**RULES REVIEW COMMISSION**

**December 15, 2011**

**MINUTES**

The Rules Review Commission met on Thursday, December 15, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Garth Dunklin, George Lucier, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker. Commissioner Venable joined via Skype.

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 10:01 a.m. with Judge 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 17, 2011 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

10A NCAC 09 .0102, .2819, .2820, .2822 – Child Care Commission. No action was taken.

10A NCAC 10 .0203 – Social Services Commission. The agency was unable to complete rules responsive to the Commission’s objections prior to the deadline for submitting rewritten rules.  No action was taken and the rules will be carried over to the next meeting.

21 NCAC 50 .0107, 0301, .0306, .0505 .0516, .1401. Board of Examiners for Plumbing, Heating and Fire Sprinkler Contractors. The Commission approved the rewritten rules submitted by the agency.

The Commission received more than 10 written letters of objection to 21 NCAC 50 .0301, .0306, .0505, .1401. These rules are now subject to legislative review and a delayed effective date.

The agency intends to respond to Commission objections to the following five rules at the January meeting:

2012 Fuel Gas Code – Sections 311.1 and 311.2 – Building Code Council. – No action was taken.

2012 Mechanical Code – Sections 313.1 and 313.2 – Building Code Council.  No action was taken.

2012 Plumbing Code – Sections 315.1 and 315.2 – Building Code Council.  No action was taken.

2009 Residential Code – Sections 313.1.1 and 313.1.2 – Building Code Council.  No action was taken.

2012 Residential Code – Sections 311.1 and 311.2 – Building Code Council.  No action was taken.

**LOG OF FILINGS**

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

**HHS – Health Service Regulation, Division of**

The agency has withdrawn all of the rules.

**Mental Health, Commission for**

10A NCAC 26E .0603 was approved unanimously.

**Wildlife Resources Commission**

Norman Young representing the Wildlife Resources Commission addressed the Commission.

All rules were approved unanimously with the following exceptions:

15A NCAC 10B .0223 – The Commission objected to the above-captioned rule based on ambiguity in accordance with G.S. 150B-21.10. This Rule appears to conflict with 15A NCAC 10B .0204 regulating the taking of wild boar. It appears that both feral swine and wild boar are defined as "free ranging mammals of the species *Sus rofa*." It is not clear how to determine when each rule applies.

Commissioner Simpson was not present during the vote.

**Cosmetic Art Examiners, Board of**

Lynda Elliot from the board addressed the Commission.

All rules were approved unanimously with the following exceptions:

21 NCAC 14T .0704 and .0801 have been withdrawn by the agency.

21 NCAC 14T .0614 - The Commission objected to this Rule based on ambiguity. In both items (5) and (6) of this rule there are some general standards that cosmetic arts schools and students must follow. The first concerns performing work services on clients in (5) and the second concerns student conduct in general in (6). Both rules provide that violations of these rules “may result” in some sort of discipline against either the school or the student.  The standards to be used in deciding the discipline are unclear since they are not set out in the rule.

21 NCAC 14T .0701 - The Commission objected to this Rule based on ambiguity. The rule is unclear as to the teacher-student ratios required under the rule.  In (j) the rule requires “one teacher for every 25 enrolled students” in a cosmetic arts school.  However the rule in (k) states that the teacher student ratio “may exceed 1:25” for theory or demonstration classes. It is unclear whether the rule in (j) would still require that ratio to be met if the rule in (k) resulted in a need for less than one teacher to every 25 enrolled students.

**Medical Board**

Christina Apperson and Marcus Jimison from the Board addressed the Commission.

All rules were approved unanimously with the following exceptions:

21 NCAC 32C .0102 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In Item (1), it is not clear what ethical customs have been defined by the North Carolina Medical Board. There is no authority cited to do so outside of rulemaking.

21 NCAC 32C .0105 - The Commission objected to this Rule based on lack of statutory authority and lack necessity. There is no authority cited for the Board to adopt Items (1), (3) and (5) of this Rule. Items (6) and (7) basically just repeat portions of G.S. 55B-6, 55B-7, 55B-8 and 55B-14 and thus are not necessary to be included in the rules.

21 NCAC 32C .0106 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the agency to adopt this Rule.

21 NCAC 32C .0109 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the agency to adopt this Rule.

**TEMPORARY RULES**

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

**HHS – Health Service Regulation, Division of**

All rules were approved unanimously.

**Environmental Management Commission**

15A NCAC 02D .0544 was approved unanimously.

**Wildlife Resources Commission**

All rules were approved unanimously.

**Administrative Hearings, Office of**

Commissioner Walker reviewed the rules from the Office of Administrative Hearings. He did not participate in any discussion or vote concerning these rules.

All rules were approved unanimously.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

The meeting adjourned at 11:27 p.m.

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

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

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Date

