



ADMINISTRATIVE RULES COMMITTEE

Friday, March 5, 2021
Pioneer Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 2:00 p.m.

Members present: Representatives Bill Devlin, Rick Becker, 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

Members absent: None

Others present: See [Appendix A](#)

It was moved by Representative Toman, seconded by Senate Poolman, and carried on a voice vote that the minutes of the December 1, 2020, 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 the April 2021 rules of the board.

In response to a question from Representative Becker, Ms. Sommers said "moderate sedation" refers to the route of sedation not the level of sedation. She said anything other than a single, oral agent is considered moderate sedation.

In response to a question from Senator Rust, Ms. Sommers said the board has the authority to increase fees.

Chairman Devlin said he is reluctant to go forward with the board's telehealth rules because of House Bill No. 1151, which relates to dental telehealth. He said if the bill passes, the board's telehealth rules may be obsolete.

In response to a question from Chairman Devlin, Ms. Sommers said the North Dakota Dental Assistants Association was the most involved in the rules process. She said the North Dakota Dental Hygiene Association typically does not get involved in the rules process unless the association is opposed to rule changes. She said the North Dakota Dental Association (NDDA) was aware of the hearing. She said all the legally required notices for the hearing were published. She said over 250 dentists were online during the hearing, but the NDDA's input was minimal. She said the NDDA expressed concern about the sedation rules but did not submit comments.

In response to a question from Representative Koppelman, Ms. Sommers said every comment the board received was addressed.

Chairman Devlin said in advance of the meeting, the committee received testimony ([Appendix C](#)) from Mr. Peter Horkan, Vice President, Government Affairs, SmileDirectClub, regarding the rules of the State Board of Dental Examiners.

Chairman Devlin called on Mr. William Sherwin, Executive Director, North Dakota Dental Association, for testimony ([Appendix D](#)) regarding the rules.

In response to a question from Chairman Devlin, Mr. Sherwin said as is stated in the written testimony, it is the position of the NDDA, North Dakota Dental Assistants Association, and North Dakota Dental Hygiene Association that there are too many problems with the rules to go forward as a whole, and these associations would like the

rules to be rewritten after taking into consideration the concerns of the associations. He said multiple requests were made to the board to form a task force to address the concerns before finalizing the rules.

In response to a question from Representative Koppelman, Mr. Sherwin said he does not object to allowing North Dakota Administrative Code Sections 20-02-01-03.1 and 20-04-01-04 to become effective on April 1, 2021, as requested by Ms. Sommers. He said if the remaining rules were to be held over to the June 2021 meeting, he would be willing to work with the board to address the associations' concerns.

It was moved by Senator Poolman, seconded by Representative Koppelman, and carried on a roll call vote that the rules of the State Board of Dental Examiners, with the exception of Sections 20-02-01-03.1 and 20-04-01-04, will be held over for further consideration at the June 2021 meeting. Representatives Devlin, Becker, Boschee, Koppelman, Marschall, Pyle, Ruby, Satrom, Steiner, Toman, and Weisz and Senators Heckaman, Klein, Lemm, Poolman, and Rust voted "aye." No negative votes were cast.

INSURANCE COMMISSIONER

Chairman Devlin called on Ms. Laney Herauf, Legal Counsel, Insurance Department, for testimony ([Appendix E](#)) regarding the April 2021 rules of the department.

In response to a question from Representative Ruby, Ms. Herauf said the limitation on credit for assessments paid to the Reinsurance Association of North Dakota was negotiated with carriers.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Chairman Devlin called on Ms. Carol Olson, Member, Board of Occupational Therapy Practice, for testimony ([Appendix F](#)) regarding the April 2021 rules of the board.

In response to a question from Representative Koppelman, Ms. Olson said the changes in the 2020 edition of the "Occupational Therapy Practice Framework: Domain and Process", which is referenced in Section 55.5-03-01-03, were minimal.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Devlin called on Mr. Jim Upgren, Assistant Director, Office of School Approval and Opportunity, Department of Public Instruction, for testimony ([Appendix G](#)) regarding the April 2021 rules of the Superintendent of Public Instruction.

Mr. Upgren said the rules revise the descriptions of the divisions within the Department of Public Instruction and update the requirements for library media specialists.

NORTH DAKOTA BOARD OF SOCIAL WORK EXAMINERS

Chairman Devlin called on Ms. Bianca Bell, Chair, North Dakota Board of Social Work Examiners, for testimony ([Appendix H](#)) regarding the April 2021 rules of the board.

In response to a question from Representative Satrom, Ms. Bell said the board is adopting by reference the National Association of Social Workers 2017 Code of Ethics with additional language regarding the practice of conversion therapy, which is defined on page 116 of the supplement.

In response to a question from Representative Ruby, Ms. Bell said the most recent code of ethics was revised in 2017. She said because research indicates individuals are harmed by conversion therapy and because the American Psychiatric Association opposes the practice of conversion therapy, the board wanted the prohibition in its ethics rules to align with current and national standards for therapy. She said the national ethics code does not address conversion therapy specifically, but rather provides those in the profession of social work are to do no harm and to mitigate harm when possible.

In response to a question from Representative Koppelman, Ms. Bell said the board did not request a time extension for adopting the rules.

Chairman Devlin called on Ms. Kristin Rubelke, Executive Director, National Association of Social Workers, North Dakota Chapter, for testimony regarding the rules of the board. Ms. Rubelke said the rules were updated to reflect current ethical standards and best practices in social work. She said the updated rules will create consistency in education and practice across the state.

In response to a question from Representative Koppelman, Ms. Bell said social workers provide therapy to the extent it is authorized within the social work scope of practice.

Ms. Bell said the intent of the conversion therapy language is make the practice a violation of the code of ethics of the North Dakota Board of Social Work Examiners, not the National Association of Social Workers 2017 Code of Ethics.

Representative Koppelman said it appears the board is creating an enlarged code of ethics by including the provision regarding conversion therapy.

Ms. Rubelke said because of the harm caused by conversion therapy, the practice has been outlawed in many states. She said the language in the rules provides more clarity for social workers in the state.

Ms. Bell said the board's job is to provide guidance for social workers.

Representative Koppelman said conversion therapy has not been outlawed in North Dakota. He said by adding this provision to rules, which have the force and effect of law, the board is creating a policy the Legislative Assembly has not enacted.

Representative Boschee said creating these rules is within the purview of the North Dakota Board of Social Work Examiners. He said this board regulates the licensees and determines the behavior and conduct of those licensees in the same way any other board regulates its licensees. He said the North Dakota Board of Social Work Examiners is doing what is necessary to make sure adults and children in North Dakota are safe.

Chairman Devlin said he agrees with Representative Boschee. However, he said, the wording creates confusion as to whether the provision regarding conversion therapy is part of the national code of ethics or is an ethical rule of the board.

In response to a question from Representative Becker, Ms. Bell said the language does not prevent a social worker from providing any type of counseling or services to individuals questioning their sexual identity or gender. She said the language limits the practice of a particular modality that causes harm.

It was moved by Representative Koppelman, seconded by Senator Rust, and carried on a voice vote that changes to Section 75.5-02-06.1-01 relating to conversion therapy be held over for consideration at the June 2021 meeting.

Chairman Devlin said Ms. Bell and the Legislative Council should work together to draft language that addresses the concerns of the committee.

No further business appearing, Chairman Devlin adjourned the meeting at 3:41 p.m.

Vonette J. Richter
Legal Division Director

ATTACH:8