

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ADMINISTRATIVE RULES COMMITTEE

Thursday, March 8, 2007  
Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

Senator Jerry Klein, Vice Chairman, called the meeting to order at 3:45 p.m.

**Members present:** Senators Jerry Klein, Tom Fischer, Gary A. Lee, Constance Triplett; Representatives Randy Boehning, Chuck Damschen, Duane L. DeKrey, David Drovdal, Mary Ekstrom, Rodney J. Froelich, Glen Froseth, Gil Herbel, Kim Koppelman, Jon Nelson, Blair Thoreson, Don Vigesaa, Dwight Wrangham

**Members absent:** Senators John M. Andrist, Layton W. Freborg

**Others present:** See Appendix A

**It was moved by Representative DeKrey, seconded by Representative Koppelman, and carried on a voice vote that the minutes of the December 4, 2006, committee meeting be approved as distributed.**

#### STATE DEPARTMENT OF HEALTH

Vice Chairman Klein called on Mr. Kirby Kruger, State Epidemiologist, State Department of Health, for testimony relating to rules adopted by the State Department of Health relating to reportable medical conditions. A copy of Mr. Kruger's prepared testimony is attached as Appendix B.

Representative Koppelman asked whether the reporting requirements for these conditions are only for statistical purposes. Mr. Kruger said some of the conditions are required to be reported for statistical purposes but the State Department of Health also does investigation, followup, and education efforts relating to some conditions.

Representative Koppelman asked why the reporting requirement for pregnancy is added for a person infected with hepatitis or HIV or other diseases. Mr. Kruger said reporting of pregnancy in these individuals allows the State Department of Health to contact the doctor and make sure the doctor is aware that effect interventions are available to protect the baby.

#### BOARD OF NURSING

Vice Chairman Klein called on Dr. Constance Kalanek, Executive Director, Board of Nursing, for testimony relating to allowing nonlicensed personal care service providers to assist disabled and elderly individuals in their homes without violating the Nurse Practice Act or rules of the Board of Nursing. A copy of Dr. Kalanek's written testimony is attached as

Appendix C. Vice Chairman Klein said it appears there was no opposition to the proposed rules during the hearings. Dr. Kalanek said that is correct.

Senator Lee said it appears the focus of the rules is to provide a licensing exemption to allow care for individuals by unlicensed persons in the home of the individual requiring care. He said the rules do not appear to specify that the service is to be provided in a home setting. Dr. Kalanek said the Board of Nursing does not make site-specific rules if possible. She said a statutory provision was enacted asking the State Department of Health to seek a waiver of federal law to allow Medicaid recipients to direct their own care in a home setting. She said the rules were adopted to implement care in those situations. She said Ms. Karen Tescher, Assistant Director of Medical Services, Department of Human Services, could address the issue of whether care would be allowed in settings other than homes. Ms. Tescher said the program was pursued to allow individuals to stay in their own homes if they would prefer that kind of care and also to allow ventilator-dependent individuals to remain in their homes. She said it is a rather narrow range of eligibility for the waiver allowed under federal law and the home environment would be where the care is provided.

Representative Nelson asked whether these unlicensed individuals would be allowed to provide care in an institutional setting. Ms. Tescher said these individuals could work as a certified nurse assistant in a nursing home, if they have that certification, but they would not be operating under this waiver in providing services in a nursing home setting.

#### STATE BOARD OF PSYCHOLOGIST EXAMINERS

Vice Chairman Klein called on Dr. Alan Fehr, State Board of Psychologist Examiners, for testimony relating to rules changes adopted by the board to address licensure of psychologists and industrial-organizational psychologists, supervision of residents, and continuing education. A copy of Dr. Fehr's written testimony is attached as Appendix D.

Representative Koppelman said the rules list accrediting organizations on a regional basis and on a national basis. He asked what the difference is between these kinds of accreditation. Dr. Fehr said regional organizations are for accreditation of a

college or university and national accreditation is required for a department of psychology.

Representative Thoreson said the rules increase a fee from \$75 to \$250 for licensing applications for persons licensed in other states. He asked why the fee is increased so much. Dr. Fehr said reciprocity for licensees from other states can be a time-consuming process for the board to perform the necessary review and background information check.

### **PUBLIC SERVICE COMMISSION**

Vice Chairman Klein called on Mr. Dean Moos, Assistant Director, Reclamation Department, Public Service Commission, for testimony relating to surface coal mining and reclamation operations rules adopted by the Public Service Commission. A copy of Mr. Moos' prepared testimony is attached as Appendix E.

### **COMMITTEE DISCUSSION**

Representative Froseth said there has been substantial discussion and concern among legislators about licensing for teachers in areas with critical teacher shortages. He said the Education Standards and Practices Board has rules on this topic and the Education Standards and Practices Board should be requested to address the Administrative Rules Committee at its next meeting regarding the status of

licensing requirements for teachers in areas with critical teacher shortages. Vice Chairman Klein said the Education Standards and Practices Board would be requested to address that issue and added to the agenda for the May meeting.

Representative Koppelman said House Bill No. 1479 was amended to provide for a study of the reasons for exemption of agencies from the Administrative Agencies Practice Act. He said several agencies are exempt from the requirements of North Dakota Century Code Chapter 28-32 and the exemptions were added to the statutory provisions as requested by agencies at the time the Administrative Agencies Practice Act was being developed. He said the study would call for a review of each agency exemption and a determination of whether valid reasons still exist for each exemption.

**It was moved by Representative DeKrey, seconded by Senator Fischer, and carried on a voice vote that the meeting be adjourned.** Vice Chairman Klein adjourned the meeting at 4:30 p.m.

---

John Walstad  
Code Revisor

[ATTACH:5](#)