**RULES REVIEW COMMISSION**

**March 21, 2013**

**MINUTES**

The Rules Review Commission met on Thursday, March 21, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Jeanette Doran, Garth Dunklin, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker. Commissioner Anna Baird Choi joined via Skype.

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

The meeting was called to order at 10:03 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 February 6, 2013 special meeting and the February 21, 2013 meeting. There were none and the minutes were approved as distributed.

Chairman Walker introduced OAH extern Carla Gray.

Chairman Walker welcomed new Commission Counsel Amanda Reeder.

**FOLLOW-UP MATTERS**

10A NCAC 09 .3004 – Child Care Commission. There has been no response from the agency and no action was taken.

21 NCAC 22F .0108, .0120 – Hearing Aid Dealers and Fitters Board – The Commission returned Rule .0108 to the agency for failure to comply with the Administrative Procedure Act. There was no response from the agency for Rule .0120 and no action was taken.

21 NCAC 22I .0103 – Hearing Aid Dealers and Fitters Board – The Commission unanimously approved the re-written rule.

21 NCAC 22J .0103 – Hearing Aid Dealers and Fitters Board – The Commission unanimously approved the re-written rule.

**LOG OF FILINGS**

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

**Home Inspector Licensure Board**

11 NCAC 08 .1012 was approved unanimously.

The Commission extended the period of review for Rule .1116 because it believes that the language in (e)(2), “similar arrangement,” should be worded more clearly to indicate the precise nature of the arrangement that will not be allowed. At the meeting, the Board’s attorney indicated it would provide that clarification by adding language to the rule to clarify the regulatory intent.

Denise Stanford with the agency addressed the Commission.

**Environmental Management Commission**

15A NCAC 02L .0202 was approved unanimously.

Connie Brower and Evan Kane with the agency addressed the Commission.

**Commission for Public Health**

Prior to the review of the rules from the Commission for Public Health, Commissioner Rippy recused himself and did not participate in any discussion or vote concerning these rules because he operates public swimming pools.

All rules were approved unanimously.

Jim Hayes with the agency addressed the Commission.

**Board of Podiatry Examiners**

All rules were approved unanimously.

Penney DePas with the agency addressed the Commission.

**Real Estate Commission**

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 these rules because he practices before that Commission.

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 these rules because she has an inactive broker's license.

All rules were approved unanimously with the following exceptions:

The Commission objected to Rule 58A .0110 based on ambiguity. It is not clear in (o), page 5 lines 27 and 28, who the rule applies to. Based on discussions at the Commission meeting it appears that the rule would apply to only a NC licensed broker who was not a NC resident and not a broker-in-charge of a NC office. But this may not be clear in all situations.

The Commission objected to Rule .1402 on the basis of lack of statutory authority and ambiguity. In both (a) and (b) there are discretionary actions that the Real Estate Commission may take. In neither case are there any standards set for when the discretionary authority shall or shall not be exercised so therefore it is unclear what those standards are. There is no authority cited to set those standards outside the rule.

Curtis Aldendifer with the agency addressed the Commission.

**Board of Recreational Therapy Licensure**

The Commission objected to Rules .0601 and .0901 on the basis of a failure to adopt them in accordance with the Administrative Procedure Act. The agency failed to make the technical changes as requested by counsel and the Commission cannot approve the rule until the changes are made. The issues leading to the technical change requests are serious enough that when cumulated they render the rules ambiguous.

The Commission objected to Rule .0602 on the basis of ambiguity. It is not clear whether the use of the licensee’s email address, as set out in the first sentence of (a) is mandatory or discretionary on the licensee’s part. The board’s Rule .0603 requires an applicant to “notify the Board within 30 days of a change of name, work or home address.” Rule .0401 concerning application procedures states in (g) that the “Board shall mail any notices to a licensee at the last known address.” Taken together these three rules make it ambiguous whether the use of the email address to mail renewal notices is mandatory or at the discretion of the licensee.

Becky Garrett with the agency addressed the Commission.

**OTHER BUSINESS**

The meeting adjourned at 12:17 p.m.

The next scheduled meeting of the Commission is Thursday, April 18th 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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 Dana Vojtko

Publications Coordinator

Minutes approved by the Rules Review Commission.

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Judge Ralph A. Walker/Chair

