

**RULES REVIEW COMMISSION MEETING
MINUTES
March 16, 2017**

The Rules Review Commission met on Thursday, March 16, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, Paul Powell, and Stephanie Simpson.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko. Commission Counsel Amber Cronk May joined by telephone.

The meeting was called to order at 10:02 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 of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the February 16, 2017 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 09C .0507, .0703; 09G .2005, .2008; 09J .0101, .0102; 09K .0101, .0103, .0105, .0106, .0107, .0108, .0109, .0113, .0114, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0213, .0214; 09O .0101 and .0107 - The review of these Rules will occur at the April meeting in accordance with G.S. 150B-21.10. No action was required by the Commission.

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27G .6702 and 27H .0201 were unanimously approved.

The Commission objected to 10A NCAC 27H .0202, .0203, .0204, .0205, .0206, and .0207 in accordance with G.S. 150B-21.9.

The Commission objected to 10A NCAC 27H .0202 finding that the Commission for MH/DD/SAS lacks the authority to set the employment requirements for individuals in requiring that forensic evaluators be employed or under contract with an LME-MCO. The Commission also objected to this Rule as being unclear or ambiguous as it is unclear what the "Pre-Trial Evaluation Center" is, how the Secretary is to make the determination, and how the public will be made aware of what this is.

The Commission objected to 10A NCAC 27H .0203 finding that the Commission for MH/DD/SAS lacks the authority to set the employment requirements for individuals in requiring that forensic evaluators be employed by or under contract with an LME-MCO. The Commission also objected to this Rule finding that it is unclear or ambiguous. Specifically, the Commission objected as Paragraph (a) contains a reference to an "applicant," but there is no information contained within the Rule as submitted to say what the "applicant" will need to do to apply to be certified as a forensic evaluator, to whom the applicant will apply, what the application process is, and the timing of the training requirements. The Commission further found that it is unclear how the LME-MCO will determine whether the evaluator has expertise as set forth in Paragraph (b).

The Commission objected to 10A NCAC 27H .0204 finding that the Commission for MH/DD/SAS lacks the statutory authority to promulgate rules regarding the contents of the report.

The Commission objected to 10A NCAC 27H .0205 for lack of statutory authority and as being unclear or ambiguous. In objecting to this Rule, the Commission found that the Commission for MH/DD/SAS lacks the statutory authority to promulgate rules regarding LME-MCOs' oversight of forensic evaluators. The Commission also found the following were unclear or ambiguous:

- In (a), it is unclear what is meant by "sufficient."
- In (b), it is unclear as to how expertise of an evaluator is to be conveyed to the LME-MCO. Rule .0205 indicates that it will be self-reporting by the evaluator; however, Rule .0203 indicates that the LME-MCO is required to determine the expertise of the evaluator. It is unclear whether these two provisions conflict with each other or whether they are different processes.
- In (e), it is unclear as to what information is required to be maintained in the log.

The Commission objected to 10A NCAC 27H .0206 for lack of statutory authority and as being unclear or ambiguous. In objecting to this Rule, the Commission found that the Commission for MH/DD/SAS lacks the authority to delegate the termination of certifications to LME-MCOs. The Commission further found that it is unclear what the responsibilities and duties of the LME-MCOs would be in accordance with this Rule.

The Commission objected to 10A NCAC 27H .0207, finding that the Commission for MH/DD/SAS lacks the statutory authority to specify the requirements of the evaluation report. The Commission also found that the Commission for MH/DD/SAS lacks the statutory authority to limit a recommendation by a forensic evaluator for a full evaluation at the Pre-Trial Evaluation Center only if the defendant is charged with a felony

Josephine Tetteh, with the Attorney General's Office and representing the agency, addressed the Commission.

Department of Insurance

11 NCAC 05A .0105, .0201, .0301, .0501, .0505, .0508, .0511, .0603, .0703, and .0704 – The agency requested additional time to address the objection from the January meeting. No action was required by the Commission.

Manufactured Housing Board

11 NCAC 08 .0904 – The agency is addressing the objection from the November meeting. No action was required by the Commission.

State Human Resources Commission

25 NCAC 01C .0402, .1004; 01D .0101, .0102, .0105, .0112, .0114, .0201, .0301, .0401, .0608, .0901, .1001, .2701, .2702; and 01O .0108 - The revised rules incorporating technical changes were unanimously approved.

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 the rules because she is a State employee.

LOG OF FILINGS (PERMANENT RULES)

Board of Agriculture

All rules were unanimously approved.

Commerce - Division of Employment Security

All rules were unanimously approved.

Prior to the review of the rules from the Division of Employment Security, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she is the Chairman of the Board of Review for the Division.

Medical Care Commission 10A NCAC 13E, 13F, 13G

All rules were unanimously approved.

Prior to the review of the rules from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because he represents the Commission.

Medical Care Commission 10A NCAC 13P

All rules were unanimously approved.

Prior to the review of the rules from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because he represents the Commission.

The Commission received over 10 letters of objection for 10A NCAC 13P .0204 requesting a delayed effective date and legislative review of the approved rule in accordance with G.S. 150B-21.3(b2).

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Wildlife Resources Commission

All rules were unanimously approved.

The Commission received over 10 letters of objection for 15A NCAC 10C .0314 requesting a delayed effective date and legislative review of the approved rule in accordance with G.S. 150B-21.3(b2).

Commission for Public Health

15A NCAC 18A .1971 was unanimously approved.

Board of Barber Examiners

All rules were unanimously approved.

Board of Chiropractic Examiners

21 NCAC 10 .0305 was unanimously approved.

Board of Employee Assistance Professionals

All rules were unanimously approved.

Board of Dental Examiners

21 NCAC 16G .0101 was unanimously approved.

Board of Massage and Bodywork Therapy

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 30 .0903 based on lack of statutory authority. The Board of Massage and Bodywork Therapy lacks the statutory authority to make by rule an exception to the public records law of North Carolina. Without a specific statutory grant from the General Assembly, the materials generated or obtained by the Board in conducting an investigation are public records.

The Commission objected to 21 NCAC 30 .0906 based on lack of statutory authority and unclear or ambiguous language. The Board of Massage and Bodywork Therapy lacks the statutory authority to summarily suspend an occupational license based upon the cited authority in the Rule as filed with the Rules Review Commission. Further, the findings required by the Board that would lead to the immediate suspension of licensure are unclear or ambiguous as provided in the Rule.

Charles Wilkins, the rulemaking coordinator representing the agency, addressed the Commission.

Ann Christian, representing the NC Chapter of the American Massage Therapy Association, addressed the Commission.

Board of Podiatry Examiners

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 52 .0201 and .0207 for failure to comply with the Administrative Procedure Act. The Board of Podiatry Examiners submitted two permanent rules that differed substantially from the proposed text published in the December 15, 2016 31:12 Register. Therefore, the Board of Podiatry Examiners failed to comply with G.S. 150B-21.2(g).

Reed Fountain, representing the agency, addressed the Commission.

Real Estate Commission

All rules were unanimously approved.

Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rules.

Prior to the review of the rules from the Real Estate Commission, Commissioner Currin recused herself and did not participate in any discussion or vote concerning the rules because she has an inactive broker's license.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the Commission and was involved with some of the subject rules.

Commissioner Dunklin was not present during the discussion or vote concerning the Real Estate Commission rules.

Commissioner Dunklin returned as the Chair following the discussion and vote on the Real Estate Commission rules.

Office of Administrative Hearings

All rules were unanimously approved.

Commissioner Currin presented these Rules to the Commission.

EXISTING RULES REVIEW

Department of Health and Human Services

10A NCAC 17- The Commission unanimously approved the report as submitted by the agency.

Social Services Commission

10A NCAC 71 - The Commission unanimously approved the report as submitted by the agency.

Commissioner Simpson was not present during the discussion or vote concerning the report.

Auctioneer Licensing Board

21 NCAC 04 - The Commission unanimously approved the report as submitted by the agency.

Commissioner Simpson was not present during the discussion or vote concerning the report.

Marriage and Family Therapy Licensure Board

21 NCAC 31 - The Commission unanimously approved the report as submitted by the agency.

Sheriffs Education and Training Standards Commission

The agency requested a waiver of 26 NCAC 05 .0211 for the report for 12 NCAC 10.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its February 2018 meeting.

Acupuncture Licensing Board

21 NCAC 01 – As reflected in the attached letter, the Commission extended the period for the agency to readopt these Rules to August 31, 2017. Commissioners Dunklin and Doran voted against.

Mike Tadych, the rulemaking coordinator with the agency, addressed the Commission.

COMMISSION BUSINESS

The Commission voted to amend the December 2016 minutes to reflect the following change:

The Commission voted to approve 04 NCAC 10J .0103, with Commissioners Dunklin and ~~Hyde~~ Hemphill voting against.

Commissioner Doran abstained from the vote as she was not present at the December 15, 2016 meeting.

Staff presented the Commission with a discussion of the Answer and Memorandum received in the Ambulatory Surgical Center Association v. the Industrial Commission lawsuit.

The Chair gave an update on SB16, which proposes changes to the Periodic Review.

The meeting adjourned at 12:20 p.m.

The next regularly scheduled meeting of the Commission is Thursday, April 20th 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,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

March 16, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Chuck Lewis	DHHS / DHSR / OEMS
John P. Barkley	DOT
Marta T. Hester	DHHS - DMH / AD / SIA
Elizabeth Kule	NCBMBT
Charles Wilkins	NCBMBT
Chrissy Waggett	NCPA / CS
MIKE TADYCU	NALB
Jessica Middlebrooks	OSHP
Jan Withers	DSDHIT
Pam King	OSDHH
Susan Mundtch	DSDHIT
Glen Siler	DSDHIT
Bob MARTIN	DPH
Randy Bonick	DHSR
Jan Ak	DHSR
Sheena J. Cabrand	Commerce - DES
E. Ann Christian	AMTA - NC
Mgtk Hazelrigg	DHHS
Denise Baker	DHHS - DMH / AD / SIA
Carlotta Dixon	DHHS - PSS
Glenda Antis	DHHS - DAA
Laura White	DHHS / DSOIF
Keel Carpenter	ADH
Tracy Ginn	DHHS / DSOIF

March 16, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Charles Diehl	NC Antiterror Licensing Bd.
Susannah Holloway	Attorney General's Office
Nadine Pfeiffer	NC DHSR
Dennis Seavers	NCBPE
Diane Konopka	Sheriffs' Stds. Div.
Jennifer Vuillemet	NC DOS
Josephine Tetlow	NC DOJ
Melissa Vuotto	NCREC
Madison Mackenzie	NCREC
Leslie Easter	NC DHHS / DPH
Tracy Steadman	NCBPE
Charminique Branson	NCJET
Adrian Bellinger	NC DOJ
Tricia Angoli	OSWP/EMS / DHHS
Nancy Deal	OSWP/EMS / DHHS
Larry Michael	NC DHHS
Carrie Ruhelman	NC WRC
Christian Waters	NCWRC
Jessie Birkhead	NCWRC
Megan Lamphare	DHSR/ACLS
Tom Mitchell	OEMS/DHSR
Wanda Nicholson	NC MFT Licensure Board



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March 16, 2017

Sent via email: mike@smvt.com
Michael J. Tadych, Rulemaking Coordinator
Acupuncture Licensing Board
Stevens Martin Vaughn & Tadych
1101 Haynes Street, Suite 100
Raleigh, North Carolina 27604

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 01**

Dear Mr. Tadych:

At its meeting on March 16, 2017, the Rules Review Commission considered the Acupuncture Licensing Board's request to extend the schedule for the readoption of the above-referenced rules. As reflected in the attached letter dated April 21, 2016, the rules set forth in 21 NCAC 01 were scheduled to be readopted by the agency no later than May 31, 2017.

Pursuant to G.S. 150B-21.3A(d)(2) and the agency's request to extend the readoption date, these rules shall be readopted by the agency no later than August 31, 2017.

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

Sincerely,

A handwritten signature in blue ink that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

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An Equal Employment Opportunity Employer



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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April 21, 2016

Michael J. Tadych
Acupuncture Licensing Board
Stevens Martin Vaughn & Tadych
1101 Haynes Street, Suite 100
Raleigh, North Carolina 27604

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 01**

Dear Mr. Tadych:

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 April 21, 2016 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 May 31, 2017.

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

Sincerely,

A handwritten signature in blue ink that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

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11/16/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION
PERIODIC RULE REVIEW
July 01, 2014 through June 30, 2016
Acupuncture Licensing Board
Total: 4**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>21 NCAC 01 .0104</u>	Necessary with substantive public interest	November 22, 2014
<u>21 NCAC 01 .0201</u>	Necessary with substantive public interest	November 22, 2014
<u>21 NCAC 01 .0301</u>	Necessary with substantive public interest	November 22, 2014
<u>21 NCAC 01 .0402</u>	Necessary with substantive public interest	November 22, 2014