**RULES REVIEW COMMISSION**

**December 20, 2012**

**MINUTES**

The Rules Review Commission met on Thursday, December 20, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Baird Choi, Addison Bell, Margaret Currin, Jeanette Doran, Garth Dunklin, Pete Osborne, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Dana Vojtko; Julie Edwards; and Tammara Chalmers.

The meeting was called to order at 10:02 a.m. with Chairman Walker presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

**APPROVAL OF MINUTES**

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the November 15, 2012 meeting. There were none and the minutes were approved as distributed.

Chairman Walker read into the record the following statement of economic interest for:

Ralph Walker, which stated there was no actual conflict of interest or the potential for a conflict of interest.

**FOLLOW-UP MATTERS**

01 NCAC 09 .0401, .0402, .0403, .0404, .0405 – The Department of Administration for the Office of the Governor - The Commission unanimously approved the repeals.

01 NCAC 11 .2102, .2103, .2104, .2105, .2111, .2116, .2201, .2202, .2203, .2204 – The Department of Administration for the Human Relations Commission - The Commission unanimously approved the repeals.

01 NCAC 19A .0103 – The Department of Administration for the Youth Advisory Council - At the agency's request the rule was returned to the agency.

01 NCAC 22 .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0301, .0302, .0303, .0401, .0402, .0403, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0604, .0605, .0606, .0701, .0702, .0703, .0704, .0801, .0802, .0901, .0902, .0903, .0904, .0905, .0906, .1001, .1002, .1101, .1102, .1103 – The Department of Administration for itself, the Environmental Management Commission and the Commission for Public Health - The Commission unanimously approved the repeals.

04 NCAC 10J .0101 – Industrial Commission –The Commission approved this rewritten rule and also granted the request for the withdrawal of objection letters from those persons who had submitted written requests that the rule be subjected to legislative review at the October Rules Review Commission meeting.  The rule is therefore not subject to legislative review.

Staci Meyer with the Industrial Commission addressed the Commission about the rule from the Industrial Commission.

Prior to the discussion of 04 NCAC 10J .0101, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning this Rule because her husband's law firm represents the NC Medical Society and many physician clients.

07 NCAC 04N .0202 – Department of Cultural Resources –The agency decided not to provide additional findings or submit a new statement of findings of need for this temporary rule so the rule was returned to the agency.

10A NCAC 09 .3004, .3007, .3008 –  Child Care Commission – The Commission took no action on Rule .3004 and will consider it again at the January meeting. The Commission approved rule .3007 contingent on a technical change; the technical change has been subsequently received. The Commission objected to Rule .3008 based on ambiguity or lack of authority. It is unclear what approval standards the agency shall use for the “formative assessments.” There is no authority to set those standards outside rulemaking.

Commissioner Choi was not present for the discussion and vote on Rule .3008.

Lexi Gruber with the agency addressed the Commission.

Chariman Walker asked Commissioner Dunklin along with Commissioners Choi and Doran to meet with agency staff to discuss Rules .3004 and .3008 to identify more precisly the statutory issues. The Commission also wishes to see if the Child Care Commission needs to have a better understanding of the RRC concerns and desires to make any changes prior to formal RRC action on these rules.

12 NCAC 10B .2004, .2102 – Sheriffs' Education and Training Standards Commission – These rewritten rules were unanimously approved

Commissioner Bell was not present for the discussion or vote on these rules.

19A NCAC 01C .0201 – Department of Transportation – There has been no response from the agency and no action was taken.

19A NCAC 02D .0414 – Department of Transportation – There has been no response from the agency and no action was taken.

19A NCAC 02E .0609, .0610 – Department of Transportation – These rewritten rules were unanimously approved.

The meeting recessed at 11:24 p.m. and reconvened at 11:32 p.m.

**LOG OF FILINGS**

Chairman Walker presided over the review of the log of permanent rules.

**Office of the Commissioner of Banks**

All rules and repeals were approved unanimously with the following exceptions:

04 NCAC 03C .0201 was approved contingent upon the Commission's receiving a technical change.  The technical change has been subsequently received.

04 NCAC 03C .0301, .0401 and .0406 were withdrawn and refiled for the January meeting.

Margaret Currin recognized Anthony Wayne, one of her students from Campbell Law School.

**Medical Care Commission**

Beverly Speroff from the agency addressed the Commission.

All rules were approved unanimously with the following execptions:

The Commission objected to Rule .2105 based on ambiguity. The rule is unclear in (b) in how many residents may be accepted at a facility “other than a continuing care retirement community.” In the first sentence in lines 8 and 9 the rule specifies that the facility cannot accept more residents than the total number for which it is licensed, “except in an emergency situation.” This implies that in an emergency situation it could accept more residents than the “total number for which it is licensed.” Yet the next sentence, lines 11 and 12, specifically states that even “[e]mergency authorizations ... shall not exceed the total number of beds licensed by the Division.” This would indicate that a facility cannot accept more residents, even in an emergency, than it is licensed for.

The Commission accepted changes to Rules .2203 and .2303 as technical changes and approved the rules.

The Commission objected to Rules .2210 and .2301 based on a lack of statutory authority. There is no authority cited, and none known, for the provisions in .2210(b) and (d) to require an administrator to meet certain qualifications, as set out in the definitions rule, to performs certain tasks. There is no authority cited, and none known, for the provision in .2301(c) requiring “an interdisciplinary team” to have a registered nurse.

**Division of Health Service Regulation**

All rules were approved unanimously.

**Private Protective Services Board**

All rules were approved unanimously.

**Wildlife Resources Commission**

All rules were approved unanimously.

**Locksmith Licensing Board**

21 NCAC 29 .0702 was approved unanimously.

**Respiratory Care Board**

21 NCAC 61 .0202 was withdrawn by the agency.

**Board of Examiners for Speech and Language Pathologists and Audiologists**

21 NCAC 64 .0220 was approved unanimously.

21 NCAC 64 .0903 – The Commission objected to this rule based on lack of statutory authority and lack of necessity in accordance with G.S. 150B-21.10. G.S. 150B-39(c) states that "[i]n preparation for, or in the conduct of, a contested case subpoena may be issued and served in accordance with G.S. 1A-1, Rule 45." Rule 45(b) sets out who may serve a subpoena. There is no authority cited for the agency to specify otherwise as the rule does in (b)(1) and (2). G.S. 150B-39(c) sets out standards an agency may use to quash a subpoena. To the degree that Subparagraph (b)(5) and (6) are consistent with that statute, they are unnecessary. To the degree they are different, they are beyond the agency's authority.

**TEMPORARY RULES**

Chairman Walker excused himself from the meeting.

Commmisioner Currin presided over the review of the log of temporary rules and the remainder of the meeting.

**Coastal Resources Commission**

15A NCAC 07H .0306 was approved unanimously.

**OTHER BUSINESS**

Staff reported that the Joint Administrative Procedures Oversight Committee unanimously voted to accept the Commission’s proposed legislation providing for a periodic review and expiration for all rules.  The Commission requested that proposed legislation be drafted for consideration giving the Commission the authority to submit rules to the legislature for review and giving the Commission greater authority in the review of fiscal notes.

The meeting adjourned at 12:40 p.m.

The next scheduled meeting of the Commission is Thursday, January 17th 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 Edwards

Editorial Assistant

Minutes approved by the Rules Review Commission.

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Judge Ralph A. Walker/Chair

