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## **ADMINISTRATIVE RULES COMMITTEE**

Tuesday, December 1, 2020  
Pioneer Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 8:00 a.m.

**Members present:** Representatives Bill Devlin, Joshua A. Boschee, Kim Koppelman, Andrew Marschall, Brandy Pyle, Dan Ruby, Bernie Satrom, Vicky Steiner, Nathan Toman, Robin Weisz; Senators Joan Heckaman, Jerry Klein, Randy D. Lemm, Nicole Poolman, David S. Rust

**Member absent:** Representative Rick Becker

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

It was moved by Senator Klein, seconded by Representative Boschee, and carried on a voice vote that the minutes of the September 15, 2020, meeting be approved as distributed.

### **STATE BOARD OF CHIROPRACTIC EXAMINERS**

Chairman Devlin called on Ms. Lisa Blanchard, Executive Director, State Board of Chiropractic Examiners, for testimony ([Appendix B](#)) regarding the January 2021 rules of the board.

In response to a question from Senator Klein, Ms. Blanchard said although the board has not received any applications for new licensure indicating military spouse status, that status has been indicated on eight license renewal applications.

In response to a question from Representative Pyle, Ms. Blanchard said the last license fee increase, which was in 2014, increased the fee from \$200 to \$300.

In response to a question from Chairman Devlin, Ms. Blanchard said creating North Dakota Administrative Code (NDAC) Section 17-03-01-01(19) was necessary to identify an individual in the clinic who has the responsibility for all patient care. She said the burden is on the State Board of Chiropractic Examiners to prove the delegation occurs. She said the board's ongoing litigation created the need for the license fee increase.

In response to a question from Representative Koppelman, Ms. Blanchard said the board plans to reduce the fee when the additional litigation funds are no longer needed. She said there is a national effort in the chiropractic field to clarify and update the term "moral turpitude." She said the board will be presenting a bill to update the grounds for revocation of license in North Dakota Century Code (NDCC) Section 43-06-15.

### **DEPARTMENT OF TRANSPORTATION**

Chairman Devlin called on Ms. Robin Rehborg, Deputy Director, Driver Safety, Department of Transportation, for testimony ([Appendix C](#)) regarding the January 2021 rules of the department.

In response to a question from Senator Rust, Ms. Rehborg said the Attorney General's opinion on these rules noted the Department of Transportation was in substantial compliance with the notice requirements of NDCC Chapter 28-32 because the publication of the hearing notice in one county newspaper did not allow 20 days between the date of publication and the hearing. She said the opinion indicated all other hearing notices allowed the required 20 days and, therefore, the department was in substantial compliance with the statutory requirements.

In response to a question from Senator Heckaman, Ms. Jennifer Blumhagen, Motor Vehicle Director, Department of Transportation, said NDCC Sections 57-40.3-02 and 57-40.3-09 authorize the collection of a 5 percent sales tax on vehicles registered in the state which were purchased in a state that did not charge sales tax.

In response to a question from Senator Rust, Ms. Rehborg said the Century Code authorizes branch offices to charge up to \$10 for services provided. She said the rule change was made to make the maximum fees consistent with state law.

### **PUBLIC SERVICE COMMISSION**

Chairman Devlin called on Mr. John Schuh, General Counsel, Public Service Commission, for testimony ([Appendix D](#)) regarding the January 2021 rules of the Public Service Commission.

In response to a question from Senator Rust, Mr. Schuh said Capital Scales and Prairie Scales submitted comments requesting more stringent regulations than what was in the proposed rules. He said Prairie Scales also commented on the difficulty in distinguishing between the Public Service Commission's seals and service companies' seals.

In response to a question from Senator Klein, Mr. Schuh said, other than during the pandemic, the commission has not had issues meeting the scale testing and measuring deadlines. He said the commission is responsible for testing the medical marijuana scales.

In response to a question from Representative Koppelman, Mr. Schuh said the rules provide if there is a conflict between the adopted handbooks and the Century Code, the Century Code controls. He said that language was added as a fail safe if there ever is a conflict between the two sources.

### **DEPARTMENT OF HUMAN SERVICES**

Chairman Devlin called on Mr. Jonathan Alm, Director, Legal Advisory Unit, Department of Human Services, for testimony ([Appendix E](#)) regarding the January 2021 rules of the department regarding informed choice referrals for home- and community-based services.

### **BOARD OF UNIVERSITY AND SCHOOL LANDS**

Chairman Devlin called on Ms. Jodi A. Smith, Commissioner, Board of University and School Lands, for testimony ([Appendix F](#)) regarding the January 2021 rules of the board.

In response to a question from Chairman Devlin, Ms. Smith said NDCC Chapter 15-09 allows for the sale of land to other government agencies, such as the Game and Fish Department. She said in those cases, a "no net loss" may not be possible because the government agency likely would not have any land to trade.

In response to a question from Representative Steiner, Ms. Smith said the board has a no net loss policy but it is not required by statute. She said as a result of the comments, as it relates to the grant land sales to a public entity, the definition of high value land was removed and the rules were revised to reference residential, industrial, and commercial zoning.

In response to a question from Senator Klein, Ms. Smith said the land sales that have been moved online will return to in-person sales once it is safe to do so. She said the board may propose a statutory change to allow for regional sales to mitigate costs.

### **WORKFORCE SAFETY AND INSURANCE**

Chairman Devlin called on Ms. Jodi Bjornson, General Counsel, Workforce Safety and Insurance, for testimony ([Appendix G](#)) regarding the January 2021 rules of Workforce Safety and Insurance regarding medical service provider electronic billing responsibilities.

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

Chairman Devlin called on Ms. Erin Stephany, Board Member, Board of Integrative Health Care, for testimony ([Appendix H](#)) regarding the January 2021 rules of the board.

In response to a question from Senator Poolman, Ms. Stephany said the rule change identifying a licensed behavior analyst rather than a licensed assistant behavior analyst was made to move those licensees from the oversight of the State Board of Psychologist Examiners to the Board of Integrative Health Care.

In response to a question from Representative Toman, Representative Boschee said in his dealings with acupuncturists on previous legislation, it is his understanding the acupuncturists prefer to be regulated by the Board of Integrative Health Care.

Representative Pyle said NDAC Section 17-02-04-06(1), as adopted by the State Board of Chiropractic Examiners, creates an exception for chiropractors who practice needle acupuncture in conjunction with a chiropractic practice from the licensure requirements of the Board of Integrative Health Care.

No further business appearing, Chairman Devlin adjourned the meeting at 9:20 a.m.

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Vonette J. Richter  
Legal Division Director

ATTACH:8