



ADMINISTRATIVE RULES COMMITTEE

Tuesday, March 5, 2024
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Brandy Pyle, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Brandy Pyle, Donna Henderson, Andrew Marschall, Carrie McLeod, Brandon Prichard, Dan Ruby, Matthew Ruby, Vicky Steiner, Bill Tveit, Steve Vetter, Robin Weisz; Senators Jerry Klein, Diane Larson, Janne Myrdal, Bob Paulson

Members absent: Representatives Scott Louser, Mike Schatz, Nathan Toman; Senator Sean Cleary

Others present: Chris Price, Jonathan Alm, Kalee Werner, and Kelsey Bless, Department of Health and Human Services; Jim Upgren, Department of Public Instruction; Ashley Wolf, Board of Counselor Examiners; Mandy Harlow, Board of Accountancy; Kim Kary, Administrative Services Division; Scott Peterson, and Scott Winkelman, Game and Fish Department; Mark Bohrer, Department of Mineral Resources; Sheri Haugen-Hoffart, Public Service Commissioner; Joseph Heringer, Board of University and School Lands; Mallory Schaefer, Marriage and Family Therapy Licensure Board

See [Appendix A](#) for additional persons present.

It was moved by Representative D. Ruby, seconded by Senator Myrdal, and carried on a voice vote that the minutes of the December 11, 2023, meeting be approved as distributed.

JANUARY RULES CARRIED OVER Department of Health and Human Services

Mr. Chris Price, Director, Emergency Medical Systems Unit, Department of Health and Human Services, provided testimony regarding the January 2024 rules carried over from the December 11, 2023, meeting.

Mr. Jonathan Alm, Attorney, Department of Health and Human Services, provided testimony ([Appendix B](#)) regarding the department's proposed amendments.

In response to questions from committee members, Mr. Price noted:

- The emergency medical responders training will remain the same but the assessment will include a national examination, which is accessible on a personal home computer, and includes a cognitive testing component to determine competency.
- The national examination is administered by 38 states.

It was moved by Representative Weisz, seconded by Senator Larson, and carried on a roll call vote that North Dakota Administrative Code (NDAC) Sections 33-36-01-01 and 33-11-01.2-24 be amended as proposed by the department under North Dakota Century Code (NDCC) Section 28-32-18(3). Representatives Pyle, Henderson, Marschall, McLeod, Prichard, D. Ruby, M. Ruby, Steiner, Tveit, Vetter, and Weisz and Senators Klein, Larson, Myrdal, and Paulson voted "aye." No negative votes were cast.

EXTENSION REQUESTS Superintendent of Public Instruction

Pursuant to NDCC Section 28-32-07, Mr. Jim Upgren, Department of Public Instruction, provided testimony ([Appendix C](#)) in support of the department's request for an extension to adopt rules to align with legislation passed during the 2023 legislative session.

It was moved by Senator Myrdal, seconded by Representative Steiner, and carried on a roll call vote that the Department of Public Instruction be granted an extension to adopt rules to become effective July 1, 2024, to implement Senate Bill Nos. 2284 and 2398 and House Bill No. 1161 (2023). Representatives Pyle, Henderson, Marschall, McLeod, Prichard, D. Ruby, M. Ruby, Steiner, Tveit, Vetter, and Weisz and Senators Klein, Larson, Myrdal, and Paulson voted "aye." No negative votes were cast.

Board of Counselor Examiners

Pursuant to NDCC 28-32-07, Ms. Ashley Wolf, practicing counselor member, Board of Counselor Examiners, provided testimony in support of the board's request for an extension to adopt rules to align with legislation passed during the 2023 legislative session.

It was moved by Representative Tveit, seconded by Representative McLeod, and carried on a roll call vote that the Board of Counselor Examiners be granted an extension to adopt rules to become effective July 1, 2024, to implement legislation passed during the 2023 legislative session. Representatives Pyle, Henderson, Marschall, McLeod, Prichard, D. Ruby, M. Ruby, Steiner, Tveit, Vetter, and Weisz and Senators Klein, Larson, Myrdal, and Paulson voted "aye." No negative votes were cast.

BOARD OF ACCOUNTANCY

Ms. Mandy Harlow, Executive Director, Board of Accountancy, provided testimony ([Appendix D](#)) regarding the April 2024 rules of the board.

GAME AND FISH DEPARTMENT

Ms. Kim Kary, Chief Administrative Officer, Administrative Services Division, Game and Fish Department, provided testimony ([Appendix E](#)) regarding the April 2024 rules of the department.

Mr. Scott Peterson, Deputy Director, Game and Fish Department, provided testimony regarding the penalties associated with violating rules related to contaminated equipment.

In response to a question from a committee member, Ms. Kary noted game wardens use discretion enforcing the rules of the department and will not enforce rules related to aquatic nuisance species that are invisible to the naked eye.

In response to a question from a committee member, Mr. Scott Winkelman, Chief Game Warden, Game and Fish Department, noted:

- Vessels contaminated with aquatic nuisance species from the Great Lakes are entering bodies of water in this state.
- The criminal penalty associated with introducing an aquatic nuisance species is a Class B misdemeanor, as provided under NDCC Section 20.1-17-09.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. Kalee Werner, Primary Care Office Director, Department of Health and Human Services, provided testimony ([Appendix F](#)) regarding the April 2024 rules of the department.

NATIVE AMERICAN SCHOLARSHIP BOARD

Ms. Brenda Zastoupil, Financial Aid Director, North Dakota University System, provided testimony ([Appendix G](#)) regarding the April 2024 rules of the board.

INDUSTRIAL COMMISSION

Mr. Mark Bohrer, Assistant Director, Oil and Gas Division, Department of Mineral Resources, Industrial Commission, provided testimony ([Appendix H](#)) regarding the April 2024 rules of the commission.

BOARD OF MASSAGE THERAPY

Mr. Robert Benson, Vice President, Board of Massage Therapy, provided testimony ([Appendix I](#)) regarding the April 2024 rules of the board.

BOARD OF MEDICINE

Ms. Sandra DePountis, Executive Director, Board of Medicine, provided testimony ([Appendix J](#)) regarding the April 2024 rules of the board.

BOARD OF NURSING

Dr. Stacey Pfenning, Executive Director, Board of Nursing, provided testimony ([Appendix K](#)) regarding the April 2024 rules of the board.

EDUCATION STANDARDS AND PRACTICES BOARD

Dr. Rebecca Pitkin, Executive Director, Education Standards and Practices Board, provided testimony ([Appendix L](#)) regarding the April 2024 rules of the board.

PUBLIC SERVICE COMMISSION

Ms. Sheri Haugen-Hoffart, Commissioner, Public Service Commission, provided testimony ([Appendix M](#)) regarding the April 2024 rules of the commission.

RACING COMMISSION

Mr. Bruce Johnson, Executive Director, Racing Commission, provided testimony ([Appendix N](#)) regarding the April 2024 rules of the commission.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Alm provided testimony regarding the April 2024 rules of the department relating to NDAC:

- Chapter 75-02-01.2, Temporary Assistance for Needy Families ([Appendix O](#));
- Chapter 75-02-13, Family Paid Caregiver Program ([Appendix P](#));
- Chapters 75-03-07 through 75-03-11.1, In-Home Child Care Early Childhood Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services ([Appendix Q](#));
- Chapter 75-03-14, Family Foster Home for Children ([Appendix R](#));
- Chapter 75-03-14.1, Shelter Care Program Certification ([Appendix S](#));
- Chapter 75-03-17, Psychiatric Residential Treatment Facilities for Children ([Appendix T](#));
- Chapters 75-03-18 and 75-03-19, Procedures for Appeal of Child Abuse and Neglect Assessments and Assessment of Child Abuse and Neglect Reports ([Appendix U](#));
- Chapter 75-03-36, Licensing of Child-Placing Agencies ([Appendix V](#));
- Chapter 75-03-40, Licensing of Qualified Residential Treatment Program Providers ([Appendix W](#));
- Chapter 75-03-41, Supervised Independent Living ([Appendix X](#)); and
- Chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System ([Appendix Y](#)).

A committee member noted:

- The decision to make a child-placing agency's license contingent on a need for a new child-placing agency is a policy decision properly made by the Legislative Assembly.
- NDCC Section 50-12-03 requires the department to issue licenses "to reputable and responsible applicants upon a showing that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise the homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded."

In response to a question from a committee member, Ms. Kelsey Bless, Licensing Unit Administrator, Children and Family Services Division, Department of Health and Human Services, noted the department:

- Reviews the need for an additional child-placing agency before an application for a license to operate a child-placing agency is approved for a license.
- Offers technical assistance and answers questions posed by child-placing agencies.

It was moved by Senator Myrdal, seconded by Representative D. Ruby, and carried on a roll call vote to void the proposed rule changes to NDAC Section 75-03-36-02 for failure to comply with express legislative intent under NDCC Section 28-32-18(1)(c). Representatives Pyle, Henderson, Marschall, McLeod, Prichard, D. Ruby, M. Ruby, Steiner, Tveit, and Vetter and Senators Klein, Larson, Myrdal, and Paulson voted "aye." No negative votes were cast.

BOARD OF TRUSTEES OF THE TEACHERS' FUND FOR RETIREMENT

Ms. Janilyn Murtha, Executive Director, Retirement and Investment Office, provided testimony (Appendices [Z](#) and [AA](#)) regarding the April 2024 rules of the board.

BOARD OF UNIVERSITY AND SCHOOL LANDS

Mr. Joseph Heringer, Commissioner, Board of University and School Lands, provided testimony ([Appendix BB](#)) regarding the April 2024 rules of the board.

MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

Rev. Larry Giese, Executive Director, Marriage and Family Therapy Licensure Board, provided testimony ([Appendix CC](#)) regarding the April 2024 rules of the board.

Committee members noted:

- The board's proposed rule designating an ethics code violation for practicing conversion therapy is contrary to decades of state legislation.
- It is unclear whether faith-based counseling encouraging heterosexual orientation or counseling assisting an individual in detransitioning from a transgender identity would violate the code of ethics.
- A counselor should be able to support a client if the client wishes to convert.
- The content of the rule regarding conversion therapy is better suited for legislation.

In response to questions from a committee member, Ms. Mallory Schaefer, board member, Marriage and Family Therapy Licensure Board, noted:

- Conversion therapy forces clients to reject the client's homosexuality.
- The board supports client-affirming care and counselor guidance in decisionmaking to help the client become fulfilled and at peace with themselves.
- Affirmative care includes supporting a client who wishes to detransition from a transgender identity.
- The board finds it unethical to practice conversion therapy because it is harmful to clients.

It was moved by Representative Steiner, seconded by Representative McLeod, and carried on a roll call vote to void the proposed rule changes to NDAC Section 111-02-01-05(5)(p) for failure to comply with express legislative intent under NDCC Section 28-32-18(1)(c). Representatives Henderson, Marschall, McLeod, Prichard, D. Ruby, Steiner, and Tveit and Senators Paulson and Myrdal voted "aye." Representatives Pyle, M. Ruby, Vetter, and Weisz and Senators Klein and Larson voted "nay."

No further business appearing, Chairman Pyle adjourned the meeting at 4:16 p.m.

Liz Fordahl
Counsel

ATTACH:29