

**RULES REVIEW COMMISSION MEETING  
MINUTES  
March 19, 2015**

The Rules Review Commission met on Thursday, March 19, 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, Jeff Hyde, Stephanie Simpson, and Faylene Whitaker.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:04 a.m. with Chairman Dunklin presiding.

Chairman Dunklin 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 Dunklin asked for any discussion, comments, or corrections concerning the minutes of the February 19, 2015 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Board of Physical Therapy Examiners**

No action was required by the Commission. The review of 21 NCAC 48C .0104 will be at the May meeting.

**LOG OF FILINGS (PERMANENT RULES)**

**Pesticide Board**

02 NCAC 09L .0707 was unanimously approved.

**Office of the Commissioner of Banks**

All rules were unanimously approved.

**Medical Care Commission**

All rules were unanimously approved.

Frances Messer from the North Carolina Assisted Living Association addressed the Commission.

**Commission for Public Health**

All rules were unanimously approved.

**Department of Transportation/Division of Motor Vehicles**

19A NCAC 03B .0201 was unanimously approved.

**Acupuncture Licensing Board**

The Rules Review Commission extended the period of review on the rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review to allow the Acupuncture Licensing Board additional time to revise the rules in response to technical change requests.

**Board of Dental Examiners**

All rules were unanimously approved.

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

#### **Irrigation Contractors Licensing Board**

All rules were unanimously approved, with the exception of Rule 21 NCAC 23 .0105. The Commission objected to the rule, finding the agency does not have statutory authority to promulgate the rule and that the text within the rule was ambiguous. The Board failed to cite to any authority for the agency to create a code of ethics. In addition, the rule text failed to define terms used within the rule, such as “defamation” and “harassment.” In addition, the Board did not say when the discipline will occur. Therefore, the rule is unclear and ambiguous.

Prior to the review of the rules from the Irrigation Contractors Licensing Board, Commissioner Whitaker recused herself and did not participate in any discussion or vote concerning these rules because the rules affect her business.

Tina Simpson, attorney to the Board, addressed the Commission.

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

21 NCAC 48G .0109 was unanimously approved.

#### **Board of Refrigeration Examiners**

21 NCAC 60 .0102 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.

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

All rules were approved with the following exceptions:

25 NCAC 01D .2701 and 25 NCAC 01J .0618 were withdrawn at the request of the agency. Therefore, there was no action for the Commission to take on these rules.

The Commission objected to 25 NCAC 01C .0311, as the rule is not reasonably necessary to implement or interpret an enactment of the General Assembly, as required by G.S. 150B-21.9(a)(3). A majority of the rule is repetitive of G.S. 126-25.

The Commission objected to 25 NCAC 01E .1603, as the rule is not within the authority delegated to the agency by the General Assembly, as required by G.S. 150B-21.9(a)(1). The rule caps a literacy program at 45 hours per year.

The Commission objected to 25 NCAC 01H .1103, as the rule is not reasonably necessary to implement or interpret an enactment of the General Assembly, as required by G.S. 150B-21.9(a)(3). A majority of the rule is repetitive of G.S. 126-34.02.

The Commission objected to 25 NCAC 01J .1304, as the rule is not within the authority delegated to the agency by the General Assembly, as required by G.S. 150B-21.9(a)(1). The rule subjects orders to the approval of the Office of State Human Resources.

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because she is a state employee in a supervisory position over state employees.

Attorney Michael Byrne addressed the Commission.

Valerie Bateman from the agency addressed the Commission.

Nancy Lipscomb from the agency addressed the Commission.

The Honorable Don Overby from the OAH addressed the Commission.

### **Building Code Council**

The Commission objected to all rules for failure to comply with G.S. 150B. The Council published these Rules in the NC Register, Volume 29, Issue 4, stating that the amendments and adoptions would not become effective until January 1, 2016. The Council then proposed to have the rule changes become effective April 1, 2015. The Commission found that the change to the effective date made to the rules following publication created a substantial change pursuant to G.S. 150B-21.2(g).

Barry Gupton from the agency addressed the Commission.

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

#### **Wildlife Resources Commission**

15A NCAC 10F .0333 was withdrawn at the request of the agency. Therefore, there was no action for the Commission to take.

#### **EXISTING RULES REVIEW**

##### **Rural Electrification Authority**

04 NCAC 08 – The Commission unanimously approved the report as submitted by the agency.

##### **Department of Health and Human Services**

10A NCAC 05 – The Commission unanimously approved the report as submitted by the agency.

##### **Child Care Commission**

10A NCAC 09 – The Commission unanimously approved the report as submitted by the agency.

##### **Board of Optometry Examiners**

21 NCAC 42 – The Commission unanimously approved the report as submitted by the agency.

### **COMMISSION BUSINESS**

Staff gave the Commission a brief legislative update.

The Commission discussed changing the June meeting dates to June 16<sup>th</sup> and June 17<sup>th</sup>.

At 11:55 a.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(a)(3) to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission.

The Commission came out of closed session and reconvened at 12:56 p.m.

The meeting adjourned at 12:57 p.m.

The next regularly scheduled meeting of the Commission is scheduled for Thursday, April 16<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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Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

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Garth Dunklin, Chair

DRAFT

March 2015

Rules Review Commission  
Meeting  
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Name	Agency
Frances Messer, Ex Director	North Carolina Assisted Living Assoc
Emelyn Hancock	NCMAA
Tina Krasner	NCOCOB
BARRY GUPTON	NCDOI/NCBCC
Blende Antis	NC DAAS (DHHS)
Jim Bunnelle, J	NCDA & CS
Carsten Bakewell	NC Mental Bd
Nadine Pfeiffer	NC DHHS - DHSR
Jan Brickley	NC DHSR
Chrissy Wagner	NCDA & CS
Nancy Light	OSHR
Valerie Bateman	OSHR
Megan Lamphere	DHHS - DHSR
Maureen	OSHR
Nick Fuller	DOT
Leah Pope	DOT
Betsy Kelter	AHA
James A. Wellons	NCDOJ for DHHS - DCDEE
Kelly Thomas	Dmv
Xiangyi Li	Duke
Dacia Thompson	Duke

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Name	Agency
Shari Howard	OSHE
Sebastian Ailes	DUKE
Amanda Ray	Optometry Board
Yolanda Smith	NCHLTCF

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Rules Review Commission  
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Name	Agency
Lonnie Christopher	Commissioner of Banks
Kathy Arney	NC Board of PT Examiners
Gem Mattson	NC PPN
Heidi Lane	NCDOT
Bob MARTIN	NC DPH
Paula Kwaminski	OSTR
Michael Pugh	Aky
Frances Liles	NCREA
Bethany Burgen	DOJ
Adrian Bellinger	DOS
Tina Simpson	DOJ
Rick Allen	DDEC