

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**ADMINISTRATIVE RULES COMMITTEE**

Wednesday, June 14, 2017  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Kim Koppelman, Scott Louser, Mike Schatz, Mary Schneider, Gary R. Sukut, Nathan Toman, Robin Weisz; Senators Kelly M. Armstrong, Joan Heckaman, Jerry Klein

**Members absent:** Senator Kyle Davison

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

**It was moved by Senator Armstrong, seconded by Representative Boschee, and carried on a voice vote that the minutes of the March 9, 2017, meeting be approved as distributed.**

**STATE BOARD OF DENTAL EXAMINERS**

Chairman Devlin called on Ms. Rita Sommers, Executive Director, State Board of Dental Examiners, for testimony ([Appendix B](#)) regarding rules adopted by the State Board of Dental Examiners.

In response to a question from Representative Koppelman, Ms. Summers said the board has established criteria regarding the elements necessary to qualify as continuing education credits. She said continuing education credits do not need to be preapproved but must meet certain requirements. She said continuing education credits that do not meet the board requirements are likely to be identified as such in an audit.

**STATE DEPARTMENT OF HEALTH**

Chairman Devlin called on Ms. Bridget Weidner, Division of Health Facilities, State Department of Health, for testimony ([Appendix C](#)) regarding rules adopted by State Department of Health.

In response to a question from Representative Koppelman, Ms. Weidner said the outpatient birth services rules do not apply to home births. She said the rules are for those birthing facilities that are either part of an existing hospital or which are in a separate facility that meets the definition of a hospital. She said the new rules, which are included in the hospital licensing rules in the state, do not apply to midwives or other birthing services.

**STATE BOARD OF PHARMACY**

Chairman Devlin called on Mr. Mark Hardy, Executive Director, State Board of Pharmacy, for testimony ([Appendix D](#)) regarding rules adopted by the State Board of Pharmacy.

In response to a question from Representative Koppelman, Mr. Hardy said the word "agent" was recommended by legal counsel as the term to use to identify a person authorized to pick up a prescription for a patient.

In response to a question from Representative Schatz, Mr. Hardy said requiring a pharmacy to offer a pharmacist consultation should not cause any financial harm to a pharmacy.

Chairman Devlin called on Mr. Patrick Ward, Bismarck, for testimony regarding the rules of the State Board of Pharmacy. He said Mr. Dennis McAllister, Senior Director, Pharmacy Regulatory Affairs, Express Scripts, who was unable to attend the meeting, provided written testimony ([Appendix E](#)). He said Express Scripts objects to North Dakota Administrative Code (NDAC) Section 61-04-13-01(5), which requires the pharmacy to attempt to reach the patient for a consultation for a new prescription being dispensed by mail to a patient.

Chairman Devlin called on Mr. John Ward, Bismarck, for testimony ([Appendix F](#)) regarding the rules adopted by the State Board of Pharmacy. He said he is a lobbyist for Express Scripts. He said North Dakota Century Code (NDCC) Section 43-15-31.2, which provides "For those prescriptions delivered outside the confines of the

pharmacy, the explanation must be by telephone or in writing . . .", is in conflict with the required attempt to reach the patient requirement in NDAC Section 61-04-13-01(5).

Senator Armstrong said the requirement in NDAC Section 61-04-13-01(5) affects both in-state and out-of-state pharmacies equally.

In response to a question from Representative Boschee, Mr. J. Ward said a pharmacist is responsible for dispensing the correct quality and type of medication. He said the information provided by Express Scripts with each prescription includes a toll-free number if the patient wishes to directly speak to a pharmacist.

In response to a question from Representative Koppelman, Mr. J. Ward said Express Scripts employs pharmacists licensed in each state the company serves.

In response to a question from Senator Heckaman, Mr. J. Ward said the requirement in NDAC Section 61-04-13-01(5) would require Express Scripts to change its current business model to be in compliance.

Senator Heckaman said this rule does not make an exception for brick and mortar so it is not discriminatory to out-of-state mail order companies like Express Scripts.

In response to a question from Senator Heckaman, Mr. P. Ward said the difference is the disparate impact the rule will have on out-of-state pharmacies. He said the business model of a brick and mortar pharmacy is different from the out-of-state mail order pharmacies. He said Express Scripts is complying with the statutory written information requirements. He said the new rule requires both written information and an "attempt to reach."

In response to a question from Representative Boehning, Mr. P. Ward said a patient typically is able to speak with a pharmacist within minutes of placing the call. He said most people are able to read and understand the written instructions provided with the prescription. He said those patients who still have questions may call the pharmacist at the toll-free number provided.

Representative Boehning said the rule may be a burden for pharmacy benefit managers and out-of-state pharmacies, but it is important to put the patient's needs first. He said the requirement could be met using interns or robocalls.

In response to a question from Senator Armstrong, Mr. Hardy said the rule is not in conflict with the statute. He said the Attorney General approved the rule change. He said although the rule is vague, the vagueness invites creativity. He said robocalls are acceptable.

Senator Armstrong said the term "attempt" is vague. He said it is not clear whether a telephone call, text, or email qualifies as an attempt. He said the rule does not include a requirement for documentation nor does the rule provide who has the burden of proving an attempt to reach the patient was made.

In response to a question from Senator Armstrong, Mr. Hardy said it is a professional standard of practice to document. He said pharmacies are well versed on documenting conversations with patients. He said the rule would improve customer safety. He said the State Board of Pharmacy has received complaints from patients regarding mailed prescriptions from both in-state and out-of-state pharmacies. He said interaction with patients is a positive thing. He said the rates of reaching a patient by phone is low.

In response to a question from Representative Louser, Mr. Hardy said a call does not fill the place of a prescribing physician. He said pharmacists; however, are the final contact with the patient. He said the pharmacist is especially important for addressing possible drug interactions.

In response to a question from Representative Koppelman, Mr. Hardy said the intent of the rule was to require the pharmacy to reach out to the patient.

Senator Armstrong said the committee needs more detail as to what the process is and whose burden it is to prove the attempt to reach was not made.

Representative Koppelman said he would like the parties to work together to find common ground. He said the State Board of Pharmacy also could propose an amendment to the rule.

**It was moved by Senator Armstrong, seconded by Representative Koppelman, and carried on a roll call vote to hold over for consideration at the next meeting NDAC Section 61-04-13-01(5).** Representatives Devlin,

Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Heckaman, and Klein voted "aye." No negative votes were cast.

### **PUBLIC SERVICE COMMISSION**

Chairman Devlin called on Mr. Randy Christmann, Chairman, Public Service Commission, for testimony ([Appendix G](#)) regarding rules adopted by the Public Service Commission.

In response to a question from Representative Koppelman, Mr. Christmann said the Public Service Commission was granted authority several sessions ago to adopt rules for wind farm decommissioning. He said the new rules will provide clarification in those areas in which the current rules are vague.

Chairman Devlin called on Mr. John Schuh, Legal Counsel, Public Service Commission, for testimony ([Appendix H](#)) regarding the rules adopted by the Public Service Commission.

### **NORTH DAKOTA RACING COMMISSION**

Chairman Devlin called on Mr. Gunner laCour, Executive Director, North Dakota Racing Commission, for testimony ([Appendix I](#)) regarding the rules adopted by the North Dakota Racing Commission.

In response to a question from Representative Boehning, Mr. laCour said the state hires one race steward and the track hires two race stewards, all of which are accredited.

### **WORKFORCE SAFETY AND INSURANCE**

Chairman Devlin called on Mr. Tim Wahlin, Director, Injury Services, Workforce Safety and Insurance, for testimony ([Appendix J](#)) regarding the rules adopted by Workforce Safety and Insurance.

In response to a question from Representative Koppelman, Mr. Harvey Hanel, Medical Services Director, Workforce Safety and Insurance, said the time within which prior authorization for services must be obtained in NDAC Section 91-01-02-33 was changed from 24 hours to 72 hours to make it consistent with practice and to make the timeframe conform to other rules in conflict. He said emergency cases are not subject to the waiting period.

In response to a question from Representative Schneider, Mr. Hanel said for purposes of NDAC Section 92-01-02-34, crutches are not a mobility assistance device. He said equipment under \$500 does not need prior authorization.

In response to a question from Senator Heckaman, Mr. Hanel said only the initial order for undergarments requires prior authorization.

In response to a question from Representative Koppelman regarding the wording of NDAC Section 92-01-02-12, Mr. Wahlin provided revised language as follows: "Workforce safety and insurance recognizes payment for travel and lodging to and from medical treatment as a if reasonable and necessary medical expense. ~~Lodging expenses will be reimbursed if they are necessary and reasonable.~~"

**It was moved by Representative Koppelman, seconded by Senator Armstrong, and carried on a roll call vote that the revised language for NDAC Section 92-01-02-12, as provided by Mr. Wahlin, be approved.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Heckaman, and Klein voted "aye." No negative votes were cast.

### **NORTH DAKOTA BOARD OF CLINICAL LABORATORY PRACTICE**

Chairman Devlin called on Ms. Sandra Matthey, Executive Director, North Dakota Board of Clinical Laboratory Practice, for testimony ([Appendix K](#)) regarding the rules adopted by the board.

In response to a question from Representative Koppelman, Ms. Matthey said the increase in licensure fees in NDAC Section 96-02-03-01 was the result of a recommendation by the board's legal counsel. She said the last fee increase was 10 years ago. She said the increase will help cover the board's operating costs and the cost of maintaining its website.

Representative Boehning said a \$10 fee increase after 10 years is a very reasonable increase.

### **BOARD OF INTEGRATIVE HEALTH CARE**

Chairman Devlin called on Mr. Blake Blowers, Board of Integrative Health Care, for testimony ([Appendix L](#)) regarding the rules adopted by the Board of Integrative Health Care.

In response to a question from Representative Koppelman, Mr. Blowers said 2015 legislation authorized the Board of Integrative Health Care to regulate acupuncture.

In response to a question from Representative Schneider, Mr. Blowers said the board looked to acupuncture rules of other states, especially Minnesota and Montana, when drafting acupuncture rules for North Dakota.

In response to a question from Representative Koppelman, Mr. Blowers said acupuncturists have more training specific to the acupuncture technique than other professionals who use acupuncture as a part of practice along with other techniques. He said these rules do not preclude other professions from using acupuncture. He said it only would be an issue if others used the designation of acupuncturist. He said the rules do not affect an individual who is licensed by another board that allows that board's licensees to use acupuncture.

No further business appearing, Chairman Devlin adjourned the meeting at 11:50 a.m.

---

Vonette J. Richter  
Code Revisor

ATTACH:12