for unacceptable personal conduct?

BURDEN OF PROOF

The burden of proof is on the Respondent to show that it had just cause to dismiss the Petitioner for unacceptable personal conduct.

WITNESSES

FOR RESPONDENT:

Margaret ("Peg") Wolfe - Public Health Nurse Supervisor I
Barbara B. Rumer - Dietician in private practice
Gayle Bridges Harris - Director of Nursing for Durham County
Clementine Buford - Middle School Team Leader and School Nurse
Elaine Hyman - Manager of Employee Relations for Durham County

FOR PETITIONER: - Laurie A. Gerhard

EXHIBITS

FOR RESPONDENT:

Exhibits 1-12, 14-40, 44, 45, 47-48 - Margaret Wolfe's Notes
Exhibit 13 - Oral Warning

Exhibit 41	-	Letter from Becky Freeman to Peg Wolfe
Exhibit 46	-	Letter from Barbara Rumer to Becky Freeman
Exhibit 49	-	Dismissal Letter
Offers of Proof	-	Exhibit 42 and Exhibit 43

FOR PETITIONER:

Exhibit 1	-	Performance Evaluation
Exhibit 2	-	Durham County Employee Handbook

MOTION TO STRIKE GRANTED

Melissa Lord was a subpoenaed witness for the Respondent. Her testimony was critical to substantiate a primary basis for dismissal for unacceptable personal conduct. The witness did not appear at the hearing on August 3, 1995. The hearing was held open until Monday, August 7, 1995, solely for the purpose of accommodating the Respondent and this witness. A new subpoena was issued. The witness again did not appear. Respondent's advised the Court that the witness was reluctant to testify. Petitioner through counsel renewed her objection to hearsay testimony regarding statements by Melissa Lord and to Respondent's Exhibits 42 and 43. This objection was sustained and a Motion to Strike was granted. Exhibits 42 and 43 are placed in the record as Offers of Proof pursuant to G.S. 150B-37(a)(2). Although an administrative law judge has the discretion to admit the most reliable and substantial evidence available when evidence is not reasonably available pursuant to G.S. 150B-29(a), the undersigned finds and concludes that this witness was reasonably available by subpoena and she chose not to appear. This deprives the Petitioner of the right to cross-examine pursuant to 26 NCAC 3 .0119(a) and the hearsay evidence should not be admitted.

FINDINGS OF FACT

1. Petitioner, Laurie A. Gerhard ("Petitioner"), was hired by the Respondent, Durham County Health Department ("County") as a Public Health Nurse I, effective October 11, 1993, at an annual salary of $24,437.09. Her initial status was as a probationary employee. She worked as a school nurse teacher.

2. Petitioner encountered difficulties learning the chain of command in the County's Health Department. Because she was unable to obtain the services of a nutritionist to put on classes for her students, Petitioner registered a complaint outside of her departmental chain of command. This complaint was made to Rebecca Freeman, Director of the Nutrition Division, regarding Sally Smith and Liz Gunselman, nutritionists in the Division. This was a major factor in her receiving an oral warning on April 14, 1994. Petitioner was directed to follow her chain of command if she had an unresolved problem or concern with a peer in another division. Although this was required of Petitioner, the complaint to Petitioner's Team Leader, Clementine Buford, had come directly from Sally Smith even though Ms. Smith had been advised not to call outside of her chain of command.

3. Petitioner's supervisor, Peg Wolfe, documented several meetings between April and June 16, 1994 with Petitioner where Ms. Wolfe cited Petitioner for lack of team spirit and negative comments from the public and other employees. By this time, it was becoming apparent to Peg Wolfe that Petitioner was often unable to communicate in a positive or tactful manner.

4. Petitioner was also advised on June 16, 1994 by Ms. Wolfe that responses from the schools where she taught were generally positive. Several commentators gave her an excellent rating, and none of the comments were negative. At this time, Ms. Wolfe testified that she told Petitioner that her status would be changed from probationary to permanent (although Petitioner has no recollection of that statement, and it does not appear in Ms. Wolfe's notes). There was still an ongoing concern with not following the chain of command and with negative comments to others. Petitioner was advised to "soften your words."

5. An item of concern with Ms. Wolfe involved the Petitioner's attendance at a meeting of the Durham Coalition on Adolescent Pregnancy Prevention ("DCAPP"), a non-profit group, in June 1994. Voluntary participation in DCAPP was encouraged by the County, and two of the volunteer co-facilitators were Annette Carrington and Clementine Buford, both Team Leaders in the County's Health Department. Ms. Buford was the Petitioner's Team Leader. Petitioner had been invited to attend the meeting by Ms. Carrington. At the meeting, Petitioner expressed certain personal views with respect to problems of DCAPP and offered suggestions as to how to fix them. Ms. Buford took exception to these comments, and lodged a written complaint to Ms. Wolfe and Gayle Harris, the Director of Nursing. She emphasized that

it was not the function of Ms. Gerhard to suggest corrective measures but rather to network with community organizations. Petitioner protested the complaint to her supervisors as this was not an official function and these were her personal views. Nevertheless, Ms. Wolfe cited this on August 19, 1994 as another example of Petitioner's inability to get along.

6. By this time, the working relationship between Clementine Buford and Petitioner was clearly strained. Elaine Hyman, Manager of Employee Relations, testified that the problems were associated with Clementine Buford also. She further testified that both employees had a "great deal to offer" to the Department. Additional meetings were held during September and October 1994 between the Petitioner and Ms. Wolfe on the subject of getting along. It was arranged that Petitioner and her Team Leader, Ms. Buford, participate in a mediation conference to be administered by Elaine Hyman of the County's Human Resources Department. This was done on September 29, 1994. Because mediation was not successful, Petitioner was to be assigned to a new team leader at the next term.

7. On November 2, 1994, Petitioner was given an annual appraisal effective October 17, 1994. Her annual salary was increased to $28,928.00. The appraisal noted that she "exceeded expectations" in three categories, she "met expectations" in eight categories, and "needed improvement" in one category, communication. It was noted that she, "Does not always work through established channels–conflict resolution skills are limited; attend session on C-R to address issue." There was no category in which she "failed to meet expectations." She was noted to be a "Creative teacher, has professional approach to practice, e.g., goals and objectives, teaching plans."

8. In spite of her difficulties with Ms. Buford and Ms. Wolfe, on November 14, 1994, Petitioner's status was changed to that of a permanent employee. Gayle Harris, Director of Nursing, testified that this was partially due to the fact that positions were being reduced in county government and they were afraid of losing this position.

9. On January 25, 1995, Becky Freeman, Director of Nutrition in the County's Health Department, wrote to Ms. Wolfe that Petitioner had made derogatory comments about a Health Department nutritionist to one Barbara Rumer, a nutritionist outside the agency. This may actually have been the same comment regarding Sally Smith which was the subject of the April 1994 oral warning. According to Mrs. Rumer, Petitioner had made the complaint to her at a chance meeting when they were both at the school attended by their children. The chance meeting took place in the fall of 1994, after school hours. Petitioner did not represent her views to be the official views of her employer, but rather her own personal views. Nevertheless, over lunch in December, Mrs. Rumer mentioned it to her friend, Lee Lichtenwalter, a County employee and nutritionist, who notified her boss, Becky Freeman, who in turn notified Ms. Wolfe. Mrs. Rumer did not know that Ms. Lichtenwalter would react as strongly as she did. She thought the matter was over. Ms. Freeman had to call Mrs. Rumer on several occasions to convince her to put the incident in writing, which she did on February 2, 1995. (Respondent's Exhibit 46). Mrs. Rumer was uncomfortable talking to Ms. Freeman or putting it in writing. Mrs. Rumer stated that Petitioner was a bright and capable person and that this all happened quite inadvertently.

10. On that very day, Petitioner was told about the letter and was placed on suspension. She was not provided with a copy of the letter. Petitioner told Ms. Wolfe that she did not remember the conversation with Mrs. Rumer, that it sounded like the same incident for which she had been placed on oral warning the previous April, that Sally Smith (the subject of Ms. Freeman's letter) and Petitioner had been working well together since the oral warning incident, that she was entitled to her own personal views.

11. For this reason (and another which was not substantiated), on February 6, 1995, Petitioner was terminated without any prior warning. She received a dismissal notification at the time of termination. It recited her continued refusal to follow appropriate channels to discuss County concerns as the specified basis to terminate Petitioner for personal conduct unbecoming a County employee. It stated that her actions called the credibility of the County into question and therefore undermined the ability of the County to offer services.

12. Petitioner timely appealed her dismissal.

13. Petitioner was not advised that she was still in oral warning at the time of her termination or within the preceding six month period.

14. The County's Employee Relations Manager, Elaine Hyman, stated that personal conduct discipline is intended to be imposed for those actions for which no reasonable person could, or should, expect to receive prior warnings. Gayle Harris and Elaine Hyman stated that it became a judgment call as to whether or not these incidents were related to personal conduct or to performance. Initially, these problems were characterized as one of job performance and thus, the

oral warning was given. The dismissal notification stated that the dismissal was based on "the incidents discussed during your pre-dismissal conference ... and a previous oral warning documenting the same behavior." (Emphasis added).

15. The County's Employee Handbook at page 9 lists sixteen (16) different types of inappropriate personal conduct, which generally attempt to prevent serious injury to persons and property. The Handbook does define a "failure to work well with the public and with other employees" as unsatisfactory job performance which requires adherence to the three step disciplinary process. The Handbook also states at page 4:

> As a County employee, you represent Durham County Government. The impression you give and the statements you make may influence the impression citizens have, not only of you, but also Durham County. You are our best public relations agent.
>
> Courteous and efficient work is essential if we are to provide the best possible service.

Failure to follow the chain of command is not listed under the examples of causes for discipline or dismissal in the Handbook.

16. The Petitioner could well be described as an employee who is above average in competency and who, in her efforts to perform her job well, received positive evaluations from the officials of the schools where she taught. Nevertheless, she was unable to satisfy the demands of her nursing supervisor to work within her defined policy of "getting along." She spoke her mind. This was not tolerated by her supervisor, Ms. Wolfe. Therefore, the Petitioner failed to adequately perform her duties in that she failed to work well with the public and with other employees.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to G.S. §§126-34, 126-35, 125-36 and Chapter 150B.

2. Petitioner is a permanent employee of a local government subject to the state personnel act as set forth in G.S. §126-37(b)(1) and §125-5(a)(2).

3. G.S. §126-35(a) limits suspension without warning to causes relating to personal conduct detrimental to State [County] service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons.

4. There are two bases for the dismissal of employees under the G.S. 126-35 standard of "just cause" and they are "unacceptable job performance" and "unacceptable personal conduct." 25 NCAC 1I .2301(b). "Unacceptable job performance" includes the failure to satisfactorily perform job requirements as directed by management; this determination is made by the supervisor. 25 NCAC 1I .2301(c). "Unacceptable personal conduct" includes conduct for which no reasonable person would expect to receive a prior warning and "conduct unbecoming an employee that is detrimental to the agency." 25 NCAC 1I .2301(d)(1) & (5). Certain actions by employees may fall into both categories depending on the facts in the case. 25 NCAC 1I .2301(e).

5. The Petitioner's conduct was not sufficiently grievous such as to warrant dismissal for personal conduct. Petitioner's conduct did not threaten serious harm to persons or property. Assuming that all of the hearsay allegations against the Petitioner were believed, a reasonable person could expect to receive prior warnings that such actions would constitute a basis for termination.

6. Failure to follow appropriate channels to discuss concerns about Health Department employees and functions is unacceptable job performance especially when Petitioner was directed to do so by management. This was the only cited reason for the dismissal; however, the evidence shows, and the undersigned concludes, that the Petitioner also failed to work well with the public and employees which is characterized in the Respondent's Employee Handbook as unsatisfactory job performance. Therefore, Petitioner was entitled to three separate warnings that her performance was unsatisfactory. 25 NCAC 1I .2302(b); Amanini v. N.C. Dept. of Human Resources, 114 N.C.App. 668, 443 S.E.2d 114 (1994); Parks v. Department of Human Resources, 70 N.C.App. 125, 338 S.E.2d 826, disc. review denied, 316 N.C. 553, 344 S.E.2d 8

(1986). These were not provided.

7. Petitioner was entitled to a statement in writing setting forth in numerical order the specific acts or omissions that were the County's reasons for terminating her employment, as required by G.S. §126-35(a). No such notice was provided.

8. The failure of the County to provide the Petitioner with the proper oral and written warnings and to meet the specificity requirements of G.S. §126-35(a) are both procedural violations which constitute a denial of due process and a discharge without just cause.

9. Petitioner is entitled to reinstatement to a same or similar position, and to an award of back pay and counsel fees.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

IT IS HEREBY RECOMMENDED that Petitioner be reinstated to the same or similar position of Public Health Nurse I and that she be awarded back pay and attorney fees. IT IS FURTHER RECOMMENDED that a written warning be placed in Petitioner's personnel file specifically setting out incidents of failure to work well with the public and employees which occurred between April 14 until February 6, 1995. The Respondent should follow the requirements of 25 NCAC 1I .2302(c)(2).

MEMORANDUM
(26 NCAC 3 .0126(c)(7))

A substantial part of the testimony and the evidence to support Petitioner's dismissal was based on hearsay testimony. Pursuant to G.S. 150B-29(a) most of the hearsay testimony was allowed in over a general objection from the Petitioner's counsel for the following reasons:

1. Statements were admitted to show why Petitioner's supervisor, Peg Wolfe, took the actions that she did regarding Petitioner and not for the truth of the matters asserted to her by others. Also, the notes and memoranda of Peg Wolfe were the product of regularly conducted meetings which she held in her capacity as supervisor. G.S. 8C-803(6) & (8); and

2. To prevent a lengthy hearing. But it is noted that Respondent chose not to present the testimony of witnesses who could corroborate hearsay testimony, most notably, Rebecca Freeman who was in the courtroom. Although Ms. Wolfe's note-taking is credible and in fact, commendable, there is an element of untrustworthiness in the information provided to her. As an example, in Respondent's Exhibit No. 5, Clementine Buford called Peg Wolfe to complain about Laurie Gerhard and Ms. Wolfe writes down the following that Ms. Buford tells her: "Laurie said that Peg said that Clementine had said that Laurie didn't like minority kids at Rogers-Herr." These types of conversations and hearsay innuendos go to the heart of the problem in this case. Relations were so strained between Clementine Buford, as well as other employees, and Laurie Gerhard that nothing Ms. Gerhard said or did was going to be right. Every comment or complaint, no matter how many people it went through, was going to be reported to Peg Wolfe. As a result, Ms. Wolfe spent a great deal of time trying to smooth the relations between Ms. Gerhard, Ms. Buford, the Nutrition Division, teachers and others.

The Respondent's problems with Ms. Buford and the Petitioner were time-consuming. From the record, it appears that Petitioner does not have a tactful personality and can be demanding and abrasive. This was a continuing problem and reflected her failure to get along with the public and with other employees. For this Petitioner deserves further warnings and counseling on communication skills, but not dismissal.

ORDER

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

NOTICE

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

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

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

This the 17th day of August, 1995.

Meg Scott Phipps
Administrative Law Judge

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural	Hearing Aid Dealers and Fitters	22
	Resources	Landscape Architects	26
16	Public Education	Landscape Contractors	28
17	Revenue	Marital and Family Therapy	31
18	Secretary of State	Medical Examiners	32
19A	Transportation	Midwifery Joint Committee	33
20	Treasurer	Mortuary Science	34
*21	Occupational Licensing Boards	Nursing	36
22	Administrative Procedures	Nursing Home Administrators	37
23	Community Colleges	Occupational Therapists	38
24	Independent Agencies	Opticians	40
25	State Personnel	Optometry	42
26	Administrative Hearings	Osteopathic Examination & Reg. (Repealed)	44
27	NC State Bar	Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
ACUPUNCTURE LICENSING BOARD						
21 NCAC 01 .0101	10:02 NCR 150	07/01/95			08/01/95	
.0201	10:07 NCR 585	10/01/95				
.0401 - .0402	10:02 NCR 150	07/01/95			08/01/95	
.0501	10:07 NCR 585	10/01/95				
.0701	10:07 NCR 585	10/01/95				
AGRICULTURE						
2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
ARCHITECTURE						
21 NCAC 02 .0208	10:12 NCR 985	12/01/95				
02 .0301 - .0302	10:10 NCR 829	07/01/96				
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS						
21 NCAC 08F .0105	10:04 NCR 255	08/01/95			08/01/95	
.0113	10:04 NCR 255	08/01/95			08/01/95	
08G .0401	10:04 NCR 255	08/01/95			08/01/95	
08J .0005	10:04 NCR 255	08/01/95			08/01/95	
.0008	10:04 NCR 255	08/01/95			08/01/95	
08M .0102	10:04 NCR 255	08/01/95			N/A	RRC Obj./Rule Withdrawn
.0104	10:04 NCR 255	08/01/95			08/01/95	
.0306	10:04 NCR 255	08/01/95			08/01/95	
.0401	10:04 NCR 255	08/01/95			08/01/95	
08N .0203	10:04 NCR 255	08/01/95			08/01/95	
.0302	10:04 NCR 255	08/01/95			08/01/95	
.0307	10:04 NCR 255	08/01/95			08/01/95	
CHIROPRACTIC EXAMINERS						
21 NCAC 10 .0203	10:04 NCR 261	08/01/95			08/01/95	
COMMUNITY COLLEGES						
23 NCAC 02C .0108	10:03 NCR 208	09/01/95				
.0210	10:07 NCR 587	01/01/96				
.0211	10:03 NCR 208	09/01/95				
.0301	10:07 NCR 587	01/01/96				
.0306	10:03 NCR 208	09/01/95				
02E .0403	10:07 NCR 587	01/01/96				
COMMERCE						
4 NCAC 06C .0203	10:05 NCR 300	09/01/95				
CORRECTION						
5 NCAC 05 .0001	10:01 NCR 12	07/01/95			07/01/95	
COSMETIC ART EXAMINERS						
21 NCAC 14B .0604	10:12 NCR 985	12/01/95				
CULTURAL RESOURCES						
7 NCAC 02F .0002	10:01 NCR 12	07/01/95			08/01/95	
ELECTROLYSIS EXAMINERS						
21 NCAC 19 .0104	10:11 NCR 907	12/01/95				
.0204	10:11 NCR 907	12/01/95				
.0616	10:11 NCR 907	12/01/95				
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES						
15A NCAC 02B .0101	10:01 NCR 13					Correction to Notice
.0104	10:01 NCR 13					Correction to Notice
.0202	10:01 NCR 13					Correction to Notice
.0211	10:01 NCR 13					Correction to Notice
.0301	10:01 NCR 13					Correction to Notice

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
					State	Local		
		.0303	10:08 NCR 661	11/01/95				
		.0304	10:04 NCR 246	01/01/96				
		.0304	10:05 NCR 301	11/01/95			11/01/95	
		.0308 - .0310	10:08 NCR 661	11/01/95				
		.0308	10:08 NCR 661	02/01/96				
		.0313	10:11 NCR 901	02/01/96				
		.0315 - .0316	10:08 NCR 661	11/01/95				
		.0315	10:08 NCR 661	02/01/96				
		.0316	10:04 NCR 246	01/01/96				
	02D	.0520	10:01 NCR 13	07/01/95	x	x		
		.0531	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.0902	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.0909	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.0952	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.1402	10:01 NCR 13	07/01/95	x	x	07/01/95	
		.1406	10:01 NCR 13	07/01/95	x	x		
		.1409	10:01 NCR 13	07/01/95	x	x		
		.1701 - .1702	10:01 NCR 13	07/01/95	x	x		
		.1801 - .1803	10:01 NCR 13	07/01/95	x	x		
NPDES Permit			10:02 NCR 56					
	04A	.0001	10:07 NCR 579	10/01/95				
		.0005	10:07 NCR 579	10/01/95				
	04B	.0016	10:07 NCR 579	10/01/95				
		.0020	10:07 NCR 579	10/01/95				
		.0028	10:02 NCR 149	07/01/95			08/01/95	
		.0029 - .0030	10:07 NCR 579	10/01/95				
	04C	.0007 - .0008	10:07 NCR 579	10/01/95				
		.0010	10:07 NCR 579	10/01/95				
	04D	.0002 -.0003	10:07 NCR 579	10/01/95				
	07B	.0101	10:09 NCR 751	12/01/95	x	x		
		.0201 - .0216	10:09 NCR 751	12/01/95	x	x		
		.0401 - .0406	10:09 NCR 751	12/01/95	x	x		
		.0501 - .0507	10:09 NCR 751	12/01/95	x	x		
	07H	.0208	10:03 NCR 197	12/01/95				
		.0308	10:09 NCR 751	12/01/95				
		.0309 - .0310	10:09 NCR 751	02/01/96				
		.1705	10:09 NCR 751	12/01/95				
		.2201 - .2202	10:03 NCR 204	12/01/95				
		.2203	10:03 NCR 204	12/01/95	x			
		.2204 - .2205	10:03 NCR 204	12/01/95				
	07K	.0103	10:09 NCR 751	12/01/95				
	10B	.0115	10:06 NCR 338	10/01/95				
		.0202 - .0203	10:01 NCR 26	07/01/95			07/01/95	
		.0202	10:04 NCR 249	08/01/95			09/01/95	
		.0214	10:01 NCR 26	07/01/95			07/01/95	
	10C	.0404	10:06 NCR 338	12/01/95				
		.0407	10:06 NCR 338	12/01/95				
	10D	.0002 - .0003	10:01 NCR 26	07/01/95			07/01/95	
		.0003	10:04 NCR 250	08/01/95			09/01/95	
		.0003	10:06 NCR 338	09.01/95				
	10F	.0313	10:06 NCR 338	10/01/95			10/01/95	
		.0317	10:01 NCR 26	07/01/95			07/01/95	
		.0323 - .0324	10:11 NCR 904	12/01/95				
Wildlife Proclamation/Striped Bass			10:02 NCR 57	04/10/95				
			10:03 NCR 195	04/15/95				
	13B	.0101	10:06 NCR 350	10/01/95				
		.0103	10:06 NCR 350	10/01/95				
		.0503	10:06 NCR 350	10/01/95				
		.0802 - 0829	10:06 NCR 350	10/01/95				
		.1627	10:06 NCR 350	10/01/95				Agency Did Not Adopt
	16A	.1001	10:07 NCR 582	01/01/96	x			
		.1002 - .1006	10:07 NCR 582	01/01/96				
	18A	.2508	10:06 NCR 350	01/01/96				

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
		.2511	10:06 NCR 350	01/01/96				
		.2516 - .2519	10:06 NCR 350	01/01/96				
		.2521 - .2524	10:06 NCR 350	01/01/96				
		.2526	10:06 NCR 350	01/01/96				
		.2528 - .2535	10:06 NCR 350	01/01/96				
		.2537	10:06 NCR 350	01/01/96				
		.2540 - .2542	10:06 NCR 350	01/01/96				
		.2543	10:06 NCR 350	01/01/96				Agency Did Not Adopt
	19A	.0401	10:06 NCR 350	10/01/95				
		.0406	10:06 NCR 350	10/01/95				
		.0502	10:06 NCR 350	10/01/95				
	19C	.0206	10:05 NCR 305	10/01/95	x			
	19H	.0702	10:07 NCR 582	10/01/95	x			
	24A	.0404	10:06 NCR 350	10/01/95	x			
FINAL DECISION LETTERS								
Voting Rights Act			10:01 NCR 02					
			10:03 NCR 194					
			10:05 NCR 298					
			10:10 NCR 825					
			10:11 NCR 889					
GENERAL CONTRACTORS LICENSING BOARD								
21 NCAC 12		.0302	10:11 NCR 906	12/01/95				
		.0410	10:11 NCR 906	12/01/95				
GOVERNOR'S EXECUTIVE ORDERS								
Number 72			10:01 NCR 01				03/06/95	
Number 73			10:02 NCR 54				03/15/95	
Number 74			10:02 NCR 54				03/27/95	
Number 75			10:03 NCR 191				03/30/95	
Number 76			10:03 NCR 191				04/03/95	
Number 77			10:05 NCR 297				05/02/95	
Number 78			10:06 NCR 336				05/23/95	
Number 79			10:07 NCR 427				06/07/95	
Number 80			10:07 NCR 427				06/13/95	
Number 81			10:08 NCR 639				06/27/95	
Number 82			10:10 NCR 823				07/27/95	
Number 83			10:10 NCR 823				08/03/95	
Number 84			10:12 NCR 981				08/24/95	
HUMAN RESOURCES								
10 NCAC	03D	.1401	10:08 NCR 641	11/01/95				
	03H	.0108 - .0109	10:02 NCR 58	09/01/95				
		.0206 - .0220	10:02 NCR 58	09/01/95				
		.0306 - .0318	10:02 NCR 58	09/01/95				
		.0407 - .0409	10:02 NCR 58	09/01/95				
		.0505 - .0507	10:02 NCR 58	09/01/95				
		.0510 - .0517	10:02 NCR 58	09/01/95				
		.0605 - .0609	10:02 NCR 58	09/01/95				
		.0705 - .0712	10:02 NCR 58	09/01/95				
		.0810 - .0812	10:02 NCR 58	09/01/95				
		.0903 - .0911	10:02 NCR 58	09/01/95				
		.1003 - .1008	10:02 NCR 58	09/01/95				
		.1105 - .1109	10:02 NCR 58	09/01/95				
		.1130 - .1136	10:02 NCR 58	09/01/95				
		.1150 - .1163	10:02 NCR 58	09/01/95				
		.1204 - .1208	10:02 NCR 58	09/01/95				
		.1210	10:02 NCR 58	09/01/95				
		.1306 - .1308	10:02 NCR 58	09/01/95				
		.1405 - .1406	10:02 NCR 58	09/01/95				
		.1408 - .1410	10:02 NCR 58	09/01/95				

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				State	Local		
	.1501 - .1503	10:02 NCR 58	09/01/95				
	.1612 - .1613	10:02 NCR 58	09/01/95				
	.1703 - .1704	10:02 NCR 58	09/01/95				
	.1804 - .1807	10:02 NCR 58	09/01/95				
	.2001	10:02 NCR 58	09/01/95				
	.2101 - .2110	10:02 NCR 58	09/01/95				
	.2201 - .2212	10:02 NCR 58	09/01/95				
	.2301 - .2308	10:02 NCR 58	09/01/95				
	.2401 - .2402	10:02 NCR 58	09/01/95				
	.2501 - .2506	10:02 NCR 58	09/01/95				
	.2601 - .2607	10:02 NCR 58	09/01/95				
	.2701	10:02 NCR 58	09/01/95				
	.2801 - .2802	10:02 NCR 58	09/01/95				
	.2901 - .2902	10:02 NCR 58	09/01/95				
	.3001 - .3005	10:02 NCR 58	09/01/95				
	.3011 - .3016	10:02 NCR 58	09/01/95				
	.3021 - .3032	10:02 NCR 58	09/01/95				
	.3101 - .3104	10:02 NCR 58	09/01/95				
	.3201 - .3202	10:02 NCR 58	09/01/95				
	.3301 - .3302	10:02 NCR 58	09/01/95				
	.3401 - .3404	10:02 NCR 58	09/01/95				
03L	.0901 - .0907	10:08 NCR 641	02/01/96				
	.1001 - .1007	10:08 NCR 641	02/01/96				
	.1101 - .1112	10:08 NCR 641	02/01/96				
	.1201 - .1202	10:08 NCR 641	02/01/96				
	.1301 - .1303	10:08 NCR 641	02/01/96				
	.1401 - .1402	10:08 NCR 641	02/01/96				
03M	.0202 - .0205	10:08 NCR 641	02/01/96				
	.0207	10:08 NCR 641	02/01/96				
14B	.0501 - .0503	10:07 NCR 430	05/01/96				
	.0505 - .0509	10:07 NCR 430	05/01/96				
14K	.0101 - .0103	10:07 NCR 430	05/01/96				
	.0201 - .0219	10:07 NCR 430	05/01/96				
	.0301 - .0310	10:07 NCR 430	05/01/96				
	.0312 - .0315	10:07 NCR 430	05/01/96				
	.0317 - .0324	10:07 NCR 430	05/01/96				
	.0326 - .0329	10:07 NCR 430	05/01/96				
	.0333 - .0348	10:07 NCR 430	05/01/96				
	.0350 - .0365	10:07 NCR 430	05/01/96				
	.0401 - .0408	10:07 NCR 430	05/01/96				
14L	.0101 - .0106	10:07 NCR 430	05/01/96				
	.0201 - .0203	10:07 NCR 430	05/01/96				
	.0301 - .0308	10:07 NCR 430	05/01/96				
	.0310	10:07 NCR 430	05/01/96				
	.0401 - .0407	10:07 NCR 430	05/01/96				
	.0601 - .0606	10:07 NCR 430	05/01/96				
	.0609	10:07 NCR 430	05/01/96				
	.0611 - .0615	10:07 NCR 430	05/01/96				
	.0701 - .0709	10:07 NCR 430	05/01/96				
	.0711 - .0712	10:07 NCR 430	05/01/96				
14M	.0101 - .0113	10:07 NCR 430	05/01/96				
	.0501 - .0511	10:07 NCR 430	05/01/96				
	.0601 - .0602	10:07 NCR 430	05/01/96				
	.0604	10:07 NCR 430	05/01/96				
	.0606	10:07 NCR 430	05/01/96				
	.0608 - .0612	10:07 NCR 430	05/01/96				
	.0614 - .0615	10:07 NCR 430	05/01/96				
	.0617 - .0621	10:07 NCR 430	05/01/96				
	.0701 - .0716	10:07 NCR 430	05/01/96				
14N	.0101 - .0107	10:07 NCR 430	05/01/96				
	.0201 - .0207	10:07 NCR 430	05/01/96				
	.0301 - .0307	10:07 NCR 430	05/01/96				
	.0401 - .0406	10:07 NCR 430	05/01/96				

Agency/Rule Citation		Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
				State	Local		
	.0501 - .0507	10:07 NCR 430	05/01/96				
	.0701	10:07 NCR 430	05/01/96				
	.0703 - .0705	10:07 NCR 430	05/01/96				
	.0801 - .0811	10:07 NCR 430	05/01/96				
	.0901 - .0905	10:08 NCR 656	05/01/96				
14O	.0301 - .0314	10:07 NCR 430	05/01/96				
	.0401 - .0409	10:07 NCR 430	05/01/96				
	.0411 - .0416	10:07 NCR 430	05/01/96				
	.0501 - .0505	10:07 NCR 430	05/01/96				
	.0601 - .0609	10:07 NCR 430	05/01/96				
	.0611 - .0615	10:07 NCR 430	05/01/96				
	.0617 - .0618	10:07 NCR 430	05/01/96				
	.0701 - .0710	10:07 NCR 430	05/01/96				
14V	.0101 - .0104	10:07 NCR 430	05/01/96				
	.0201 - .0208	10:07 NCR 430	05/01/96				
	.0301 - .0304	10:07 NCR 430	05/01/96				
	.0401 - .0405	10:07 NCR 430	05/01/96				
	.0501 - .0505	10:07 NCR 430	05/01/96				
	.0601 - .0604	10:07 NCR 430	05/01/96				
	.0701 - .0712	10:07 NCR 430	05/01/96				
	.0801 - .0805	10:07 NCR 430	05/01/96				
	.1101 - .1103	10:07 NCR 430	05/01/96				
	.1201 - .1203	10:07 NCR 430	05/01/96				
	.1301 - .1303	10:07 NCR 430	05/01/96				
	.1401 - .1403	10:07 NCR 430	05/01/96				
	.1501 - .1504	10:07 NCR 430	05/01/96				
	.2101 - .2104	10:07 NCR 430	05/01/96				
	.2201 - .2204	10:07 NCR 430	05/01/96				
	.2301 - .2306	10:07 NCR 430	05/01/96				
	.2401 - .2404	10:07 NCR 430	05/01/96				
	.2501 - .2505	10:07 NCR 430	05/01/96				
	.3101 - .3103	10:07 NCR 430	05/01/96				
	.3201 - .3203	10:07 NCR 430	05/01/96				
	.3301 - .3303	10:07 NCR 430	05/01/96				
	.3401 - .3403	10:07 NCR 430	05/01/96				
	.3501 - .3503	10:07 NCR 430	05/01/96				
	.3601 - .3604	10:07 NCR 430	05/01/96				
	.3701 - .3703	10:07 NCR 430	05/01/96				
	.3801 - .3803	10:07 NCR 430	05/01/96				
	.3901 - .3903	10:07 NCR 430	05/01/96				
	.4001 - .4003	10:07 NCR 430	05/01/96				
	.4101 - .4104	10:07 NCR 430	05/01/96				
	.5001 - .5002	10:07 NCR 430	05/01/96				
	.5101 - .5104	10:07 NCR 430	05/01/96				
	.5201 - .5204	10:07 NCR 430	05/01/96				
	.5301 - .5303	10:07 NCR 430	05/01/96				
	.5401 - .5403	10:07 NCR 430	05/01/96				
	.5501 - .5503	10:07 NCR 430	05/01/96				
	.5601 - .5603	10:07 NCR 430	05/01/96				
	.5701 - .5703	10:07 NCR 430	05/01/96				
	.5801 - .5804	10:07 NCR 430	05/01/96				
	.5901 - .5903	10:07 NCR 430	05/01/96				
	.6001 - .6003	10:07 NCR 430	05/01/96				
	.6101 - .6103	10:07 NCR 430	05/01/96				
	.6201 - .6202	10:07 NCR 430	05/01/96				
	.6301 - .6303	10:07 NCR 430	05/01/96				
	.6401 - .6403	10:07 NCR 430	05/01/96				
	.6501 - .6503	10:07 NCR 430	05/01/96				
	.6601 - .6603	10:07 NCR 430	05/01/96				
	.6701 - .6702	10:07 NCR 430	05/01/96				
	.6801 - .6802	10:07 NCR 430	05/01/96				
	.6901 - .6903	10:07 NCR 430	05/01/96				
18A	.0124 - .0128	10:07 NCR 430	05/01/96				

Agency/Rule Citation		Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
				State	Local		
	.0130	10:07 NCR 430	05/01/96				
	.0132 - .0133	10:07 NCR 430	05/01/96				
	.0135 - .0136	10:07 NCR 430	05/01/96				
18I	.0114 - .0120	10:07 NCR 430	05/01/96				
18J	.0110 - .0119	10:07 NCR 430	05/01/96				
	.0212 - .0213	10:07 NCR 430	05/01/96				
	.0304 - .0311	10:07 NCR 430	05/01/96				
	.0507 - .0511	10:08 NCR 656	05/01/96				
	.0601 - .0604	10:07 NCR 430	05/01/96				
	.0701 - .0715	10:07 NCR 430	05/01/96				
	.0801 - .0805	10:07 NCR 430	05/01/96				
	.0803	10:02 NCR 118	07/01/95			07/01/95	
18K	.0109 - .0116	10:07 NCR 430	05/01/96				
	.0262 - .0263	10:08 NCR 656	05/01/96				
18L	.0107 - .0108	10:07 NCR 430	05/01/96				
	.0223 - .0224	10:07 NCR 430	05/01/96				
	.0331 - .0336	10:07 NCR 430	05/01/96				
	.0338 - .0339	10:07 NCR 430	05/01/96				
	.0428 - .0434	10:07 NCR 430	05/01/96				
	.0504	10:07 NCR 430	05/01/96				
	.0511	10:07 NCR 430	05/01/96				
	.0513	10:07 NCR 430	05/01/96				
	.0601 - .0607	10:08 NCR 656	05/01/96				
	.0701 - .0705	10:07 NCR 430	05/01/96				
	.0707	10:07 NCR 430	05/01/96				
	.0801	10:07 NCR 430	05/01/96				
	.0803 - .0809	10:07 NCR 430	05/01/96				
	.0901 - .0904	10:07 NCR 430	05/01/96				
	.1001 - .1006	10:07 NCR 430	05/01/96				
	.1101 - .1103	10:07 NCR 430	05/01/96				
	.1105 - .1107	10:07 NCR 430	05/01/96				
	.1201	10:07 NCR 430	05/01/96				
	.1203 - .1206	10:07 NCR 430	05/01/96				
	.1301 - .1309	10:07 NCR 430	05/01/96				
	.1401 - .1403	10:07 NCR 430	05/01/96				
	.1501 - .1525	10:07 NCR 430	05/01/96				
18M	.0107 - .0110	10:07 NCR 430	05/01/96				
	.0206 - .0213	10:07 NCR 430	05/01/96				
	.0304 - .0307	10:07 NCR 430	05/01/96				
	.0406 - .0409	10:07 NCR 430	05/01/96				
	.0505 - .0506	10:07 NCR 430	05/01/96				
	.0607 - .0608	10:07 NCR 430	05/01/96				
	.0701	10:07 NCR 430	05/01/96				
	.0703 - .0706	10:07 NCR 430	05/01/96				
	.0708 - .0714	10:07 NCR 430	05/01/96				
	.0801 - .0803	10:07 NCR 430	05/01/96				
	.0817 - .0819	10:07 NCR 430	05/01/96				
	.0824 - .0838	10:07 NCR 430	05/01/96				
	.0901 - .0908	10:07 NCR 430	05/01/96				
	.1001 - .1009	10:07 NCR 430	05/01/96				
	.1101 - .1106	10:07 NCR 430	05/01/96				
	.1203 - .1204	10:07 NCR 430	05/01/96				
	.1302 - .1305	10:07 NCR 430	05/01/96				
	.1401 - .1403	10:07 NCR 430	05/01/96				
	.1405 - .1410	10:07 NCR 430	05/01/96				
18N	.0105 - .0110	10:07 NCR 430	05/01/96				
	.0204 - .0212	10:07 NCR 430	05/01/96				
	.0305 - .0306	10:07 NCR 430	05/01/96				
	.0601 - .0605	10:08 NCR 656	05/01/96				
	.0701 - .0709	10:08 NCR 656	05/01/96				
18O	.0517 - .0524	10:08 NCR 656	05/01/96				
18P	.0901 - .0903	10:07 NCR 430	05/01/96				
	.1001 - .1004	10:07 NCR 430	05/01/96				

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
	18Q	.0284	10:07 NCR 430	05/01/96				
		.0286 - .0287	10:07 NCR 430	05/01/96				
		.0520 - .0521	10:07 NCR 430	05/01/96				
		.0538 - .0552	10:07 NCR 430	05/01/96				
	26B	.0110	10:08 NCR 660	10/01/95				
		.0124	10:02 NCR 118	07/01/95	x		07/01/95	
	26G	.0703 - .0705	10:12 NCR 982	12/01/95				
	26H	.0213	10:02 NCR 118	07/01/95			07/01/95	
		.0302	10:04 NCR 228	08/01/95	x		08/01/95	
		.0304 - .0305	10:04 NCR 228	08/01/95	x		08/01/95	
		.0308 - .0309	10:04 NCR 228	08/01/95	x		08/01/95	
		.0508	10:12 NCR 982	12/01/95				
	26I	.0101 - .0107	10:10 NCR 826	11/01/95				
	39D	.0302 - .0303	10:09 NCR 722	11/01/95				
	41F	.0706	10:03 NCR 196	08/01/95			08/01/95	
		.0812	10:03 NCR 196	08/01/95			08/01/95	
	42H	.0911	10:09 NCR 722	12/01/95				
	42W	.0001 - .0002	10:10 NCR 828	11/01/95				
INSURANCE								
11 NCAC	06A	.0812	10:04 NCR 246	08/01/95			08/01/95	
	16	.0704	10:11 NCR 900	12/01/95				
JUSTICE								
12 NCAC	04E	.0104	10:07 NCR 573	10/01/95				
	07D	.0201	10:07 NCR 575	10/01/95				
		.0204	10:11 NCR 900	12/01/95				
		.0301	10:07 NCR 575	10/01/95				
		.0401	10:07 NCR 575	10/01/95				
		.0701	10:07 NCR 575	10/01/95				
		.0706	10:07 NCR 575	10/01/95				
		.0801	10:07 NCR 575	10/01/95				
		.0806	10:07 NCR 575	10/01/95				
		.0902	10:07 NCR 575	10/01/95				
		.0904	10:07 NCR 575	10/01/95				
	09A	.0204	10:02 NCR 122	08/01/95			08/01/95	
	09B	.0113	10:02 NCR 122	08/01/95			08/01/95	
		.0201 - .0202	10:02 NCR 122	08/01/95			01/01/96	
		.0205	10:02 NCR 122	08/01/95				
		.0206	10:02 NCR 122	08/01/95			08/01/95	
		.0210	10:02 NCR 122	08/01/95			08/01/95	
		.0212 - .0214	10:02 NCR 122	08/01/95			08/01/95	
		.0226 - .0228	10:02 NCR 122	08/01/95			08/01/95	
		.0232 - .0233	10:02 NCR 122	08/01/95			08/01/95	
	09C	.0401	10:02 NCR 122	08/01/95			08/01/95	
		.0601	10:02 NCR 122	08/01/95			08/01/95	
	09D	.0102	10:02 NCR 122	08/01/95			08/01/95	
		.0104 - .0106	10:02 NCR 122	08/01/95			08/01/95	
	10B	.0102 - .0103	10:09 NCR 723	01/01/96				
		.0105	10:09 NCR 723	01/01/96				
		.0204	10:09 NCR 723	01/01/96				
		.0301	10:09 NCR 723	01/01/96				
		.0304	10:09 NCR 723	01/01/96				
		.0307	10:09 NCR 723	01/01/96				
		.0401 - .0403	10:09 NCR 723	01/01/96				
		.0405	10:09 NCR 723	01/01/96				
		.0407 - .0409	10:09 NCR 723	01/01/96				
		.0502 - .0503	10:09 NCR 723	01/01/96				
		.0505	10:09 NCR 723	01/01/96				
		.0601 - .0607	10:09 NCR 723	01/01/96				
		.0702 - .0706	10:09 NCR 723	01/01/96				
		.0801 - .0803	10:09 NCR 723	01/01/96				
		.0901	10:09 NCR 723	01/01/96				

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		.0903 - .0906	10:09 NCR 723	01/01/96				
		.0908 - .0912	10:09 NCR 723	01/01/96				
		.1004 - .1005	10:09 NCR 723	01/01/96				
		.1201 - .1205	10:09 NCR 723	01/01/96				
	11	.0210	10:05 NCR 301	09/01/95				
LABOR								
13 NCAC			10:01 NCR 10	01/01/96				Notice on Subject Matter
			10:01 NCR 12	01/01/96				Notice on Subject Matter
			10:02 NCR 149	10/01/95				Notice on Subject Matter
			10:02 NCR 149	01/01/96				Notice on Subject Matter
			10:02 NCR 149	01/01/96				Notice on Subject Matter
			10:02 NCR 149	02/01/96				Notice on Subject Matter
			10:03 NCR 196	01/01/96				Notice on Subject Matter
			10:03 NCR 197	01/01/96				Notice on Subject Matter
	12	.0101	10:02 NCR 142	08/01/95				
		.0303 - .0315	10:02 NCR 142	08/01/95				
		.0501 - .0502	10:02 NCR 142	08/01/95				
		.0803 - .0808	10:02 NCR 142	08/01/95				
LIST OF RULES CODIFIED								
			10:02 NCR 167					Rules Filed 03/95
			10:04 NCR 272					Rules Filed 04/95
			10:06 NCR 392					Rules Filed 05/95
			10:09 NCR 783					Rules Filed 06/95
			10:10 NCR 845					Rules Filed 07/95
MEDICAL EXAMINERS								
21 NCAC	32B	.0901 - .0902	10:10 NCR 831	11/01/95				
	32F	.0003	10:10 NCR 831	11/01/95				
	32H	.0102	10:02 NCR 151	07/01/96			07/01/96	
		.0201	10:02 NCR 151	07/01/96			07/01/96	
		.0203	10:02 NCR 151	07/01/96				
		.0408	10:02 NCR 151	07/01/96			07/01/96	
		.0506	10:02 NCR 151	07/01/96				
		.0601	10:02 NCR 151	07/01/95			09/01/95	
		.0602	10:02 NCR 151	07/01/96			07/01/96	
		.0801	10:02 NCR 151	07/01/96			07/01/96	
		.1001	10:02 NCR 151	07/01/96			07/01/96	
	321	.0003 - .0004	10:02 NCR 151	07/01/95			09/01/95	
	32M	.0001 - .0002	10:10 NCR 831	11/01/95				
NURSING, BOARD OF								
21 NCAC	36	.0109	10:11 NCR 908	01/01/96				
		.0202 - .0203	10:11 NCR 908	01/01/96				
		.0209	10:11 NCR 908	01/01/96				
		.0211	10:11 NCR 908	01/01/96				
		.0216 - .0219	10:11 NCR 908	01/01/96				
		.0221	10:11 NCR 908	01/01/96				
		.0225	10:11 NCR 908	01/01/96				
		.0227	10:11 NCR 908	01/01/96				
		.0318	10:11 NCR 908	01/01/96				
		.0320	10:11 NCR 908	01/01/96				
		.0322	10:11 NCR 908	01/01/96				
		.0401 - .0405	10:10 NCR 839	12/01/95				
NURSING HOME ADMINISTRATORS								
21 NCAC	37	.0101	10:04 NCR 262	08/01/95			08/01/95	
		.0302	10:03 NCR 206	08/01/95				
		.0404	10:03 NCR 206	08/01/95				
		.0502	10:03 NCR 206	08/01/95			08/01/95	
		.0603	10:03 NCR 206	08/01/95			08/01/95	

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.0904	10:04 NCR 262	08/01/95				
.0912	10:03 NCR 206	08/01/95			08/01/95	
.0914	10:03 NCR 206	08/01/95				
PHYSICAL THERAPY EXAMINERS						
21 NCAC 48C .0103	10:08 NCR 671	10/01/95				
48D .0006	10:08 NCR 671	10/01/95				
.0008	10:08 NCR 671	10/01/95				
.0011	10:08 NCR 671	10/01/95				
48E .0110	10:08 NCR 671	10/01/95				
48F .0002	10:08 NCR 671	10/01/95				
48G .0501 - .0516	10:08 NCR 671	10/01/95				
.0601	10:08 NCR 671	10/01/95				
48H .0104	10:08 NCR 671	10/01/95				
.0701 - .0704	10:08 NCR 671	10/01/95				
PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS						
21 NCAC 50 .0402	10:01 NCR 39	09/01/95			09/01/95	
.0505	10:01 NCR 39	09/01/95				Agency Did Not Adopt
PROFESSIONAL COUNSELORS						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95				
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
PROFESSIONAL ENGINEERS AND LAND SURVEYORS						
21 NCAC 56 .0802	10:11 NCR 934	12/01/95				
.0804	10:11 NCR 934	12/01/95				
.0902	10:11 NCR 934	12/01/95				
.1103	10:11 NCR 934	12/01/95				
.1301	10:11 NCR 934	12/01/95				
.1602	10:11 NCR 934	12/01/95				
.1604	10:11 NCR 934	12/01/95				
.1608	10:11 NCR 934	12/01/95				
.1707	10:11 NCR 934	12/01/95				
.1712 - .1713	10:11 NCR 934	12/01/95				
PSYCHOLOGY BOARD						
21 NCAC 54 .1701	10:11 NCR 929	12/01/95				
.1707	10:11 NCR 929	12/01/95				
.2704 - .2706	10:11 NCR 929	12/01/95				
PUBLIC EDUCATION						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
REAL ESTATE COMMISSION						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95			08/01/95	
.0503	10:04 NCR 263	08/01/95			08/01/95	
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95			08/01/95	
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note State	Fiscal Note Local	Effective Date	Other Information
.0515	10:02 NCR 157	07/01/95			07/01/95	
REFRIGERATION EXAMINERS						
21 NCAC 60 .0102	10:04 NCR 264	08/01/95			08/01/95	
.0105	10:09 NCR 781	11/01/95				
.0204	10:04 NCR 264	08/01/95			08/01/95	
.0314	10:04 NCR 264	08/01/95			08/01/95	
.1102	10:04 NCR 264	08/01/95			08/01/95	
.1103	10:09 NCR 781	11/01/95				
REVENUE						
Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
Tax Review Board	10:09 NCR 716					
Tax Review Board	10:11 NCR 890					
SECRETARY OF STATE						
18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				
.1402	10:11 NCR 906	12/01/95				
STATE PERSONNEL						
25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0401	10:12 NCR 986	12/01/95				
.0406	10:12 NCR 986	12/01/95				
.0504	10:12 NCR 986	12/01/95				
.0509	10:07 NCR 588	10/01/95				
.0510 - .0511	10:12 NCR 986	12/01/95				
.0515	10:12 NCR 986	12/01/95				
.0808	10:04 NCR 264	08/01/95				
.0910	10:12 NCR 986	12/01/95				
.1001	10:04 NCR 264	08/01/95				
.1001	10:12 NCR 986	12/01/95				
.1005	10:12 NCR 986	12/01/95				
.1009	10:04 NCR 264	08/01/95				
.1009 - .1010	10:12 NCR 986	12/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.1928	10:12 NCR 986	12/01/95				
.2001	10:04 NCR 264	08/01/95			08/08/95	
.2601 - .2604	10:12 NCR 986	12/01/95				
01E .0304 - .0305	10:12 NCR 986	12/01/95				
.0804	10:04 NCR 264	08/01/95				
.1001 - .1002	10:12 NCR 986	12/01/95				
.1110	10:12 NCR 986	12/01/95				
.1402 - .1409	10:07 NCR 588	10/01/95				
.1410 - .1411	10:07 NCR 588	10/01/95				
01H .0628	10:12 NCR 986	12/01/95				
01I .2301 - .2310	10:12 NCR 986	12/01/95				
01J .0401 - .0413	10:12 NCR 986	12/01/95				
.0501 - .0511	10:12 NCR 986	12/01/95				
.0604 - .0606	10:07 NCR 588	10/01/95				
.0608	10:07 NCR 588	10/01/95				

Agency/Rule Citation			Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
					State	Local		
		.0610 - .0612	10:07 NCR 588	10/01/95				
		.0613 - .0615	10:07 NCR 588	10/01/95				
		.0801 - .0809	10:12 NCR 986	12/01/95				
	01K	.0312	10:04 NCR 264	08/01/95				
		.0318	10:12 NCR 986	12/01/95				
		.0701 - .0705	10:12 NCR 986	12/01/95				
		.0707 - .0708	10:12 NCR 986	12/01/95				
	01L	.0101 - .0106	10:12 NCR 986	12/01/95				
TRANSPORTATION								
19A NCAC	02D	.0415	10:12 NCR 984	12/31/95				
		.0801	10:04 NCR 254	09/01/95				
	04A	.0004	10:10 NCR 829	12/01/95				

BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	**201 00 00**	**$63.00**	**$90.00**
Division of Purchase & Contract	201 10 05	$21.00	$30.00
Federal Block Grant Funds	201 10 33	$17.50	$25.00
Title 2 - Dept. of Agriculture - Full Title	**202 00 00**	**$98.00**	**$140.00**
Food & Drug Protection Division	202 15 09	$28.00	$40.00
Structural Pest Control Committee	202 15 34	$21.00	$30.00
Agricultural Markets	202 15 43	$21.00	$30.00
Plant Industry	202 15 48	$21.00	$30.00
Animal Industry	202 15 52	$21.00	$30.00
Title 3 - Dept. of State Auditor - Full Title	**203 00 00**	**$7.00**	**$10.00**
Title 4 - Dept. of Commerce - Full Title	**204 00 00**	**$87.50**	**$125.00**
Alcoholic Beverage Control Commission	204 15 02	$12.00	$40.00
Banking Commission	204 15 03	$24.50	$35.00
Credit Union Division	204 15 06	$14.00	$20.00
Savings & Loan Division	204 15 09	$14.00	$20.00
Industrial Commission/Workers Compensation	204 15 10	$14.00	$20.00
Savings Institutions Division	204 15 16	$24.50	$35.00
Title 5 - Dept. of Corrections - Full Title	**205 00 00**	**$56.00**	**$80.00**
Division of Prisons	205 15 02	$24.50	$35.00
Title 6 - Council of State - Full Title	**206 00 00**	**$21.00**	**$30.00**
Title 7 - Dept. of Cultural Resources - Full Title	**207 00 00**	**$21.00**	**$30.00**
Title 8 - State Board of Elections - Full Title	**208 00 00**	**$7.00**	**$10.00**
Title 9 - Offices of the Governor & Lt. Governor - Full Title	**209 00 00**	**$31.50**	**$45.00**
Title 10 - Dept. of Human Resources - Full Title	**210 00 00**	**$346.50**	**$495.00**
Licensing of Health Facilities	210 20 10	$45.50	$65.00
Detention Facilities	210 20 20	$31.50	$45.00
Mental Health & Rehabilitation Services	210 20 30	$77.00	$110.00
Social Services	210 20 40	$119.00	$170.00
Children Services/Day Care	210 20 41	$31.50	$45.00
Services for the Aging	210 20 42	$31.50	$45.00
Services for the Blind	210 20 43	$28.00	$40.00
Services for the Deaf & Hard of Hearing	210 20 44	$17.50	$25.00
Employment Opportunities	210 20 45	$35.00	$50.00
Title 11 - Dept. of Insurance - Full Title	**211 00 00**	**$63.00**	**$90.00**
Insurance	211 10 01	$56.00	$80.00
Consumer Services	211 10 04	$24.50	$35.00
Fire & Rescue Services	211 10 05	$17.50	$25.00
Agent Services	211 10 06	$28.00	$40.00
Engineering & Building Codes	211 10 08	$21.00	$30.00
Title 12 - Dept. of Justice - Full Title	**212 00 00**	**$63.00**	**$90.00**
Private Protective Services	212 10 07	$21.00	$30.00
Police & Sheriff's Education & Training Standards	212 10 09	$31.50	$45.00
NC Alarm Systems Licensing Board	212 10 11	$17.50	$25.00
Title 13 - Dept. of Labor - Full Title	**213 00 00**	**$77.00**	**$110.00**
Mine & Quarry Safety	213 15 06	$14.00	$20.00
General Safety/OSHA	213 20 00	$31.50	$45.00
Wage & Hour Rules	213 15 12	$14.00	$20.00
Boiler & Pressure Vessel Safety	213 15 13	$14.00	$20.00
Apprenticeship & Training	213 15 14	$14.00	$20.00
Elevator & Amusement Device Safety	213 15 15	$14.00	$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	**214 00 00**	**$31.50**	**$45.00**
Alcohol Law Enforcement	214 00 08	$17.50	$25.00
Victims Compensation Fund	214 00 11	$14.00	$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	**215 00 00**	**$276.50**	**$395.00**
Environmental Management	215 15 00	$115.50	$185.00
Air Quality	215 15 10	$49.00	$70.00
Water Quality	215 15 20	$49.00	$70.00
Land & Waste Management	215 15 30	$56.00	$80.00
Solid Waste Management	215 15 31	$35.00	$50.00
Underground Storage Tanks	215 15 32	$17.50	$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	$31.50	$45.00
Environmental Health	215 25 00	$105.00	$150.00
Radiation/Nuclear Waste	215 25 10	$42.00	$60.00
Sanitation	215 25 20	$35.00	$50.00
Public Health	215 25 30	$59.50	$85.00
Intoxilizer & Breathalyser	215 25 31	$17.50	$25.00
Title 16 - Dept. of Public Instruction - Full Title	**216 00 00**	**$21.00**	**$30.00**
Elementary & Secondary Education	216 10 06	$21.00	$30.00
Title 17 - Dept. of Revenue - Full Title	**217 00 00**	**$91.00**	**$130.00**
Taxes on Individuals	217 15 10	$31.50	$45.00
Taxes on Business	217 15 20	$56.00	$80.00
Sales & Use Tax Division	217 15 27	$31.50	$45.00
Motor Fuels Tax Division	217 15 29	$21.00	$30.00
Title 18 - Secretary of State - Full Title	**218 00 00**	**$21.00**	**$30.00**
Securities Division	218 10 06	$21.00	$30.00
Title 19A - Dept. of Transportation - Full Title	**219 00 00**	**$63.00**	**$90.00**
Division of Highways	219 10 02	$28.00	$40.00
Division of Motor Vehicles	219 10 03	$35.00	$50.00
Title 20 - Dept. of the State Treasurer - Full Title	**220 00 00**	**$31.50**	**$45.00**
Title 21 - Occupational Licensing Boards - Full Title	**221 00 00**	**$143.50**	**$205.00**
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