

**RULES REVIEW COMMISSION MEETING
MINUTES
January 17, 2019**

The Rules Review Commission met on Thursday, January 17, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

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

Jeanette Doran, which stated there was no actual or likely conflict of interest.

Garth Dunklin, which stated there was no actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Mr. Dunklin fills the role of a public member on the Commission and he is the current Chair of the Commission. He is an Attorney/Manager with the law firm of Bass, Dunklin, McCullough & Smith, PLLC. He has disclosed that he has been an Adjunct Professor at the University of North Carolina at Charlotte. As such, Mr. Dunklin has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues regarding the University of North Carolina at Charlotte and/or the attorneys and the clients of the law firm come before the Commission for official action.

The Chairman notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: the follow-up matter rules for the Commission for the Blind.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the December 13, 2018 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Board of Elections and Ethics Enforcement

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 - No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion concerning the rules because she has a matter pending before the Board.

Commissioner LiVecchi was not present for the discussion on these Rules.

DHHS/Division of Medical Assistance

10A NCAC 22F .0301 - No action was required by the Commission, as the rewritten rule was approved at the November 15, 2018 meeting, but the changes were determined to be substantial pursuant to G.S. 150B-21.12(c). The agency is required to republish the rule in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

Commissioner LiVecchi was not present for the discussion on these Rules.

Commission for the Blind

10A NCAC 63C .0203, .0204, .0403, and .0601 – The Commission continued its objection to the rules in accordance with G.S. 150B-21.12.

The Commission continued its objection to 10A NCAC 63C .0601, Paragraphs (a)(8) (“business consultation”), and (a)(9) (“consultation to support operations”), because the indicated terms are unclear and ambiguous.

The Commission continued its objection to 10A NCAC 63C .0203, Paragraph (d)(6), because it effectively incorporates the ambiguous terms in Rule .0601 that are identified above.

The Commission waived 26 NCAC 05 .0103(a) and allowed Dixon Snukals to submit documents after the deadline.

Dixon Snukals, representing the Elected Committee of Blind Vendors, addressed the Commission.

Cynthia Speight, the Director with the Division of Services for the Blind, addressed the Commission.

Environmental Management Commission

15A NCAC 13B .0830, .0831, .0832, .0833, .0834, .0835, .0836, .0837, .0838, .0839, .0840, .0841, .0842, .0843, .0844, .0845, and .0846 – All rewritten rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

LOG OF FILINGS (PERMANENT RULES)*Pre-Reviewed Rules***Board of Agriculture 02 NCAC 09B**

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Soil and Water Conservation Commission

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Soil and Water Conservation Commission to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Board of Barber Examiners

21 NCAC 06N .0101 was unanimously approved.

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

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Board of Dental Examiners

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Substance Abuse Professional Practice Board

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 68 .0203 based upon lack of statutory authority and failure to comply with the APA. Specifically, in Subparagraph (a)(4) of this Rule, the Board proposed to charge a \$200 registration fee. However, G.S. 90-113.38(b1) limits the registration fee to \$150. The Commission found that the Board does not have authority to exceed the amount set by statute. In addition, when the Board noticed this Rule in the October 15, 2018 Register, it proposed that the fee be \$150. The agency raised the amount of the registration fee by \$50 after publication. The Commission found that this change after publication constituted a substantial change as defined in G.S. 150B-21.2(g), and therefore, the agency failed to comply with the APA.

The Commission objected to 21 NCAC 68 .0205, .0211, .0212, and .0305 based upon lack of statutory authority to charge a higher registration fee than allowed by statute.

The Commission objected to 21 NCAC 68 .0208 for lack of statutory authority. Specifically, the Commission objected to Subparagraphs (c)(2) and (c)(3) of the Rule, in which the Board set the ratio of supervision at one hour of supervision for every 80 to 160 hours of practice, with the amount of supervision decreasing the longer the individual has been practicing. G.S. 90-113.37A(b) sets the ratio of supervision to work at 40 hours. The Commission found that the Board does not have the authority to alter the statutory requirement.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Non Pre-Reviewed Rules

Board of Agriculture 02 NCAC 37

02 NCAC 37 .0203 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Commissioner of Agriculture

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Board of Agriculture 02 NCAC 60B

02 NCAC 60B .0701 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Department of Insurance

11 NCAC 20 .0101 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Alcoholic Beverage Control Commission

14B NCAC 15A .0102 was unanimously approved.

Marine Fisheries Commission

All rules were unanimously approved.

Coastal Resources Commission

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 15A NCAC 07H .0209, .0308, .1704, and .1705 in accordance with G.S. 150B-21.10. They did so in response to a request from the Coastal Resources Commission to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Department of Transportation

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 19A NCAC 02D .0408, 02E .0412, .0418, .0419, .0420, .0421, and .1006 in accordance with G.S. 150B-21.10. They did so in response to a request from the Department of Transportation to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Board of Examiners of Electrical Contractors

21 NCAC 18B .0201 was unanimously approved.

LOG OF FILINGS (TEMPORARY RULES)**Department of Administration**

All rules were unanimously approved.

EXISTING RULES REVIEW**Board of Agriculture**

02 NCAC 46 - The Commission unanimously approved the report as submitted by the agency.

02 NCAC 48A - The Commission unanimously approved the report as submitted by the agency.

02 NCAC 48B - The Commission unanimously approved the report as submitted by the agency.

02 NCAC 52J - The Commission unanimously approved the report as submitted by the agency.

02 NCAC 61- The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

11 NCAC 01- The Commission deferred review pursuant to Rule 26 NCAC 05 .0210 because it had a question regarding an apparent discrepancy in the report.

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

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

Marine Fisheries Commission

15A NCAC 18A .0100, .0300-.0900, .3400 - The Commission unanimously approved the report as submitted by the agency.

Medical Care Commission

10A NCAC 13K - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed readoption date from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion concerning the proposed readoptions because his law firm may have conflicts.

Victims Compensation Commission

14B NCAC 09 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than May 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Coastal Resources Commission

15A NCAC 07 H, I, J, K, L, M - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than July 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

2019 STATE MEDICAL FACILITIES PLAN

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2019 Plan.

Prior to the review of the 2019 State Medical Facilities Plan, Commissioner Poley recused himself and did not participate in any discussion concerning the 2019 State Medical Facilities Plan because his law firm may have conflicts.

Commissioner Doran was not present for the discussion or vote on the 2019 State Medical Facilities Plan.

COMMISSION BUSINESS

The Chair gave an update on the consent order in the matter of DHHS/CPH v. RRC.

The Commission amended Rule 26 NCAC 05 .0211 to reflect a change in the periodic review schedule.

The Commission reviewed and approved the 2019 Rules Review Commission meeting dates.

The meeting adjourned at 10:35 a.m.

The next regularly scheduled meeting of the Commission is Thursday, February 21, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

January 17, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
CATHERINE BLUM	DEQ-DIVISION OF MARINE FISHERIES
Hannah Jennigan	NCDOT
Cynthia Speight	WSB
Elaine Kniv	DHHS
Jennifer Everett	DEQ
Dennis Seavers	BBE
Tien Cheng	NCDA&CS
Kellie Wade	NCDOT
JOHN F. MADDREY	DEPT. OF ADMINISTRATION
Nadine Pfeiffer	NC DHHS-DH SR
Charles Case	McGuire Woods for ECBU
Sean Brogan	NC FOREST SERVICE
Shannon Gerger	NC Dept of Admin
Jessica Montie	NC DEQ
Anita Mac Mullan	NCDA + CS
Kathie Trotter	NCDSB
Christy Goebel	NC DEQ
William Wilton	NCDOS
BORBY WHITE	NC DENTAL BOARD
Dan Brack	for NC Dental Board
Dixon Smukals	McGuire Woods LLP

January 17, 2019

Rules Review Commission
Meeting
Please Print Legibly

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STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Medical Care Commission
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 13K

Dear Ms. Pfeiffer:

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 January 17, 2019 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 November 30, 2021.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 18, 2018
APO Review: December 22, 2018**

**Medical Care Commission
Total: 18**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 13K .0102</u>	Necessary with substantive public interest
<u>10A NCAC 13K .0401</u>	Necessary with substantive public interest
<u>10A NCAC 13K .0604</u>	Necessary with substantive public interest
<u>10A NCAC 13K .0701</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1104</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1109</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1113</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1114</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1115</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1116</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1201</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1204</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1205</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1206</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1207</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1208</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1211</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1212</u>	Necessary with substantive public interest



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Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Will Polk, Rulemaking Coordinator
Victims Compensation Commission
4201 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **14B NCAC 09**

Dear Mr. Polk:

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 January 17, 2019 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, 2020.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
November 16, 2017
APO Review: January 09, 2018
Victims Compensation Commission
Total: 5**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>14B NCAC 09 .0301</u>	Necessary with substantive public interest
<u>14B NCAC 09 .0302</u>	Necessary with substantive public interest
<u>14B NCAC 09 .0303</u>	Necessary with substantive public interest
<u>14B NCAC 09 .0304</u>	Necessary with substantive public interest
<u>14B NCAC 09 .0305</u>	Necessary with substantive public interest



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Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Jennifer Everett
Coastal Resources Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 07 H, I, J, K, L, and M**

Dear Ms. Everett:

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 January 17, 2018 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 July 31, 2020.

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

Sincerely,

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Amber May
Commission Counsel

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919/431-3000
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fax: 919/431-3100

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Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 25, 2018
APO Review: March 06, 2018
Coastal Resources Commission
Total: 226**

RRC Determination: Necessary with substantive public interest

Rule	Determination
15A <u>NCAC 07H .0104</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0105</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0106</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0201</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0203</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0205</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0206</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0207</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0208</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0209</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0301</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0302</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0303</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0304</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0305</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0306</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0308</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0309</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0310</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0311</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0312</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0401</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0404</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0405</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0406</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0501</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0502</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0503</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0504</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0505</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0506</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0507</u>	Necessary with substantive public interest
15A <u>NCAC 07H .0508</u>	Necessary with substantive public interest

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15A	NCAC	07M	.0601	Necessary with substantive public interest
15A	NCAC	07M	.0602	Necessary with substantive public interest
15A	NCAC	07M	.0603	Necessary with substantive public interest
15A	NCAC	07M	.0701	Necessary with substantive public interest
15A	NCAC	07M	.0702	Necessary with substantive public interest
15A	NCAC	07M	.0703	Necessary with substantive public interest
15A	NCAC	07M	.0704	Necessary with substantive public interest
15A	NCAC	07M	.0705	Necessary with substantive public interest
15A	NCAC	07M	.0801	Necessary with substantive public interest
15A	NCAC	07M	.0802	Necessary with substantive public interest
15A	NCAC	07M	.0902	Necessary with substantive public interest
15A	NCAC	07M	.1001	Necessary with substantive public interest
15A	NCAC	07M	.1002	Necessary with substantive public interest
15A	NCAC	07M	.1101	Necessary with substantive public interest
15A	NCAC	07M	.1102	Necessary with substantive public interest
15A	NCAC	07M	.1201	Necessary with substantive public interest
15A	NCAC	07M	.1202	Necessary with substantive public interest