

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Thursday, June 14, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Kim Koppelman, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Kim Koppelman, Bill Amerman, Tracy Boe, Randy Boehning, Duane DeKrey, Robert Frantsvog, Joe Kroeber, David Monson, Mike Schatz, Dwight Wrangham; Senators John M. Andrist, Layton Freborg, Joan Heckaman, Jerry Klein, Margaret Sitte

Members absent: Representatives Bill Devlin, Blair Thoreson

Others present: See [Appendix A](#)

It was moved by Senator Klein, seconded by Representative Schatz, and carried on a voice vote that the minutes of the March 14, 2012, meeting be approved as distributed.

NORTH DAKOTA BOARD OF SOCIAL WORK EXAMINERS

Chairman Koppelman called on Ms. Mary Jane Blanchfield, President, and Ms. Nancy Kleingartner, Vice President, North Dakota Board of Social Work Examiners, for testimony ([Appendix B](#)) relating to rules of the board carried over for consideration from the previous committee meeting.

Senator Andrist said he is concerned about barriers to the entry of licensed professionals in North Dakota. He asked if there is anything in the rules to enhance entry of new licensed social workers. Ms. Kleingartner said there are no enhancements for initial licensure in the rules. She said the self-study option for continuing education will make it easier for licensees to meet continuing education requirements. She said the board intends to continue to monitor the appropriateness of requirements for initial licensure.

Representative Schatz asked where in North Dakota face-to-face continuing education sessions are available. Ms. Kleingartner said the board sponsors an annual session in Medora for three days of meetings and continuing education. She said education sessions are also held at locations throughout the state so a licensee would not be required to have an overnight stay to attend training. She said at some locations where a significant number of licensees are employed, a trainer is brought in to provide training to staff.

Representative Frantsvog questioned why changes in North Dakota Administrative Code (NDAC) Section 75.5-02-03-04.1(4) are removed. Ms. Kleingartner said the rules provide a better

definition of clinical experience, which makes it unnecessary to list examples of the kinds of qualifying experience. She said occasionally a listing of examples can omit description of some situations that should be included, and a good general definition is better than a list of examples.

Representative Koppelman asked if rules of the board are based substantially on national standards language. Ms. Kleingartner said the board rules are not based specifically on national standards. She said the board monitors licensing standards in other states and has observed a trend among states along the lines of the rules changes made by the board. She said the board has adopted a large part of the national code of ethics.

Representative Koppelman asked what sanctions are available to the board for disciplinary violations. Ms. Kleingartner said a licensee could be subject to loss of license or suspension, among other options.

Senator Heckaman asked if communications with social workers are confidential in court actions. Ms. Blanchfield said there is a right of confidentiality but if the social worker initiates the court action, they would be allowed to testify. Ms. Kleingartner said there is no confidentiality or privileged communication in some areas of social work.

Representative Schatz asked how many social workers have been disciplined by the board. Ms. Blanchfield said she was not certain of exact numbers, but later in the meeting provided statistical information ([Appendix C](#)) on disciplinary action.

STATE PROCUREMENT OFFICE

Chairman Koppelman called on Ms. Sherry Neas, State Procurement Manager, State Procurement Office, Office of Management and Budget, for presentation ([Appendix D](#)) of a request for an extension of time to adopt rules.

In response to a question from Representative Koppelman, Ms. Neas said the rules have been submitted to the Attorney General's office for review, and an extension to October 1, 2012, would be sufficient.

It was moved by Representative DeKrey, seconded by Representative Kroeber, and carried on a voice vote that the Administrative Rules Committee extend the deadline for submission of the rules of the State Procurement Office to October 1, 2012.

RULE EXCEPTION TO STATUTORY PROVISIONS

Chairman Koppelman called on Committee Counsel for presentation of a memorandum entitled [Administrative Rule Exemption From Statutory Provisions](#). Committee Counsel said a question was raised at the previous committee meeting about a rules provision providing an exemption from a statutory provision. He said under ordinary circumstances an administrative rule may not supersede a statutory provision and, for that reason, an administrative rule cannot create an exemption from a statutory provision. He said in the case of the rule in question, the relevant statutory provision provides that the North Dakota Board of Clinical Laboratory Personnel is to adopt rules to allow practice by an individual supervised by a licensed individual if the supervised individual performs tests and uses methods identified by rules adopted by the board. He said under these circumstances the rule implements rather than supersedes the statutory provision.

HOUSING FINANCE AGENCY

Chairman Koppelman called on Mr. Max Wetz, Housing Finance Agency, for information relating to questions raised at the previous committee meeting. A copy ([Appendix E](#)) of a letter from Mr. Mike Anderson, Executive Director, Housing Finance Agency, was reviewed by Mr. Wetz.

Senator Andrist said the housing incentive fund program has been a godsend in western North Dakota, but the level of administrative costs and fees was not anticipated. He said the agency should look at cutting administrative costs and fast tracking financing approval. Mr. Wetz said the agency intends to take fees only to pay for administrative costs of the program, and some of those costs were addressed when getting the program up and running.

INSURANCE DEPARTMENT

Chairman Koppelman called on Ms. Melissa Hauer, General Counsel, Insurance Department, for testimony ([Appendix F](#)) relating to rules adopted by the Insurance Commissioner. Ms. Hauer said her testimony covers the portion of rules relating to accounting practices and procedures, custodial agreements, use of clearing corporations, and boilers.

Ms. Mary Hoberg, Legal Counsel, Insurance Department, presented testimony ([Appendix G](#)) relating to rules of the Insurance Commissioner governing licensing of administrators and insurance for continuing education.

Mr. Johnny Palsgraaf, Legal Counsel, Insurance Department, presented testimony ([Appendix H](#)) relating to rules of the Insurance Commissioner regarding the surplus lines insurance and North Dakota Life and Health Guaranty Association rules.

In response to a question from Senator Heckaman regarding boiler inspection fees, Mr. Bob Reitz,

Insurance Department, said there have been no boiler inspection fee increases in 10 years. He said the fee change is approximately a 35 percent increase for the owner or user of a boiler subject to inspection.

STATE BOARD OF PSYCHOLOGIST EXAMINERS

Chairman Koppelman called on Dr. Margo Adams Larsen, President, State Board of Psychologist Examiners, for testimony ([Appendix I](#)) relating to rules adopted by the board.

Senator Heckaman inquired about NDAC Section 66-02-01-16 allowing limited practice without a license. Dr. Larsen said the board receives a significant number of online requests, which most commonly relate to inquiries about continuing an existing doctor-patient relationship in North Dakota for a patient that is now present in North Dakota.

Representative Koppelman said legislation was enacted during the 2011 legislative session to require the board to issue a license or registration for an applied behavior analyst who makes application, submits the fee, and is credentialed by a nationally recognized behavior analyst certification board. He said the sponsor of the 2011 legislation expressed disappointment with the rules relating to applied behavior analyst licensing. Dr. Larsen said she was not aware there is dissatisfaction about the rules meeting the requirements of the legislation. She said she would examine the legislation and rules as adopted.

In response to a question from Senator Andrist, Dr. Larsen said an industrial-organizational psychologist practices in a branch of psychiatry focused on delivery of services to organizations or groups of people. She said this practice may involve examination of industrial processes, marketing, or other issues relating to employees, workplaces, and organizations. She said the practice of an applied behavior analyst is focused more on individual behavior.

Senator Heckaman said many occupations involve analysis of individual behavior. She asked how an employer or entity will know if the employer or entity needs a licensed person for behavior analysis. Dr. Larsen said she is not sure how to address the question. She said the board has tried to make information available to the public to understand the role of a licensed behavior analyst.

Senator Andrist said the chairman of the Senate Human Services Committee advised him that she does not believe the rules as adopted fulfill the intent of the 2011 legislation. He said he also has heard comments from others regarding concerns about the content of the rules. He asked if all of the concerned parties have had input in the rulemaking process. Dr. Larsen said the board did not receive several comments until after the comment deadline passed. She said at that point the Special Assistant Attorney General for the board advised the board that the late

comments were outside the board's authority for action.

Senator Andrist asked if Dr. Larsen and the board would welcome an opportunity to sit down with the people who expressed disappointment with the rules. Dr. Larsen said she absolutely would welcome the opportunity.

Representative Koppelman said he has had communication indicating that the kind of internship experience from other states that is acknowledged by the North Dakota board creates a hardship for licensing for North Dakota. Dr. Larsen said she is aware that some internship experience does not meet the requirements of law.

Representative Koppelman said his understanding is that a group was assembled during the legislative session that discussed and agreed on the final contents of the bill that was passed, but the board did not agree with the end result. Dr. Larsen said the board is limited in rulemaking by the terms of the statutory provisions enacted.

Representative Koppelman asked if the Special Assistant Attorney General for the board advised caution on the extent of the rules adopted. Dr. Larsen said it was pointed out that North Dakota Century Code (NDCC) Chapter 43-32 does not allow a fee for verification.

Representative Monson said a motivational speaker appearing in North Dakota may inadvertently engage in the practice of psychiatry. He asked how these individuals would know if they would be subject to the fees. Dr. Larsen said such an individual would not fall within the definition of practice in NDCC Chapter 43-32.

Chairman Koppelman called on Dr. Anne Dilenschneider for comments on the rules adopted by the board. Dr. Dilenschneider said she has encountered confusion among licensed applicants. She said she served an internship in California and then accepted a position in North Dakota as a postdoctoral resident. She said her issue began in July 2011 when her supervisor began to examine the law to see if she qualified for licensing. She said in that inquiry accreditation became an issue, and her internship program became an issue. She said she believes that her internship in California was at a higher standard than required in North Dakota. She said an inquiry was made to the board. She said the board response was that it would take about nine months to receive a decision on the inquiry. She said she believes other states do not have such a lengthy delay on licensing decisions. She said before a person moves to another state, the person knows if licensing will be approved. She said she would suggest that all paperwork be received and approved by the board before the applicant comes to North Dakota. She said this is very difficult because of the lengthy time for the board to make decisions.

Dr. Dilenschneider said there is also confusion about qualifying internships in North Dakota. She said a psychiatry internship may involve a regionally

accredited school doctoral program, an American Psychiatry Association accreditation of a doctoral program, or a program approved by the board by rule. She said she has not been able to determine if any programs have been approved by rule.

Dr. Dilenschneider said she received a decision of the board to decline licensure under her application. She said she is going through the hearing process with the Attorney General's office as a first step to appealing the decision of the board. She said it appears statute and rules provisions are in conflict. She said she is uncertain whether her appeal will be successful, and she may ultimately have to leave the state to practice. She said she is aware of other applicants who have had to leave the state for these reasons. She said her purpose in appearing before this committee is to bring the confusion to the committee's attention in hopes that rules and procedures will be improved so applicants in the future will not be in her position.

Representative Koppelman said if there is a conflict between a statute and a rule, the statute would prevail. He asked if there are additional areas of confusion. Dr. Dilenschneider said there are several issues that are confusing to applicants. She said it is important for applicants to be able to get an answer from the board office on interpretation before relocating to North Dakota. She said an applicant is placed in uncertainty in making important career and personal decisions on locating in North Dakota. She said a 2009 statutory change about regional accreditation has not been implemented by revision of the administrative rules.

Senator Andrist said options for the committee are to hold over consideration of the rules or to reject the rules. He asked if Dr. Dilenschneider has a recommendation. She said she is not in a position to advise the committee on action it should take.

Chairman Koppelman said the option of voiding the pending rules would require the board to restart the whole process. He said this could be a lengthy process before revised rules are in place. He said if the rules are carried over for committee consideration, it could allow time before the next committee meeting for the board and interested parties to review and discuss the content of the rules and whether changes should be made. He said if changes are agreed upon, the Administrative Rules Committee could approve them. Dr. Dilenschneider said she knows applicants have had to leave North Dakota, and it would be interesting to know why that has happened. She said in contemplation of being forced to relocate, she has contacted licensing boards in other states and has been receiving quick responses on her qualifications. She said her experience with boards in other states is much different from her experience with the board in North Dakota.

Representative Koppelman asked Dr. Larsen if there is any form of temporary licensing the board could allow in these kinds of circumstances. Dr. Larsen said the board would have to investigate

that question. She said she is not sure if there is a form of provisional license that could be issued.

Senator Andrist said every agency that licenses occupational and professional individuals should have some form of provisional authority so technicalities do not prevent licensing for qualified individuals.

Representative Kroeber asked if the board is allowed to issue licenses under reciprocity provisions. Dr. Larsen said there is authority for reciprocity, but only if the licensing state has standards as strict as or stricter than North Dakota. She said this is very restrictive because North Dakota generally has stricter standards than other states.

Senator Heckaman asked what the difference is between registration and licensing. Dr. Larsen said registration means the individual must practice under a supervisor.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Koppelman called on Ms. Brenda Oas, Special Education Office, Department of Public Instruction, for testimony ([Appendix J](#)) relating to rules adopted by the Superintendent of Public Instruction.

Ms. Oas said the rules adopted are to comply with recent federal changes to the Individuals With Disabilities Education Act. She said the state was required to adopt rules, but school districts are allowed discretion to use the response to intervention process or to continue use of practices under the Individuals With Disabilities Education Act that have been used for many years.

Senator Sitte asked if a cost-benefit analysis of these changes is possible. Ms. Oas said a formal cost-benefit analysis would be very difficult, but the majority of schools that have adopted this procedure believe it to be cost-effective. She said improvements to student performance have been very encouraging, based on what the department has heard from administrators.

Representative Koppelman said it appears the rules require parent involvement in decisionmaking. Ms. Oas said engaging parents early in the process seems beneficial to all. She said parents like the aspect of charting a child's progress, and parents seem to like the overall approach.

Representative Koppelman asked what happens if a parent disagrees with school recommendations. Ms. Oas said in that circumstance, the best approach is for the parents and the classroom teacher to spend time discussing options for the child.

EDUCATION STANDARDS AND PRACTICES BOARD

Chairman Koppelman called on Dr. Janet Welk, Executive Director, Education Standards and Practices Board, for testimony ([Appendix K](#)) relating to rules adopted by the board. Dr. Welk said at the end of June the board will meet to consider what to do regarding licenses for teachers moving to North

Dakota from a state where they were teaching under a waiver.

Representative Monson said the Legislative Assembly did not want to discriminate against qualified teachers coming to North Dakota. He said he understands the board has not put up higher standards for out-of-state applicants. Dr. Welk said that is correct and that will be part of the board discussion later this month.

Senator Sitte said the rules adopted by the board establish requirements for teachers of theology. She asked what right the state has to set standards for theology teachers. Dr. Welk said the requirement comes from statute, and the standards are not restrictive. She said the requirement for a theology teacher would be a bachelor's degree of any kind and a letter from the school administrator.

Representative Koppelman asked if North Dakota is making it harder for teachers to come here from other states. Dr. Welk said, to the contrary, she attended a recent conference at which North Dakota was described as the only state that has true reciprocity with other states for teacher licensing.

STATE GAMING COMMISSION

Chairman Koppelman called on Mr. James P. Wang, Chairman, State Gaming Commission, for testimony ([Appendix L](#)) relating to rules adopted by the commission.

Senator Klein asked for an explanation of quick shot bingo. Mr. Wang said in quick shot bingo the numbers are all drawn at once and announced rather than being announced as each number is drawn. He said quick shot bingo has existed since 1996. He said the electronic dauber method has existed for some time, and the rules changes are amended to reflect use of both methods.

In response to a question from Senator Sitte, Mr. Keith Lauer, Gaming Division, Attorney General's office, said eligible organizations are allowed to conduct poker on two occasions per year, and each occasion can last up to three days. He said the three-day tournament may consist of players participating in satellite tournaments at several sites to qualify to be in the final day round. He said in the satellite tournament a lower entry fee is allowed than for the final round, which may allow participants to qualify for the final round with a smaller investment.

DEPARTMENT OF HUMAN SERVICES

Chairman Koppelman called on Ms. Julie Leer, Legal Advisory Unit, Department of Human Services, for testimony ([Appendix M](#)) relating to provider integrity rules adopted by the department.

Ms. Leer said the rules relate to medical services providers within the jurisdiction of the Medical Services Division of the department. She said no comments were received on the rules.

TEACHERS' FUND FOR RETIREMENT

Chairman Koppelman called on Ms. Shelly Schumacher, Retirement Program Manager, Teachers' Fund for Retirement, for testimony ([Appendix N](#)) for rules adopted for the program.

OFFICE OF ADMINISTRATIVE HEARINGS

Chairman Koppelman called on Mr. Allen C. Hoberg, Director, Office of Administrative Hearings, for testimony ([Appendix O](#)) relating to rules adopted by the Office of Administrative Hearings.

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Chairman Koppelman called on Mr. Joe Ibach, Chairman, North Dakota Real Estate Appraiser Qualifications and Ethics Board, for testimony ([Appendix P](#)) relating to rules adopted by the board.

Senator Andrist said it appears there is a lack of licensed appraisers in this state. He said particularly in western North Dakota there is a lengthy delay on financing approval for building projects and home mortgages because appraisers cannot keep up with the volume of work. Mr. Ibach said about four years ago there was an adequate number of appraisers in the state. He said significant changes have occurred in the past four years, including an unprecedented oil boom and record low mortgage rates. He said these problems have combined to create much more work, and there has not been an increase in the number of appraisers. He said he is not sure how to solve the problem.

Mr. Ibach said the rules as submitted did not include some of the changes intended. He distributed copies ([Appendix Q](#)) of corrected versions of the rules in question. Ms. Jodie Campbell, Executive Director, North Dakota Real Estate Appraiser Qualifications and Ethics Board, explained the differences from the rules submitted and the corrections requested.

It was moved by Representative Monson, seconded by Representative Boehning, and carried on a voice vote that the changes suggested by the North Dakota Real Estate Appraiser Qualifications and Ethics Board be approved for inclusion in the rules as published.

COMMITTEE DISCUSSION

Chairman Koppelman said it appears from testimony received that newspaper publication cost for administrative rulemaking notices is about \$1,900. He asked Ms. Hauer if she has observed an increase in publication costs for newspapers. Ms. Hauer said she is not certain if there has been an increase. She said cost increases may be attributable to the length of notices. Chairman Koppelman requested Committee Counsel to obtain information on whether newspaper publication costs have increased.

Representative Schatz said information should be obtained on the number of licensed social workers, the number of complaints received by the board, plus the information received on the number of disciplinary actions. Chairman Koppelman requested Committee Counsel to obtain information from the board and send it by e-mail to committee members.

It was moved by Senator Sitte, seconded by Senator Klein, and carried on a roll call vote that the Administrative Rules Committee carry over consideration of rules of the State Board of Psychologist Examiners. Representatives Koppelman, Boehning, Frantsvog, Kroeber, Monson, and Schatz and Senators Andrist, Freborg, Heckaman, Klein, and Sitte voted "aye." No negative votes were cast.

No further business appearing, Chairman Koppelman adjourned the meeting at 3:15 p.m.

John Walstad
Code Revisor

ATTACH:17