

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF FACILITY SERVICES
RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR) DECISION TO DECLINE ISSUANCE
DECLARATORY RULING BY) OF DECLARATORY RULING
PATRICIA TILLER)

Patricia Tiller, through correspondence sent through the Office of Administrative Hearings, has requested an interpretation of 10A NCAC 13G .0406(a)(6): Other Staff Qualifications¹. Pursuant to N.C. Gen. Stat. § 150B-4, 10A NCAC 14A .0103, and the authority granted to me by the Secretary of the Department of Health and Human Services, and for the reasons given below, I hereby decline to issue any ruling to Ms. Tiller.

The North Carolina Administrative Procedure Act (“APA”) provides that:

On request of a person aggrieved, an agency shall issue a declaratory ruling . . . as to the applicability to a given state of facts of a statute administered by the agency . . . except when the agency for good cause finds issuance of a ruling undesirable.

N.C. Gen. Stat. § 150B-4. The APA also provides that an agency “shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. *Id.* Consequently, the Department has adopted a rule that provides that:

Whenever the Director [of the Division of Facility Services] believes for good cause that the issuance of a declaratory ruling will not serve the public interest, he may refuse to issue one. When good cause is deemed to exist, the Director will notify the petitioner of his decision in writing stating reasons for the denial of a declaratory ruling.

10A NCAC 14A .0103.

I take administrative notice of the fact that Ms. Tiller is the Petitioner in at least seven pending contested cases challenging decisions of the Health Care Personnel Registry Section and the Adult Care Licensure Section. *See* attached hereto as Exhibit A, petitions for 04 DHR 0598;

¹ The correct rule citation is 10A NCAC 13G .0406(a)(5).

04 DHR 1116; 04 DHR 1508; 04 DHR 1526; 04 DHR 1771; 04 DHR 2324; and 05 DHR 0305. In at least one of these cases, 04 DHR 2324, the basis for the appeal is the citation of the Adult Care Licensure Section's finding that, "According to information from the Health Care Personnel Registry, Patricia Tiller, live-in administrator and care-giver, was listed with one substantiated finding of Neglect of a Resident, entered on 04/04/03 and another finding was substantiated for misappropriation of a resident's property on or about May 22, 2003." As a result, Ms. Tiller has been cited for 10A NCAC 13G .0406: Other Staff Qualifications, and assessed an administrative penalty of \$1,850.00. See, attached hereto as Exhibit B, Adult Care Licensure administrative action. Ms. Tiller has challenged this action through the filing of a petition in the Office of Administrative Hearings, 04 DHR 2324. See, Exhibit A. I take further administrative notice that Ms. Tiller's petition is still pending.

The issuance of a ruling interpreting 10A NCAC 13G .0406 does not serve the public interest for several reasons. First, the Agency's interpretation and application of this rule is the basis for the filing of Ms. Tiller's petition in 04 DHR 2324. Issuance of a declaratory ruling for the interpretation of an administrative rule which is the subject of the contested case petition would invite unnecessary repetition. *Catawba Memorial Hosp. v. North Carolina Dep't of Human Resources*, 112 N.C. App. 557, 436 S.E.2d 390 (1993). Second, the issuance of a ruling would lead to judicial review of the ruling in Superior Court at the same time that the Adult Care Licensure Section's decision (04 DHR 2324) is under review in OAH. This would violate the principle of judicial economy and circumvents the progression of contested case proceedings brought under N.C. Gen. Stat. § 150B-22 *et seq.*

CONCLUSION

For the reasons given above, I decline to issue any ruling in response to Ms. Tiller's

request for the interpretation of 10A NCAC 13G .0406.

This the _____ day of December, 2005.

Robert J. Fitzgerald, Director
Division of Facility Services

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Declaratory Ruling on the following persons by depositing the copy in an official depository under the exclusive care and custody of the United States Postal Service in a properly addressed postage-paid wrapper.

Patricia Tiller
P.O. Box 582
Holly Springs, NC 27540

CERTIFIED MAIL

This the _____ day of December, 2005.

Phyllis Thorne Daw
Assistant Director