

APPENDIX II-C (Continued)

**RULEMAKING NOTICE FORM - Page 2**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Sarah Fuller, Esq.** Title: **Hearings & Rules Administrator**  
Address: **95 Pleasant Street** Phone #: **603-271-3597**  
**Concord, NH 03301** Fax#: **603-271-2581**  
E-mail: **Sarah.Fuller@dol.nh.gov**  
TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 9, 2019**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **May 2, 2019 at 2pm**  
Place: **Department of Labor, 95 Pleasant Street Concord NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:033, dated March 19, 2019

1. **Comparison of the costs of the proposed rule (s) to the existing rule (s):** Not applicable, the previous rules expired in February 2019
2. **Cite the Federal mandate. Identify the impact on state funds:** No federal mandate. No impact on state funds.
3. **Cost and benefits of the proposed rule(s):** There is no cost or benefit attributable to the proposed rules or the expired rules. Therefore there is no difference in cost between the proposed rules and the expired rules.

## PART Lab 408 REGULATION OF THIRD PARTY ADMINISTRATORS

**Adopt Part LAB 408.01 through 408.17, previously effective date 2/25/11 (Document # 9878-A), and expired 2/25/19, to read as follows:**

Lab 408.01 Purpose. The purpose of this part is to provide for the regulation and licensing of third party administrators who perform services for employers self-insuring their workers' compensation and to set forth procedural requirements which the commissioner deems necessary to carry out the provisions of RSA 281-A:5-d.

Lab 408.02 Definitions.

(a) "Third party administrator (TPA)" means "third party administrator" as defined in RSA 281-A:5-d.

(b) "Department" means the department of labor.

(c) "Commissioner" means the commissioner of labor or the commissioner's authorized representative.

(d) "Self-insurer" means a person, partnership, association, limited liability company, corporation, or legal representative of a person, partnership, association, limited liability company or corporation who employs one or more persons whether in one or more trades, businesses, professions or occupations and whether in one or more locations who is approved by the department of labor to assume the responsibility for providing workers' compensation for wage loss, remedial care and rehabilitation as provided by RSA 281-A.

Lab 408.03 Application.

(a) A TPA shall not operate as a TPA in this state without a certificate of authority from the department which will be issued only following review of the information supplied by the applicant as described in Lab 408.18.

(b) Any amendment to the application shall be filed in the same manner as the application. If an application is amended, such amendment shall be considered, and subject to approval or denial, in the same manner as the original application.

(c) A TPA shall notify the commissioner in writing of any change in the information required to be filed under these rules including, but not limited to, a change of address or name, no later than 30 days after the change. If a change occurs but notification is not provided, the certificate of registration shall be terminated following notice and an opportunity for hearing.

Lab 408.04 Surety Bond.

(a) All applicants shall provide financial assurance as follows:

(1) The applicant shall attempt in good faith to obtain a surety bond issued by an insurance company licensed to do business in the State of New Hampshire in a minimum amount of \$100,000

(2) If the applicant cannot obtain such a bond, then another form of security, including, but not limited to, cash or negotiable securities in an amount equal to \$100,000 shall be set aside



in an escrow account with a financial institution licensed to do business in the state of New Hampshire.

(b) The surety bond or escrow account shall be payable to the commissioner to ensure the financial protection of the TPA's customers, subject to the dollar limitation of the surety bond or escrow account.

Lab 408.05 Audited Financial Statement.

(a) Each applicant for a certificate of authority or renewal of a certificate of authority shall provide the applicant's current audited financial statement. An audited financial statement, for the purposes of this rule, shall consist of a financial statement that is prepared in a manner consistent with generally accepted accounting principles (GAAP), and shall be accompanied by an opinion by an independent accounting firm.

(b) The audited financial statement shall reflect a positive net worth in order to be acceptable as proof of the applicant's financial responsibility.

Lab 408.06 Written Agreement Necessary.

(a) A TPA shall not act on behalf of a self-insurer without a written agreement with that self-insurer.

(b) "Notice of Contract Between Third Party Administrator and Self-Insurer" form WC-TPA-CBP (3/2019) contained in appendix II shall be used.

Lab 408.07 Fiduciary Obligation.

(a) Each TPA shall establish a premium trust account if the TPA expects to receive premiums or return premiums on New Hampshire business.

(b) If the account is interest bearing, the TPA shall comply with Lab 408.11.

(c) Fiduciary funds on New Hampshire business shall at all times be maintained in the premium trust account separate from any other account of depository. Such account shall be in an amount at least equal to the premiums and return premiums, net of commission, received by the TPA.

(d) The TPA's New Hampshire premium trust account signature card shall contain the following notation: "This is an insurance premium trust account maintained under the provisions of RSA 281-A:5-d."

(e) Checks drawn on the premium trust account shall bear the notation "Premium Trust Account".

Lab 408.08 Commingling of Funds Prohibited.

(a) Under no circumstances shall a TPA place fiduciary funds in a personal or business operating account. The TPA may retain commission income or other funds in the TPA's premium trust account in order to advance premiums, establish reserves for paying return commissions or for such contingencies as may arise in his business of receiving and transmitting premiums or return premium funds.

(b) The TPA may retain a portion of the TPA's unearned commissions in the premium trust account in order to avoid being short in the event of a policy cancellation. When a policy is canceled and

the return premium is received by the TPA by means of a credit or otherwise, those funds shall be placed in the premium trust account until remitted to the self-insured entitled thereto.

(c) Cash premium payments shall not be deposited into the TPA's personal or business operating account in order to draw a personal check in the amount of net premium payment to the self-insurer. The use of personal checks to transit fiduciary funds shall be prohibited in any situation that results in commingling the fiduciary funds with the TPA's personal funds.

Lab 408.09 Interest-Bearing Accounts. A TPA shall only utilize interest-bearing accounts that require no advance notice for the withdrawal of funds, and the TPA shall arrange all such interest-bearing accounts so that funds therein contained shall be immediately available during normal business hours.

Lab 408.10 Return Premiums. The TPA shall hold the return premiums as a fiduciary. The TPA shall retain the return premium in the trust account until remittance to the client is made. Remittance to the client shall occur no later than 45 days from the date the return premium is determined. If the return premium cannot be delivered to the insured entitled thereto, the TPA shall retain the funds. The TPA shall have the responsibility to report the unclaimed funds to the State of New Hampshire, in accordance with RSA 471-C.

Lab 408.11 Recordkeeping Requirements.

(a) The TPA shall maintain the following records relative to the premium trust account:

- (1) Periodic statements of account supplied by the bank for all premium trust accounts maintained pursuant to this part;
- (2) Records of all deposits made into each premium trust account;
- (3) Canceled checks drawn on, or records of withdrawal of funds from, such premium trust accounts; and
- (4) An accounts receivable listing or similar record.

(b) All records described above shall be kept in the principal office of the TPA.

Lab 408.12 Responsibilities of the Self Insurer.

(a) The self-insurer shall be responsible for determining benefits, premium rates, underwriting criteria and claims payment procedures and for securing reinsurance.

(b) The standards pertaining to these matters shall be provided in writing by the self-insurer to the TPA.

(c) If the TPA has any responsibility for the development or formula of the items in (a) above, that responsibility shall be set forth in the written agreement between the TPA and the self-insurer.

Lab 408.13 Approval of Advertising. All advertising conducted by the TPA on the behalf of the self-insurer shall be approved in writing by the self-insurer in advance of its use.



Lab 408.14 Grounds for Denial, Nonrenewal or Revocation of Certificate. Following notice and an opportunity for hearing, the commissioner or the commissioner's representative shall deny, nonrenew or revoke a TPA's certificate if it is found that the TPA is not competent, trustworthy, financially responsible or of good personal and business reputation, based on the following factors.

- (a) Failure to comply with any provisions of RSA 281-A:5-d, or these rules;
- (b) Failure to comply with any lawful order of the commissioner;
- (c) Failure to comply with the workers' compensation claims processing responsibilities established by Lab chapter 500;
- (d) Committing an unfair or deceptive act or practice;
- (e) Deterioration of financial condition adversely affecting the certificate holder's ability to operate as a TPA;
- (f) Filing an application or any required form with the department which contains fraudulent information or omissions;
- (g) Misappropriation, conversion, illegal withholding, or refusal to pay on proper demand any monies that belong to a person otherwise entitled to them;
- (h) That an owner, principal, officer, partner, manager, director, stockholder, trustee, employee of the TPA or the TPA itself has:
  - (1) Had a TPA license or an application for a TPA license in any state denied, suspended or revoked;
  - (2) Been the subject of a fine, penalty, order, withdrawal or informal settlement with any state regulatory agency; or
  - (3) Pled guilty or no contest to any felony or misdemeanor;

Lab 408.15 Inquiry by Commissioner.

- (a) The TPA shall respond, in writing, within 30 days to any inquiry by the commissioner made pursuant to these rules.
- (b) A TPA shall keep all complaints on file for a period of 5 years. Complaint information shall be made available to the department by the TPA upon the commissioner's request.

Lab 408.16 Hearing and Appeal. Prior to denying or revoking a certificate issued under this part, a certificate holder shall be provided with written notice of the commissioner's allegations and provided an opportunity for a hearing in accordance with Lab 200.

Lab 408.17 Violations and Penalties.

- (a) Any TPA who violates any of the provisions of this part shall have civil penalties imposed as provided in RSA 281-A:60, I(r), as follows:
  - (1) A violation of Lab 408.03(a) shall result in a civil penalty of up to \$2,500.00; and

(2) Each individual violation of the other provisions of these rules shall result in a civil penalty of up to \$500.00 for the first violation, and each subsequent violation shall result in the civil penalty increasing by \$500.00 per violation up to a maximum civil penalty of \$2,500.00 for each violation.

**readopt with amendment LAB 408.18, effective date 2/25/11 (Document # 9878-B), to read as follows:**

Lab 408.18 Application Form.

(a) TPAs wishing to do business in this state shall complete and file "Application for Certificate of Authority Third Party Administrators" form WC-TPA-COA (1/2018) contained in appendix II. ~~an application on a form providing the following information:~~

- ~~(1) The name, address and federal identification number of the TPA;~~
- ~~(2) Any trade name used by the TPA;~~
- ~~(3) The state of domicile of the TPA; and~~
- ~~(4) The name, address, telephone number and title of the contact person for the TPA.~~

(b) The Application for Certificate of Authority Third Party Administrators ~~application~~ form shall be completed and signed by an officer or authorized representative of the TPA. The complete application form shall be verified and filed at the department on initial application and annually thereafter. The filing fee of \$200.00 shall accompany the initial application, and a filing fee of \$100.00 shall accompany a renewal application.

(c) The Application for Certificate of Authority Third Party Administrators form ~~An application~~ shall not be deemed to be filed until the commissioner has received all of the information necessary to properly process the application.

(d) The Application for Certificate of Authority Third Party Administrators form completed ~~An application~~ by a corporation, limited partnership or limited liability company shall be accompanied by a current certificate of good standing, from the secretary of state of New Hampshire.

(e) The Application for Certificate of Authority Third Party Administrators form shall be accompanied by the "Biographical Affidavit" form WC-TPA-BA (3/2019) ~~Each applicant for a certificate of authority as a TPA shall indicate on the application whether he or she has:~~

- ~~(1) Ever been denied a license or certificate of authority as an insurance agent, broker, TPA or claims adjuster;~~
- ~~(2) Been previously licensed or authorized as an insurance agent, broker, TPA or claims adjuster;~~
- ~~(3) Had a license or certificate of authority as an insurance agent, broker, TPA or claims adjuster, suspended or revoked or has been denied the renewal of such license; and~~
- ~~(4) Had any contract as an agent or TPA for a self insurer canceled for cause and if so, the facts concerning that action.~~



Rule	Specific State Statute which the Rule Implements
Lab 408	RSA 281-A:5-d, RSA 281-A:60, I (r).

## APPENDIX II

RULE	TITLE	OBTAIN AT:
Lab 408.06	Notice of Contract Between Third Party Administrator and Self-Insurer- WC-TPA- CBP (3/2019)	This publication is available on the Internet on the NH Department of Labor's Website at the following address: <a href="https://www.nh.gov/labor/documents/tpa-contract.pdf">https://www.nh.gov/labor/documents/tpa-contract.pdf</a> or by calling (603) 271-3176. This material may be obtained in alternative format (Large Print or Disc), upon request, by calling: (202) 693-0675. TTY/TDD callers may dial toll-free 1-877- 889-5627
Lab 408.18	Application for Certificate of Authority Third Party Administrators WC-TPA- COA (1/2018)	This publication is available on the Internet on the NH Department of Labor's Website at the following address: <a href="https://www.nh.gov/labor/documents/tpa-certificate-authority.pdf">https://www.nh.gov/labor/documents/tpa-certificate-authority.pdf</a> or by calling (603) 271-3176. This material may be obtained in alternative format (Large Print or Disc), upon request, by calling: (202) 693-0675. TTY/TDD callers may dial toll-free 1-877-889-5627
Lab 408.18	Biographical Affidavit WC-TPA-BA (3/2019)	This publication is available on the Internet on the NH Department of Labor's Website at the following address: <a href="https://www.nh.gov/labor/documents/tpa-affadavit.pdf">https://www.nh.gov/labor/documents/tpa-affadavit.pdf</a> or by calling (603) 271-3176. This material may be obtained in alternative format (Large Print or Disc), upon request, by calling: (202) 693-0675. TTY/TDD callers may dial toll-free 1-877-889-5627

**NOTICE OF CONTRACT**  
**BETWEEN THIRD PARTY ADMINISTRATOR AND SELF-INSURER**

ADMINISTRATOR NAME: \_\_\_\_\_

TRADE NAME(IF USED): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

NAME OF INSURER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

CONTACT TITLE: \_\_\_\_\_ PHONE \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

Under the terms of the attached contract, the administrator will be responsible for: (check those which apply)

- |                                   |                                   |
|-----------------------------------|-----------------------------------|
| _____ Solicitation of Coverage    | _____ Underwriting                |
| _____ Collection Charges/Premiums | _____ Claims Adjustment           |
| _____ Distribution Ad Materials   | _____ General Management Services |
| _____ Claims Payment              | _____ Other (Explain)             |

Effective Date of Contract: \_\_\_\_\_

Physical location of books and records maintained by the administrator in regard to this agreement:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Also include the following items:

- A copy of the contract between the administrator and insurer.



- A copy of the notification which will be sent to policyholders informing them of this arrangement.
- Copies of all advertisement and marketing materials to be distributed by the administrator.
- Level of reinsurance provided for the benefit of insured's under this contract, include carrier name.
- Actuarial or estimated annual losses paid for a 3 year period.

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Signature of Representative

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Signature of Self-Insurer Representative

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Printed Name of Administrator Representative

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Printed Name of Self-Insurer Representative



# State of New Hampshire

## Department of Labor

Hugh J. Gallen  
State Office Park  
Spaulding Building  
95 Pleasant Street  
Concord, NH 03301  
603/271-3176  
TDD Access: Relay NH  
1-800-735-2964  
FAX: 603/271-6149  
<http://www.nh.gov/labor>

Ken Merrifield  
Commissioner

Rudolph W. Ogden, III  
Deputy Commissioner

### APPLICATION for CERTIFICATE of AUTHORITY

#### THIRD PARTY ADMINISTRATORS CHAPTER 161

ADMINISTRATOR NAME: \_\_\_\_\_

TRADE NAME (if any) \_\_\_\_\_

DOMICILE: \_\_\_\_\_

ADDRESS:  
\_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

CONTACT TITLE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FEIN # \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

Note: This department will only correspond with the named contact person. This individual may be in the company or a contracted person such as a consultant.

<u>Fees</u>	
Application Examination	\$200.00
Annual Renewal	\$100.00
(Due 60 days prior to license expiration)	

All checks must be made payable to: **Treasurer, State of New Hampshire.**

Our review process will not begin until fees are paid. New Hampshire law does not allow for the payment of fees after the issuance of the license.



### SECTION 1 – MANAGEMENT

1.) **OFFICIAL LIST OF ALL INDIVIDUALS** responsible for the conduct of affairs of the administrator. The list should give the name, position occupied, address and the professional qualifications of each of these individuals. It should also be sworn to as a true and complete list by the secretary of the administrator. The list shall include:

- Board of Directors
- Board of Trustees
- Executive Committee/Governing Board/Committee
- Principal Officers
- Shareholders (10% or more)
- Others exercising control/influence

### SECTION 2 – FINANCIAL

- A Security Deposit Agreement from a New Hampshire bank indicating that a minimum of \$100,000 has been placed with that bank and pledged to the Commissioner of Labor of the State of New Hampshire,

or

- Fidelity bond with a minimum face value of 1 million dollars,

or

- A surety bond issued for a minimum of \$100,000 by a surety company licensed to do business in the State of New Hampshire.

1.) THE PHYSICAL ADDRESS WHERE THE BOOKS AND RECORDS MAINTAINED BY THE ADMINISTRATOR ARE LOCATED:

2.) THE FOLLOWING DOCUMENTS MUST BE INCLUDED WITH THE APPLICATION:

- Federal Tax Returns (last 3 years)
- Audited Financial statement (2 most recent years)

### SECTION 3 – DOCUMENTARY

1.) **CERTIFIED COPIES OF ALL BASIC ORGANIZATIONAL DOCUMENTS**, including Articles of Incorporation, Articles of Association, partnership agreements, trade name certificate, trust agreement, shareholder agreement, recent certificate of good standing for state of domicile and for State of New Hampshire and all amendments thereto. These items should be certified by the proper domiciliary state of official.

2.) **COPY OF THE BY-LAWS** of the applicant certified as a true and correct copy of the secretary of the company.

3.) **BUSINESS PLAN STATEMENT.** Attach a separate sheet outlining the administrator's Business Plan, including staffing levels proposed for New Hampshire and nationwide.

4.) **SUMMARY of INSURANCE POLICIES.** Attach copies of binder pages from insurance carriers for Administrator's:

*"Errors & Omissions" Insurance  
(carrier/limits/policy period)*

*"Directors & Officers" Insurance  
(carrier/limits/policy period)*

*Any other pertinent coverage's  
(carrier/limits/policy period)*



**BIOGRAPHICAL AFFIDAVIT**

Full Name and Address of Company (No Not Use Group Names)

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In connection with the above-named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) **IF ANSWER IS 'NO' OR 'NONE', SO STATE.**

1. Affiant's Full Name (Initials Not Acceptable): \_\_\_\_\_

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2. a. Have you ever had your name changed? \_\_\_\_\_ If yes, give the reason for the change \_\_\_\_\_

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b. Other names used at any time. \_\_\_\_\_

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3. Affiant's Social Security Number. \_\_\_\_\_

4. Date and Place of Birth. \_\_\_\_\_

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5. Affiant's Business Address. \_\_\_\_\_

Business Telephone. \_\_\_\_\_

6. List your residences for the last ten (10) years starting with your current address, giving:

Date	Address	City and State
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7. Education: Dates, Names, Locations and Degrees.

College: \_\_\_\_\_

\_\_\_\_\_

Graduate Studies: \_\_\_\_\_

\_\_\_\_\_

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. List memberships in Professional Societies and Associations. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. Present or Proposed Position with the Applicant Company. \_\_\_\_\_

\_\_\_\_\_

10. List complete employment record (up to and including present jobs, positions, directorates or officerships) for the past twenty (20) years, giving:

**DATES**

**EMPLOYER AND ADDRESS**

**TITLE**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11. Present employer may be contacted.    **YES**    **NO**    (Circle One)

Former employer may be contacted    **YES**    **NO**    (Circle One)

12. a. Have you ever been in a position which required a fidelity bond? \_\_\_\_\_

If any claims were made on the bond, give details. \_\_\_\_\_



b. Have you ever been denied an individual or position schedule fidelity bond, or have a bond canceled or revoked? \_\_\_\_\_

If yes, give details.

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13. List any professional, occupational and vocational licenses issued by any public or governmental licensing agency regulatory authority which you presently hold or have held in the past (state date license issued, issuer of license, date terminated, reason for termination).

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14. During the last ten (10) years, have you ever been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has any such license held by you ever been suspended or revoked? \_\_\_\_\_

If yes, give details: \_\_\_\_\_

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15. List any insurers in which you control directly or indirectly or own legally or beneficially 10% or more of the outstanding stock (in voting power). \_\_\_\_\_

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16. Will you or members of your immediate family subscribe to or own, beneficially or of record, shares of stock of the applicant insurance company or its affiliates? \_\_\_\_\_

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17. Have you ever been adjudged a bankrupt? \_\_\_\_\_

18. a. Have you ever been convicted or had a sentence imposed or suspended or had pronouncement of a sentence suspended or been pardoned for conviction of or pleaded guilty or nolo contendere to an information or indictment charging any felony, or charging a misdemeanor involving embezzlement, theft, larceny, or mail fraud, or charging violation of any corporate securities statute or any insurance law, or have you been subject of any disciplinary proceedings of any federal or state regulatory agency? \_\_\_\_\_

If yes, give details \_\_\_\_\_

\_\_\_\_\_

- b. Has any company been so charged, allegedly as a result of any action or conduct on your part? \_\_\_\_\_

If yes, give details. \_\_\_\_\_

\_\_\_\_\_

19. Have you ever been an office, director, trustee, investment committee member, key employee, or controlling stockholder of any insurer which, while you occupied any such position or capacity with respect to it, became insolvent or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship? \_\_\_\_\_

20. Has the certificate of authority or license to do business of any insurance company of which you were an officer or director or key management person ever been suspended or revoked while you occupied such position? \_\_\_\_\_

If yes, give details. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_. I hereby certify under penalty of perjury that I am acting on behalf, and that foregoing statements are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Affiant)

State of \_\_\_\_\_

County of \_\_\_\_\_

Personally appeared before me the above named \_\_\_\_\_ personally known to me, who, being duly sworn, deposes and says that he executed the above instrument and that the statements and answers contained therein are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

My Commission Expires \_\_\_\_\_

SEAL