**RULES REVIEW COMMISSION**

**June 20, 2012**

**MINUTES**

The Rules Review Commission met on Wednesday, June 20, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Margaret Currin, Garth Dunklin, George Lucier, Pete Osborne, Stephanie Simpson. Curtis Venable joined via Skype.

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

The meeting was called to order at 10:03 a.m. with Vice-Chairman Currin presiding. She 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**

Vice-Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the May 17, 2012 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

10A NCAC 41A .0205 – Commission for Public Health. The Commission approved the re-written rule submitted by the agency.

12 NCAC 09E .0102 – The Criminal Justice Education and Training Standards Commission has not yet met and no action was taken.

21 NCAC 22F .0103, .0114 – No action was taken

**LOG OF FILINGS**

Vice-Chairman Currin presided over the review of the log of permanent rules.

**Athletic Trainer Examiners**

The Commission reviewed the rules from the Board of Athletic Trainer Examiners first so that other agencies present could hear the concerns the Commission had with the activities of the Board.

Paula Learoyd, Executive Director addressed the Commission.

Ann Christian, Council to the Board addressed the Commission.

Ms. Christian and Ms. Learoyd were questioned by the Commission about information on the agency's website showing that it had already been charging increased fees at least two years and showing that the rule had already been changed.

All rules were approved unanimously with the following exception:

21 NCAC 03 .0201 – The Commission objected to this rule based on ambiguity in accordance with G.S. 150B-21.10. In (4), it is not clear how the Board will determine what is a reasonable charge for duplication services and materials. It is also not clear that the charge will not exceed the "actual cost" for making copies as prohibited by G.S. 132-6.2(b).

The board requested that the Commission waive its rules and review the rewritten rule at the meeting. No motion to that effect was made.

**Department of Commerce**

All rules and repeals were approved unanimously.

**Child Care Commission**

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

10A NCAC 09 .0901, .0902, .1702, .1706 and .1718 – The Commission extended the period of review for these rules. It did this at the agency’s request in order to allow the agency time to determine whether any legislation enacted during the current legislative session would have any effect on these rules and require or allow any changes. This would pertain in particular to the commission counsel’s recommendation to object to rules 09 .0901, 1702 and .1706.

**Medical Care Commission**

Meghan Lamphere addressed the Commission.

All rules and the repeal were approved with the following exception:

10A NCAC 13D .2701 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. There is no authority cited for the provisions in (b) and (c) requiring certain credentials or training in order to function in certain required capacities in the facility. In (b) the facility must have someone with a certain credential to function as a “director of food service,” a position the facility must have in order to be licensed. If the person does not have the credential at the time of hiring, then he or she must begin specified training in order to function in that position. There is no authority cited for the agency to require either a licensed or credentialed individual or someone undergo certain training to continue in that position. In (c) the facility must “employ a licensed dietitian/nutritionist on at least a consultant basis." There is no authority cited for requiring a licensed individual to be employed for a certain position. It is unclear what is required by (d). The rule requires the dietitian to “assure the following parameters of nutrition have been addressed and ... interventions by the facility have been met.” However it is unclear how the items in (1) – (6), e.g., “laboratory values,” are “parameters of nutrition” and how those parameters would lead to “recommended successful interventions by the facility.”

Note that the agency has the authority to require a “food service supervisor” for a nursing home facility. And the agency is free to write the requirements or definition of that person so that under the Chapter 90, Article 25, “Dietetics/Nutrition” the person filling that position would be required to be a licensed individual. But the agency is not free to set the qualifications on its own.

The agency asked the Commission to waive rule 26 NCAC 05 .0112 to submit the waiver request in writing and then to grant the waiver to approve the rule. The motion by Commissioner Osborne failed for lack of a second.

**Commission for Mental Health**

All rules were approved unanimously.

**Commission for the Blind**

10A NCAC 63F .0402 was approved unanimously.

**Social Services Commission**

All the repeals were approved unanimously.

**Department of Insurance**

All rules and repeals were approved unanimously.

**Private Protective Services Board**

All rules were approved unanimously.

**Environmental Management Commission**

All rules were approved unanimously.

**Wildlife Resources Commission**

Norman Young, counsel for the Wildlife Resources Commission, addressed the Commission.

All rules were approved unanimously.

15A NCAC 10B .0219 and .0223 received more than 10 letters of objection. These rules are now subject to legislative review and delayed effective date.

**Commission for Public Health**

John Barkley addressed the Commission.

All rules were approved unanimously with the following exceptions:

15A NCAC 18A .2608, .2609, .2610, .2611, .2612 – The Commission extended the period of review for these rules. The Commission extended the period of review at the agency's request to ensure that the objection to 15A NCAC 18A .2653 does not result in a gap in regulation.

15A NCAC 18A .2653 – The Commission objected to this rule based on ambiguity in accordance with G.S. 150B-21.10. Item 11, by using "and" and "or" in a list, is ambiguous on its face. It is not clear if it means (1) (2) and (3), or (4); (1) (2), and (3) or (4); or something different.

**Board of Architecture**

21 NCAC 02 .0204 – The Commission objected to this rule based on ambiguity in accordance with G.S. 150B-21.10. In Paragraph (c), it is not clear what is meant by "properly described and identified." This objection applies to existing language in the Rule.

The meeting recessed at 11:24 a.m. and reconvened at 11:33 a.m.

**Board of Chiropractic Examiners**

All rules were approved unanimously.

**Board of Nursing**

All rules were approved unanimously.

**State Personnel Commission**

All rules were approved unanimously with the following exceptions:

25 NCAC 01B .0437, – The Commission objected to this rule based on ambiguity. In Paragraph (c), it is not clear what is meant by "good cause shown." The definition in 25 NCAC 01B is not relevant to the use of the term in this Rule. This objection applies to existing language in the Rule.

25 NCAC 01B .0438 - The Commission objected to this rule based on lack of statutory authority. In Paragraphs (a) and (b), there is no authority cited for and award of costs. G.S. 126-4(11) allows an award of witness fees and attorney fees only. In Part (b)(1)(A), there is no authority cited for the State Personnel Commission to award witness fees or legal fees where an Administrative Law Judge finds discrimination, harassment, or orders reinstatement or back pay. G.S. 150B-33(b)(11) gives that authority to the Administrative Law Judge. For contested cases filed on or after January 1, 2012, the Commission no longer hears cases. G.S. 126-4(11) thus no longer applies once a case reaches the Administrative Law Judge level. This objection applies to existing language in the Rule.

**OTHER BUSINESS**

Staff updated the Commission on various bills affecting rulemaking working their way through the legislature.

The meeting adjourned at 11:57 p.m.

The next scheduled meeting of the Commission is Wednesday, July 19 at 10:00 a.m.

Respectfully Submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Julie Edwards

Editorial Assistant

Minutes approved by the Rules Review Commission.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge Ralph A. Walker/Chair

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

Rules 15A NCAC 18A .2605, .2629, .2636 had been filed by the agency for and approved by the RRC as repeals during the July meeting. However after the meeting agency staff discovered that those rules had been previously repealed. They have been removed from the approved rules list but the filings will remain in the database with a note that the rules were previously repealed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dana Vojtko

Publications Coordinator

