

**RULES REVIEW COMMISSION MEETING  
MINUTES  
August 15, 2019**

The Rules Review Commission met on Thursday, August 15, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Paul Powell.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the July 18, 2019 meeting. There were none and the minutes were approved as distributed.

The Chairman notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Temporary Rules for the State Board of Elections and Permanent Rules for the Board of Electrolysis Examiners.

**FOLLOW UP MATTERS**

**Board of Elections**

08 NCAC 10B .0101, .0102, .0104, .0105, .0106, and .0107 were unanimously approved.

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

**Social Services Commission**

10A NCAC 06R .0101, .0102, .0201, .0302, .0304, .0305, .0401, .0403, .0501, .0502, .0503, .0504, .0506, .0508, .0509, .0601, .0801, .0802, .0804, .0806, .0902, and .0904 were unanimously approved.

10A NCAC 06S .0101, .0102, .0203, .0204, .0301, .0302, .0402, .0403, .0404, .0405, .0501, .0508; and 06T .0201 - The Commission objected due to lack of statutory authority.

**DHHS/ Division of Health Benefits**

10A NCAC 23G .0304 - The agency is addressing the objections from the July meeting. No action was required by the Commission.

**Commission for the Blind**

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

**Social Services Commission**

10A NCAC 67A .0103, .0105, .0106, .0107, .0108, .0203, .0204, .0205, .0206; 68 .0101, .0102, .0107, .0108, .0303; 69 .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0301, .0302, .0304, .0305, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0601, .0603; 72 .0102, .0201, .0202, .0203, and .0301 were unanimously approved.

The Commission objected to 10A NCAC 67A .0101, .0201, .0202; 68 .0103, .0104, .0105, .0106, .0202, .0203, .0204, .0205, .0206, .0208, .0301, and .0303; 69 .0602, .0604, .0605; and 72 .0101 in accordance with G.S. 150B-21.10.

The Commission objected to 10A NCAC 67A .0101 and .0201 as being unnecessary as these Rules only provide cross-references to other rules or provide information otherwise set forth in Statute.

The Commission objected to 10A NCAC 67A .0202 as being unnecessary as 45 CFR 205.10(a)(4) provides notice requirements for cases of “intended action to discontinue, terminate, suspend, or reduce assistance...”

The Commission objected to 10A NCAC 68 .0103 as being unnecessary given G.S. 150B-21.1(a3) and 21.2(e), which provide requirements regarding rulemaking hearings. This Rule also appears to pertain exclusively to internal management, which does not meet the definition of a rule pursuant to G.S. 150B-2(8a)(a).

The Commission objected to 10A NCAC 68 .0104 as being unnecessary given G.S. 150B-21.2(e) and (f), which provides requirements regarding rulemaking hearings and public comments. Further, the Commission found this Rule to be unclear with the use of “promptly”, “brief”, “clearly”, “full and effective”, and “fair” without providing additional clarifying information. Finally, the Commission found this Rule to be beyond the statutory authority of the agency as it conflicts with G.S. 150B-21.2(f).

The Commission objected to 10A NCAC 68 .0105 as being unnecessary as G.S. 150B-21.2(c) sets forth notice requirements regarding the grant or denial of a rule-making petition.

The Commission objected to 10A NCAC 68 .0106 as being unnecessary as G.S. 150B-21.2(i) requires that an agency maintain a rulemaking record and provides the information to be included in that record.

The Commission objected to 10A NCAC 68 .0202, .0203, .0204, .0205, .0206, and .0208 as being unnecessary as these Rules are repetitive of Section .0100 of Chapter 68.

The Commission objected to 10A NCAC 68 .0301 for lack of statutory authority as none of the cited authority provides rulemaking authority regarding employment of county departments of social services to the Social Services Commission.

The Commission objected to 10A NCAC 68 .0303 as being unnecessary as this Rule appears to be addressed by G.S. 108A-14(b). Further, the Commission objected to this Rule for lack of statutory authority as none of the cited authority provides rulemaking authority regarding delegation between a county board and the director of a county department to the Social Services Commission.

The Commission objected to 10A NCAC 69 .0602, .0604, and .0605 as being unnecessary as these Rules reference contract terms.

The Commission objected to 10A NCAC 72 .0101 as being unnecessary as this Rule does not provide any directives to the regulated public nor provide any information not otherwise available in rule or statute.

#### **Department of Justice**

12 NCAC 02I .0213 was withdrawn at the request of the agency.

At the June meeting, the RRC voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget to determine if the adoption of 12 NCAC 02I .0306 has a substantial economic impact and therefore

requires a fiscal note. The RRC is awaiting a response from the Office of State Budget. No action was required by the Commission.

#### **Environmental Management Commission 15A NCAC 02B, 02H**

The agency is addressing the objections for 15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206. No action was required by the Commission.

#### **Environmental Management Commission 15A NCAC 02C**

15A NCAC 02C .0101, .0102, .0105, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0116, .0117, .0118, .0119, .0201, .0202, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0217, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0229, .0230, .0240, .0241, and .0242 – All rules were unanimously approved.

#### **Environmental Management Commission 15A NCAC 02T**

15A NCAC 02T .1601, .1602, .1604, .1605, .1606, .1607, and .1608 - All rules were unanimously approved.

#### **Coastal Resources Commission**

15A NCAC 07J .0409 was unanimously approved.

#### **Board of Dietetics/Nutrition**

The agency is addressing the objections for 21 NCAC 17 .0101 and .0303. No action was required by the Commission.

#### **State Human Resources Commission**

25 NCAC 01E .0210 was withdrawn at the request of the agency.

25 NCAC 01I .1702, .1805, .1902, .1903, .1905, .2003, .2105, .2302, .2303, .2304, .2305, .2306, .2307, and .2310 were unanimously approved.

#### **LOG OF FILINGS (PERMANENT RULES)**

##### **Department of Insurance**

All rules were unanimously approved.

##### **Alcoholic Beverage Control Commission**

All rules were unanimously approved with the following exceptions:

14B NCAC 15A .0201, .0202, .0203, .0204, .0601, and .0602 were withdrawn at the request of the agency.

##### **Alarm Systems Licensing Board**

All rules were unanimously approved.

#### **Environmental Management Commission 15A NCAC 02B**

15A NCAC 02B .0621 and .0624 were unanimously approved.

The Commission extended the period of review for 15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0201, .0202, .0203, .0204, .0205, .0206, .0208, .0211, .0212, .0214, .0215, .0216, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0230, .0231, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0314, .0315, .0316, and .0317

in accordance with G.S. 150B-21.10. It did so in response to a request from the agency to extend the period in order to allow the agency additional time to address technical change requests.

#### **Environmental Management Commission 15A NCAC 02D**

All rules were unanimously approved.

#### **Board of Architecture**

21 NCAC 02 .0211 was unanimously approved.

Prior to the review of the rule from the Board of Architecture, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm represents the Board.

Commissioner Choi left the meeting during the discussion concerning the rule.

#### **Licensing Board for General Contractors**

All rules were unanimously approved.

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and she is the rulemaking coordinator for the Board.

#### **Board of Electrolysis Examiners**

All rules were unanimously approved.

21 NCAC 19 .0501 was approved contingent upon a technical change to Paragraph (a) to state that the supervising physician shall be readily available during services in accordance with G.S. 88A-11.1(c). The technical change was subsequently received.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 21 NCAC 19 .0501.

Dorenda Stilwell, with Hairaway Electrolysis & Laser, Inc., addressed the Commission.

Trudy Brown, with Advance Laser and Skin Rejuvenation, addressed the Commission.

Ashley McCullough, a member of the Board, addressed the Commission.

Susan Magas, Administrative Assistant with the Board, addressed the Commission.

#### **LOG OF FILINGS (TEMPORARY RULES)**

##### **State Board of Elections**

08 NCAC 10B .0103; 17 .0101, .0102, .0103, .0104, .0105, .0106, and .0109 were unanimously approved.

#### **EXISTING RULES REVIEW**

##### **Commission for Mental Health/DD/SAS**

10A NCAC 27G - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

### **COMMISSION BUSINESS**

The Chair gave a brief update on the enactment of SL 2019-140 - Amend Administrative Procedure Laws.

The Chair announced that the Style Guide will be added to the September agenda for a vote on adoption by the RRC. Additionally, the RRC will be holding its Elections of Officers at the September meeting.

The meeting adjourned at 10:29 a.m.

The next regularly scheduled meeting of the Commission is Thursday, September 19, 2019 at 9:00 a.m.

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Alexander Burgos, Paralegal

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Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

August 15, 2019

Rules Review Commission  
Meeting  
Please Print Legibly

| Name                | Agency                      |
|---------------------|-----------------------------|
| Dennis Seavers      | BBE                         |
| Paris Penny         | NC DHHS                     |
| Misty PM            | DHHS                        |
| Doreen Stilwell     | NC BEE                      |
| Alie Sainting       | "                           |
| Tracey Jones        | "                           |
| Susan Mages         | "                           |
| Ashley McDellough   | NCBEE                       |
| Hedy Brown          | "                           |
| Katelyn Love        | SBE                         |
| Dana Begh           | <del>NC</del> NC Electrolen |
| Frank Wiesner       | NCLBGC                      |
| Debbie Price        | NCLBGC                      |
| Loretta Peace Bunch | NC DOT                      |
| Michael Rogen       | NC DWR                      |
| RAT PREMAKUMAK      | NC DOJ                      |
| Deirda Aites        | DHHS - DAA                  |
| Jennifer Morris     |                             |
| Ry Ish              | NCBEE                       |
| Kelly Tamow         | NC SBE                      |
| Patrick Knowlson    | NC DAQ                      |

August 15, 2019

Rules Review Commission  
Meeting  
Please Print Legibly

| Name                    | Agency                                  |
|-------------------------|---|
| Matthew F. Davis        | NC DEQ                                  |
| PAUL CLARK              | NIDEQ                                   |
| Thomas Campbell         | NC DOJ                                  |
| WALKER REAGAN           | NC ABC Comm                             |
| Danise Mazza            | NCOSHR                                  |
| CHRISTINE RYAN          | NCOSHR                                  |
| HEATHER CARTER          | NC DHHS - DAAS                          |
| Pelroy, <del>with</del> | NC <sup>DEQ</sup> <del>DEUR</del> - DWR |
| W. DENKE Baker          | NC DHHS - <del>OMH/PO/SAS</del>         |
| Charminique Williams    | DOJ                                     |
| Jeff <del>Murray</del>  | ASLR                                    |
| Cara Bridges            | NCGA                                    |
| Grant Schwab            | ↓                                       |
| Susie Camilleri         |   |
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STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

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

August 15, 2019

Denise Baker  
Division of Mental Health  
3001 Mail Service Center  
Raleigh, North Carolina 27699-3001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 27G**

Dear Ms. Baker:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 15, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2022.

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

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
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Clerk's Office  
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Rules Review  
Commission  
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Civil Rights  
Division  
919/431-3036  
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An Equal Employment Opportunity Employer



**RRC DETERMINATION  
PERIODIC RULE REVIEW**

**May 16, 2019**

**APO Review: July 20, 2019**

**Mental Health/DD/SAS, Commission for**

**Total: 2**

**RRC Determination: Necessary with substantive public interest**

**Rule**

10A NCAC 27G .0207

10A NCAC 27G .2202

**Determination**

Necessary with substantive public interest

Necessary with substantive public interest