**RULES REVIEW COMMISSION**

**April 18, 2013**

**MINUTES**

The Rules Review Commission met on Thursday, April 18, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Margaret Currin, Jeanette Doran, Garth Dunklin, Pete Osborne, Bob Rippy and Commissioner Addison Bell 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 10:14 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 March 21, 2013. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

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

11 NCAC 08 .1116 – Home Inspector Licensure Board – The Commission unanimously approved the re-written rule.

21 NCAC 22F .0120 – Hearing Aid Dealers and Fitters Board – The Board responded to the Commission’s objection by proposing to repeal 21 NCAC 22F .0120 and adopting nine new rules to fully address the issues raised by the Commission’s objection. Pursuant to G.S. 150B-21.12(c), the Commission found that the submission was responsive to the Commission’s objection. The Commission also found that the changes were substantial, creating an effect that could not have reasonably been foreseen from the text of Rule 21 NCAC 22F .0120. The Commission authorized the proposed changes to be published pursuant to G.S. 150B-21.1(a3) and will review the rules again for approval after publication.

Catherine Jorgensen addressed the Commission.

21 NCAC 58A .0110, .1402 – Real Estate Commission – The Commission unanimously approved the re-written rules.

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 is a practicing attorney before the Commission.

21 NCAC 65 .0601, .0602 – Board of Recreational Therapy Licensure - The Commission unanimously approved the re-written rules. Rule .0901 was withdrawn by the agency.

**LOG OF FILINGS**

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

**Board of Agriculture**

All rules were unanimously approved.

**Department of Commerce – Division of Employment Security**

All rules were approved unanimously with the following exceptions:

The Commission objected to Rule 04 NCAC 24E .0102 based on ambiguity and lack of statutory authority. Specifically, it is not clear within the Rule what the standards will be for a “reasonable” amount of effort to find the records or to begin the search for those records. It is unclear which third parties will routinely receive the information in Paragraph (g). Further, the rule allows third parties to request the confidential records of applicants and recipients of unemployment compensation if the third party includes a statement that the applicant or employer has waived confidentiality. 20 CFR 603.5 provides that the State may release confidential information to third parties when there is a signed release by the party that includes information to ensure informed consent. There is no such requirement for a signed release or informed consent in this Rule.

The Commission objected to Rule 04 NCAC 24E .0104 based on ambiguity. It is unclear in Paragraph (b) what standards will be used to “assure to the satisfaction of the individual retrieving the information” that payment will be made. It is also unclear what constitutes a “substantial search,” which triggers this payment.

The agency requested that the Commission waive its rules and review the rewritten rule at the meeting. Commission moved to deny the request. The motion was seconded and unanimously approved.

Thelma Hill, Deputy Chief Counsel addressed the Commission.

**Office of Information Technology Services**

The Commission extended the period of review on all the rules. They did so in order to give the agency additional time to understand staff’s comments concerning the rules, make technical changes, make any other changes the agency wished to satisfy staff’s concerns, and to prepare any other response to staff’s comments.

Richard Bradford, an attorney from the Department of Justice representing the agency, addressed the Commission. He stated that the agency was in concurrence with the recommendation to extend the period of review.

**Child Care Commission**

All rules were unanimously approved.

**Environmental Management Commission**

All rules were unanimously approved.

Jolle Burleson addressed the Commission.

**Marine Fisheries Commission**

All rules were unanimously approved.

Catherine Blum addressed the Commission.

**Coastal Resources Commission**

All rules were unanimously approved.

Commissioner Dunklin was not present during the discussion and did not vote. He returned prior to the discussion of and vote on the Wildlife Resource Commission rules.

**Wildlife Resources Commission**

All rules were unanimously approved.

**Board of Physical Therapy Examiners**

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 48A .0106 based on ambiguity and lack of statutory authority. G.S. 90-640 requires that a licensee engaged in health care wear a name badge displaying the licensee’s full name and level of licensure. In Paragraph (b) of the Rule, it unclear who will determine whether the first name only and level of licensure is necessary to ensure the licensee’s safety and in what instances that may occur. Technically speaking, the only rulemaking authority conferred by the cited statute to regulating bodies is to create these exemptions. Here, the Board did not create the exemptions, but instead recited the statutory language.

In addition, Paragraph (c) states that a name badge is not required to be worn in the licensee’s office if his or her name is prominently displayed in the office. G.S. 90-640(c) includes several options that can be used to allow a licensee not to wear an identification badge in the licensee’s office. It is unclear if the Board intended a licensee to wear a badge stating only licensure status or if it intended to require no identification at all. All statutory options require that an individual be able to determine the licensee’s name and licensure status, and the Board does not have authority to amend the statutory requirement in the rule.

Ben Massey addressed the Commission.

**RRC CERTIFICATION**

**State Board of Education**

These rules were deferred to the May 16th meeting at the agency's request.

The meeting adjourned at 12:12 p.m.

The next scheduled meeting of the Commission is Thursday, May 16th 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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 Julie Edwards

Editorial Assistant

Minutes approved by the Rules Review Commission.

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Margaret Currin/Vice-Chair



