

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## ADMINISTRATIVE RULES COMMITTEE

Thursday, June 9, 2011  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Kim Koppelman, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Kim Koppelman, Bill Amerman, Randy Boehning, Bill Devlin, Robert Frantsvog, Joe Kroeber, Mike Schatz, Dwight Wrangham; Senators John M. Andrist, Tom Fischer, Layton Freborg, Jerry Klein, Margaret Sitte

**Members absent:** Representatives Tracy Boe, Duane DeKrey, David Monson, Blair Thoreson; Senator Joan Heckaman

**Others present:** See [Appendix A](#)

**It was moved by Senator Klein, seconded by Senator Fischer, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

The chairman called on committee counsel for review of the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

The chairman welcomed committee members and said the Administrative Rules Committee serves an important role. He said administrative rules properly adopted have the force of law. He said the Legislative Assembly has delegated a portion of its constitutional authority to administrative agencies to adopt rules that have the force of law. He said this makes it important to monitor how that authority is being used. He said he does not view the committee and agency relationship as adversarial. He said he thinks the function of the committee is to work with agencies to develop the best possible rules for public benefit.

### ADMINISTRATIVE RULES COMMITTEE BACKGROUND MEMORANDUM

Chairman Koppelman called on committee counsel for a presentation of a memorandum entitled [Administrative Rules Review - Background Memorandum](#).

### STATE DEPARTMENT OF HEALTH

Chairman Koppelman called on Mr. Larry Thelen, Program Administrator, Drinking Water Program, State Department of Health, for testimony ([Appendix B](#)) relating to rules adopted by the department.

### BOARD OF OCCUPATIONAL THERAPY PRACTICE

Chairman Koppelman called on Ms. Shirley Kulla, Chair, Board of Occupational Therapy Practice. Ms. Kulla said the rules changes are not related to statutory or federal law changes. She said the purpose of the rules changes is to update the code of ethics of the state board by adopting the most recent version of the code of ethics of the American Occupational Therapy Association, adopted in 2010.

In response to a question from Representative Boehning, Ms. Kulla said the new code of ethics replaces three previous sets of codes with a single comprehensive code of ethics and ethics standards.

### STATE BOARD OF PHARMACY

Chairman Koppelman called on Mr. Howard Anderson, Executive Director, State Board of Pharmacy, for testimony ([Appendix C](#)) relating to rules adopted by the board.

Mr. Anderson said the board was considering rules governing sterile and nonsterile products and included those rules in the initial notice of rulemaking. He said the board determined not to adopt those rules at this time because additional consideration is required.

Committee counsel said North Dakota Administrative Code Section 61-02-01-17 requires pharmacy employees to wear a badge of identification. He asked if the pharmacy owner would be considered an employee for purposes of the identification requirement. Mr. Anderson said the board would consider the owner to be an employee required to wear an identification badge under this rule.

Senator Andrist asked if a person picking up a prescription for another person would be noted in the pharmacy records. Mr. Anderson said pharmacies did not support a requirement for recording individuals picking up prescriptions. He said the rule requires the individual picking up a prescription to provide identification, which should serve as a deterrent to improperly picking up prescriptions. He said many pharmacies will keep a record of people they do not know who are picking up prescriptions for others.

### RACING COMMISSION

Chairman Koppelman called on Mr. Winston Satran, Director, Racing Commission, for testimony ([Appendix D](#)) relating to rules adopted by the commission.

Senator Sitte asked if the new wagers allowed by the rules would result in an expansion of gambling. Mr. Satran said most states that prosper at horse racing have racinos. He said he does not believe North Dakota is ready for that. He said the new types of wagers allowed in the rules appear to be options used in other states to increase viability of the racing industry. He said it is important to recognize that the horse racing track in North Dakota will begin to repay tax increment financing indebtedness and an increase in wagering is likely, but the increase is intended to address the debt issue.

Senator Sitte asked why the rules remove the word simulcast in some places. Mr. Satran said account wagering does not involve simulcast and changes have been made as appropriate.

Representative Koppelman asked if the commission has unlimited authority to create wagering options. Mr. Satran said we have argued against that. He said use of the administrative rulemaking process brings these issues to a public forum for discussion.

### DEPARTMENT OF HUMAN SERVICES

Chairman Koppelman called on Mr. Tim Austin, Legal Counsel, Department of Human Services, for

testimony ([Appendix E](#)) relating to child support guideline rules.

Mr. Austin covered the portions of the report of the Department of Human Services relating to the procedural aspects of the child support guidelines rulemaking. He said Mr. Jim Fleming, Director, Child Support Enforcement, Department of Human Services, would cover the substance of the rules provisions.

Mr. Fleming reviewed the substantive changes to the rules. He said attendance at public hearings on child support guidelines has declined over the years. He said the department hopes that is an indication that rules are now better at addressing issues that have been contentious.

Representative Koppelman asked if it is correct to assume that there is still no link between making support payments and the right to visitation. Mr. Fleming said that is correct.

**It was moved by Senator Klein, seconded by Senator Fischer, and carried on a voice vote that the meeting be adjourned.** No further business appearing, Chairman Koppelman adjourned the meeting at 12:00 noon.

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John Walstad  
Code Revisor

ATTACH:5