

RULES REVIEW COMMISSION MEETING
MINUTES
June 15, 2017

The Rules Review Commission met on Thursday, June 15, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Stephanie Simpson.

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

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 May 18, 2017 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27H .0207 – The rewritten rule was unanimously approved.

10A NCAC 27H .0202, .0203, .0204, .0205, and .0206 – The RRC reviewed the rewritten rules submitted by the Commission for MH/DD/SAS in response to the March 16, 2017 objections and continued their objections to these rules in accordance with G.S. 150B-21.9.

The RRC found that the Commission for MH/DD/SAS lacked the statutory authority to require that forensic evaluators be employed by an LME-MCO and objected to any such reference contained within Rules 10A NCAC 27H .0202 through .0206.

The RRC objected to 10A NCAC 27H .0203, finding that the Commission for MH/DD/SAS lacked the statutory authority to require LME-MCOs to submit and verify information required by this Rule, nor delegate this responsibility to the LME-MCOs. Further, the RRC found that it was unclear how the LME-MCO will determine whether the evaluator has expertise as set forth in Paragraph (b).

The RRC objected to 10A NCAC 27H .0204, specifically Subparagraph (a)(3), finding that it was unclear because it does not state what is meant by "required by law."

The RRC objected to 10A NCAC 27H .0205, finding that the Commission for MH/DD/SAS lacked the statutory authority to promulgate rules regarding LME-MCO oversight of forensic evaluators. Further, the Commission found that it was unclear how the expertise of an evaluator is to be conveyed to the LME-MCO, as Rule .0205 indicates that it will be self-reporting by the evaluator, while .0203 indicates that the LME-MCO is required to determine the expertise of the evaluator. The RRC found that as written, the Rules were unclear whether these provisions conflict with each other or whether they are different processes.

The RRC found that while the Commission for MH/DD/SAS has shifted the actual termination of the certification to the Division in the rewritten version of Rule .0206, much of the termination responsibilities remained with the LME-MCO. As such, the RRC objected to .0206, finding that the Commission for MH/DD/SAS lacked the authority to delegate the responsibilities related to the termination of certifications to LME-MCOs. Further, the RRC found that it was unclear as to how the

LME-MCO will know whether an individual is no longer a “licensed clinician” and whether a forensic evaluator has completed the required training.

William Walton, with the Attorney General’s Office and representing the agency, addressed the Commission.

Denise Baker, the agency rulemaking coordinator, addressed the Commission.

Department of Insurance

11 NCAC 05A .0501, .0505, .0508, and .0511 - The agency is addressing the objections from the January meeting. No action was required by the Commission.

Loretta Peace-Bunch, the agency rulemaking coordinator, addressed the Commission.

Manufactured Housing Board

11 NCAC 08 .0904 was unanimously approved.

Commission for Public Health

15A NCAC 18A .1801, .1802, .1803, .1804, .1805, .1806, .1807, .1808, .1809, .1810, .1811, .1812, .1813, .1814, .1815, .1817, .1818, .1821, .1822, .1823, .1824, .1825, .1826, .1827, .1828, .1829, .1830, .1831, .1832, .1833, .1834, .2201, .2202, .2203, .2204, .2205, .2206, .2207, .2208, .2209, .2210, .2211, .2212, .2213, .2214, .2215, .2216, .2217, .2218, .2219, .2220, .2221, .3001, .3002, .3003, .3004, .3005, .3006, .3007, .3008, .3009, .3010, .3011, .3012, .3013, .3014, .3015, and .3016 – At its May 18, 2017 meeting, the Commission objected to these rules in accordance with G.S. 150B-21.10.

The agency responded in accordance with the provisions of G.S. 150B-21.12 on May 22, 2017, and requested that the rules be returned. Pursuant to G.S. 150B-21.12(d), the above-referenced rules were returned upon the written request of the agency. No further action will be taken by the Commission on these Rules.

Locksmith Licensing Board

21 NCAC 29 .0402 and .0601 - The agency is addressing the objections from the April meeting. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Medical Care Commission

10A NCAC 13D .2111 was unanimously approved.

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

Department of Health and Human Services

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Commissioner of Insurance

11 NCAC 06A .0809 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Environmental Management Commission

15A NCAC 02B .0308 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Coastal Resources Commission

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Department of the Secretary of State

18 NCAC 12 .0214 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Department of Transportation

19A NCAC 02D .0818 was unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rule.

Medical Board

All rules were unanimously approved.

Commissioner Poley was not present during the discussion or vote concerning the rules.

Real Estate Commission

1st Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rule.

21 NCAC 58A .1703 was unanimously approved.

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

Prior to the review of the rule from the Real Estate Commission, Chairman Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the Commission.

Commissioner Poley was not present during the discussion or vote concerning the rule.

EXISTING RULES REVIEW**Alcoholic Beverage Control Commission**

14B NCAC 15C - The Commission unanimously approved the report as submitted by the agency.

Department of Environmental Quality

15A NCAC 07O – The Commission unanimously approved the report as submitted by the agency.

Department of Revenue

17 NCAC 05 - The Commission unanimously approved the report as submitted by the agency.

Board of Landscape Architects

21 NCAC 26 - The Commission unanimously approved the report as submitted by the agency.

Board of Funeral Service

21 NCAC 34 - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02R - As reflected in the attached letter, the Commission voted to schedule readoption of these rules no later than September 30, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Auctioneer Licensing Board

21 NCAC 04 - As reflected in the attached letter, the Commission voted to schedule readoption of these rules no later than February 28, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Marriage & Family Therapy Licensure Board

21 NCAC 31 - As reflected in the attached letter, the Commission voted to schedule readoption of these rules no later than May 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Social Services Commission

10A NCAC 70D - Pursuant to 26 NCAC 05. 0204, the agency requested a waiver of 26 NCAC 05 .0211 for the report for 10A NCAC 70D. The request was subsequently withdrawn by the agency's chairman at the meeting.

10A NCAC 70M - Pursuant to 26 NCAC 05. 0204, the agency requested a waiver of 26 NCAC 05 .0211 for the report for 10A NCAC 70M.

The waiver request for 10A NCAC 70M was approved, with Commissioners Doran and Hyde voting against. 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 December 2017 meeting.

Michael A. Becketts, with the Department of Health and Human Services, addressed the Commission.

Wayne E. Black, with the agency, addressed the Commission.

Nancy Dunn, with the Attorney General's Office and representing the agency, addressed the Commission.

Drew Pledger, the Chairman of the Social Services Commission, addressed the Commission.

Department of the Secretary of State

18 NCAC 02, 08, 11, 12 - Pursuant to 26 NCAC 05 .0205, the agency requested a waiver of 26 NCAC 05 .0211 for the reports for 18 NCAC 02, 08, 11, and 12.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the reports, and amended 26 NCAC 05 .0211. The Commission will review the agency's reports at its July 2017 meeting.

Commissioner Poley was not present during the discussion or vote concerning the request.

COMMISSION BUSINESS

The Chairman gave an update of Senate Bill 16/ Business & Agency Reg. Reform Act of 2017.

The Chairman discussed the moving of pre-reviewed permanent rules to the beginning of the Permanent Rules portion of the Agenda starting in July.

Staff gave an overview of the Readoption Process and the Chairman led a discussion on the topic with the Commission. The Commission agreed to send a letter to the Joint Legislative Administrative Procedure Oversight Committee to clarify what is the intended outcome when an agency does not readopt rules by the RRC deadline.

Ann Wall, from the Secretary of State, addressed the Commission.

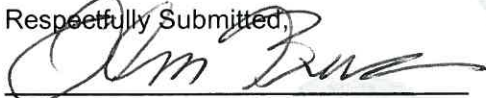
Commissioner Poley was not present during the Commission Business portion of the meeting. Commissioner Bryan left during the Commission Business portion of the meeting.

The meeting adjourned at 12:35 p.m.

The next regularly scheduled meeting of the Commission is Thursday, July 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

June 15, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Drew Pledger	Social Services Commission
JOE SARDLER	NC DOI - ^{MANUFACTURED} Housing Board
Loretta Burch	NC DOI
Michael A Beckett	NC DHHS
William Walton	NC DOS
Spence Baker	NC DMH / DHHS
Karin Kelle	NC DHHS - PSS
Wayne E. Beard	NC DHHS - PSS
Marta T. Hester	NC DHHS - DMH / SAS
Nadine Pfeiffer	NC DHHS - DHSR
Jennifer Everett	DEQ
Carlotta Dixon	PSS
Wanda Long	NCMB
Felix Vander	DOT
Erin Bennett	DOJ
Will Forrestal	DOJ
Regina Cuccinillo	DOJ
Gail Carrick	DOJ
Brian Puckett	DOR
Ann Wall	SOS
Catherine Lee	NCBE

June 15, 2017

Rules Review Commission
Meeting
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STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
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Raleigh, NC 27609-6285

June 15, 2017

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management 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 02R**

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 June 15, 2017 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 September 30, 2018.

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

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
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fax: 919/431-3100

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**RRC DETERMINATION
PERIODIC RULE REVIEW
April 01, 2015 through November 30, 2015
Environmental Management Commission
Total: 10**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>15A NCAC 02R .0101</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0102</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0201</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0202</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0203</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0301</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0302</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0401</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0402</u>	Necessary with substantive public interest	June 20, 2015
<u>15A NCAC 02R .0403</u>	Necessary with substantive public interest	June 20, 2015



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June 15, 2017

Charles Diehl, Rulemaking Coordinator
Auctioneer Licensing Board
108 Ber Creek Drive
Fuquay-Varina, North Carolina 27526

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 04

Dear Mr. Diehl:

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 June 15, 2017 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 February 28, 2019.

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

Sincerely,

A handwritten signature in cursive script, reading "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

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

Rules Division
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**RRC DETERMINATION
PERIODIC RULE REVIEW
March 16, 2017
APO Review: May 20, 2017
Auctioneer Licensing Board
Total: 47**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>21 NCAC 04B .0101</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0102</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0103</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0104</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0201</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0202</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0301</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0302</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0303</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0401</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0402</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0403</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0404</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0405</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0501</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0502</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0503</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0504</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0505</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0506</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0601</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0602</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0603</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0604</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0605</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0606</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0607</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0701</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0801</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0802</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0803</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0804</u>	Necessary with substantive public interest
<u>21 NCAC 04B .0805</u>	Necessary with substantive public interest

<u>21</u>	<u>NCAC 04B .0806</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0807</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0808</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0809</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0810</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0811</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0812</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0813</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0814</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0815</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0816</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0817</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0818</u>	Necessary with substantive public interest
<u>21</u>	<u>NCAC 04B .0819</u>	Necessary with substantive public interest



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June 15, 2017

Wanda Nicholson, Rulemaking Coordinator
Marriage & Family Therapy Licensure Board
201 Shannon Oaks Circle, Suite 200
Cary, North Carolina 27511

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 31**

Dear Ms. Nicholson:

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 June 15, 2017 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, 2018.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Abigail M. Hammond", is written over a light blue horizontal line.

Abigail M. Hammond
Commission Counsel

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919/431-3000
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**RRC DETERMINATION
PERIODIC RULE REVIEW
March 16, 2017
APO Review: May 20, 2017**

**Marriage and Family Therapy Licensure Board
Total: 19**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>21 NCAC 31 .0201</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0202</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0203</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0301</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0401</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0403</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0404</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0501</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0502</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0503</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0504</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0505</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0506</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0609</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0701</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0801</u>	Necessary with substantive public interest
<u>21 NCAC 31 .0802</u>	Necessary with substantive public interest
<u>21 NCAC 31 .1001</u>	Necessary with substantive public interest
<u>21 NCAC 31 .1002</u>	Necessary with substantive public interest