

**RULES REVIEW COMMISSION MEETING  
MINUTES  
January 15, 2015**

The Rules Review Commission met on Thursday, January 15, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Stephanie Simpson, Ralph Walker, and Faylene Whitaker.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder, as well as support staff members Julie Brincefield and Alex Burgos.

The meeting was called to order at 9:59 a.m. with Chairman Currin presiding.

Chairman Currin introduced the new General Counsel to the Office of Administrative Hearings, Bill Culpepper.

Chairman Currin introduced a new Administrative Law Judge to the Office of Administrative Hearings, Phil Berger, Jr.

Chairman Currin introduced OAH Extern Ryan Niland.

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

**APPROVAL OF MINUTES**

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the December 17, 2014 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Division of Mental Health**

The agency had not responded in accordance with G.S. 150B-21.1(b1) or (b2). There was no action for the Commission to take at the meeting.

Commissioner Doran was not present during the discussion or vote on these rules.

**Environmental Management Commission**

15A NCAC 02H .1030 was unanimously approved.

Commissioner Doran was not present during the discussion or vote on the rule.

**Mining and Energy Commission**

All rules were unanimously approved, with the exception of rules 15A NCAC 05H .0804 and .1704, which were withdrawn by the agency.

Prior to the review of the rules from the Mining and Energy Commission, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning these rules because of a possible conflict with her husband's law firm.

Commissioner Doran was not present during the discussion or vote on these rules.

### **Board of Landscape Architects**

The Commission voted to extend the period of review to allow the Board additional time to finalize changes to the rules.

Prior to the review of the rules from the Board of Landscape Architects, Commissioner Whitaker recused herself and did not participate in any discussion or vote concerning these rules because of possible conflict with her garden center business.

Jeff Gray, the agency's attorney and rulemaking coordinator, addressed the Commission.

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

#### **Department of Commerce – Credit Union Division**

The Commission voted to extend the period of the review to allow the agency additional time to finalize changes to the rules.

Prior to the review of the rules from the Department of Commerce-Credit Union Division, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because she is employed with the Department of Commerce.

Prior to the review of the rules from the Department of Commerce-Credit Union Division, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning these rules because of a potential conflict of interest.

Commissioner Doran was not present during the discussion or vote on the rules.

#### **Division of Health Service Regulation**

All rules were unanimously approved.

Commissioner Doran was not present during the discussion or vote on the rules.

#### **Department of State Treasurer**

All rules were unanimously approved.

Commissioner Doran was not present during the discussion or vote on the rules.

#### **Hearing Aid Dealers and Fitters Board**

21 NCAC 22F .0105 was unanimously approved.

Commissioner Doran was not present during the discussion or vote on the rule.

The Commission took a break from 11:11 a.m. to 11:23 p.m.

#### **Board of Physical Therapy Examiners**

All rules were approved with the following exception:

21 NCAC 48C .0104 – The Commission voted against staff's recommendation to approve the rule with Commissioners Choi, Currin, and Hyde voting in favor; and Commissioners Doran, Dunklin, Hemphill, Simpson, Walker, and Whitaker voting against. The Commission objected to this rule based upon lack of statutory authority.

Thomas Mitchell, Sharon DeMocker, Mary C. Majebe, Eric Buckley, Nancy Davison, Ashley Perkinson, Ann Christian, and Ed Gaskins addressed the Commission speaking against the rule.

John Silverstein, Stephen Feldman, Mary Hannah, and David Reed addressed the Commission speaking in favor of the rule.

**Board of Refrigeration Examiners**

21 NCAC 60 .0214 was unanimously approved.

Prior to the review of the rule from the Board of Refrigeration Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the board.

Commissioners Doran, Walker, and Whitaker were not present during the discussion and vote on the rule.

**Office of Administrative Hearings**

26 NCAC 03 .0118 was unanimously approved.

Commissioner Choi presented the review for the rule.

**EXISTING RULES REVIEW**

**Board of Agriculture**

02 NCAC 09B – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09C – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09D – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09E – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09F – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09G – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09H – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09J – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09K – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09M – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09N – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 09O – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 38 – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 43F – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 51 – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 52A – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 52K – The Commission unanimously approved the report as submitted by the agency.

02 NCAC 54 – The Commission unanimously approved the report as submitted by the agency.

Commissioners Choi, Dunklin, and Hemphill were not present and did not participate in the vote for these reports.

#### **Medical Care Commission**

0A NCAC 13A – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 13D – The Commission unanimously approved the report as submitted by the agency.

#### **Division of Health Service Regulation**

10A NCAC 14I – The Commission unanimously approved the report as submitted by the agency.

#### **Department of Environment and Natural Resources**

15A NCAC 01F – The Commission unanimously approved the report as submitted by the agency.

#### **Board of Employee Assistance Professionals**

As this report was not scheduled for review at the January meeting, it was reviewed at the end of the regularly scheduled business.

The Board requested a waiver for an extension of time to file their report pursuant to G.S. 150B-21.3A and 26 NCAC 05 .0211

The Commission approved the waiver request, with Commissioner Doran opposed.

Barden Culbreth with the agency addressed the Commission.

The Commission rescheduled the date of review for the report for 21 NCAC 11 pursuant to Rule 26 NCAC 05 .0204.

The Commission will review the Board's report at its July 2015 meeting.

#### **2015 STATE MEDICAL FACILITIES PLAN**

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2015 Plan.

#### **COMMISSION BUSINESS**

The Commission's Bylaws require that elections be held at the January meeting. The following members were elected as officers:

Garth Dunklin was elected Chairman.

Jeff Hyde was elected 1<sup>st</sup> Vice-Chairman.

Stephanie Simpson re-elected 2<sup>nd</sup> Vice-Chairman.

At 1:45 p.m., Chairman Dunklin ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S 143-318.11 to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission.

The Commission came out of closed session at 2:43 p.m.  
The meeting adjourned at 2:50 p.m.

The next regularly scheduled meeting of the Commission is scheduled for Thursday, February 19<sup>th</sup> at 10:00 a.m.

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

Respectfully Submitted,

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Julie Brincefield, Administrative Assistant

Minutes approved by the Rules Review Commission:

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Margaret Currin, Chair

DRAFT

JANUARY 2015

Rules Review Commission  
Meeting  
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Name	Agency
Robert Josey	DENR
Mary-Ann	Pawist Traditions
Starleen Scott Robbins	DMIT/DDBAS
Barden Culbreth	NCEAP
Beverly Speroff	NCDHGR

JANUARY 2015

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Name	Agency
Ryan Niland	OAH - Intern
ANA-LAURA DIAZ	DST - Counsel
JOHN SWERSTEIN	NCBPE
Betsy Vetter	American Heart Association
Nancy Davidson	NCAADM - PT/LAc
Debbie Rowan	NCPTA
Bradley Bennett	NCOENR
David Edwards	NCPTA
Mary Kay Hannah	NCPTA
Stephen Feldman	NCPTA / Ellis & White's
Tom Mikels	NCCF
Kristin Gordon	Law Student
Lynne Berry	NC Div. of Aging

JANUARY 2015

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Name	Agency
Christina Daerr Reich	NCAAOM
Eric Raymond Buckley	NCAAOM
Tina Hlabse	NCDACS
Derek Vogner	MC DA + CS
Ann Christian	NCA LB
Ashley Parkinson	Parkinson Law
James Hest	Everett Gaskins Henrich LLP
Ed Gaskins	" " " "
Kathy Arney	NCBPTE
Jennifer Everett	DENR
David Reed	NCBPTE
William H. Pottser, Jr	NCDTA
Katharine Marciniak	DEMCR
Walt Haven	DEMCR
Ryan Chamell	DEMCR
Jeff Gray	Board of Landscape Architect.
Sharon DeMocker, MD	Sharon DeMocker Family Medicine
Junie Norfleit	Junie Norfleit
Nadine Pfeffer	DHSR
Chris Kelmslater	NCAAOM
Beverly Massey JR	N.C. Board of Physical Therapy Examiners