

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**ADMINISTRATIVE RULES COMMITTEE**

Friday, March 6, 2015  
Prairie Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 1:30 p.m.

**Members present:** Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Ben Koppelman, Kim Koppelman, Mike Schatz, Peter F. Silbernagel, Blair Thoreson, Nathan Toman, Robin Weisz; Senators Kelly M. Armstrong, Joan Heckaman, Jerry Klein, Connie Triplett

**Members absent:** Representatives Robert Frantsvog, Mark S. Owens

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

**It was moved by Representative Boehning, seconded by Senator Armstrong, and carried on a voice vote that the minutes of the December 8, 2014, meeting be approved as distributed.**

**STATE BOARD OF DENTAL EXAMINERS**

Chairman Devlin called on Ms. Rita M. Sommers, Executive Director, State Board of Dental Examiners, for testimony ([Appendix B](#)) regarding the rules of the board carried over from the December 8, 2014, meeting. Ms. Sommers said there were concerns expressed about how dental assistants would receive the additional education necessary to perform additional duties. She said the Dental Assisting National Board, Inc., also known as "DANB", has over 200 sites in the country where dental assistants can receive training.

In response to a question from Chairman Devlin, Ms. Sommers said she does not record the straw votes in the minutes of the board. She said only motions and roll call votes are recorded. She said the Attorney General's office has not given the board advice on open meeting requirements.

In response to a question from Chairman Devlin, Ms. Sommers said she and Mr. Rod St. Aubyn could not come to a consensus on a compromise on the issues raised at the December 8, 2014, meeting. She said because a compromise could not be reached, there was no reason to take it to the State Board of Dental Examiners. She said representatives of the North Dakota Dental Assistants Association have been present at board meetings.

In response to a question from Representative Boehning, Ms. Sommers said a public hearing was held on the supragingival scaling rule change. She said upon the board's review of comments on April 2, 2014, the board requested further amendments to the rule to include supragingival scaling. She said the board adopted this change at its April 12, 2014, meeting. She said the board determined given the subject matter was a significant amendment and in order to be in compliance with rulemaking proceedings, it was appropriate to re-notice the rulemaking process to include the amendment to authorize dental assistants under direct supervision to provide the duty of supragingival scaling. During the second comment period, she said, several dental hygienists requested the board strike the amendment or restrict the age limit. As a result of the input provided during the second comment period, she said, the board moved to restrict the duty by adding the age 12 and younger language. She said the board did not feel it was necessary to re-notice the rules to make the age restriction change. She said representatives of the North Dakota Dental Hygienists' Association were never prohibited from talking at any meeting of the board nor did the association request to be included on the board's agenda. She said the two sides did not resolve the issues because the dental hygienists were not willing to compromise.

Chairman Devlin called on Dr. Robert Lauf, President, State Board of Dental Examiners, for testimony regarding the rules adopted by the board. Dr. Lauf said the board actions were done based on what is necessary to protect the public. He said because the North Dakota Dental Hygienists' Association is not in the position to protect the public, the board does not need to sit down with them. He said the dental hygienists have a voice on the board through the dental hygienist member who serves on the State Board of Dental Examiners. He said one straw vote occurred. He said now that he understands a straw vote is a violation of open meetings requirements, it will not happen again.

In response to a question from Representative Boehning, Dr. Lauf said the board meetings are always open and the dental hygienists are welcome to appear. He said the North Dakota Dental Hygienists' Association has a member on the board who can bring forth the association's questions. He said all the related professional associations receive meeting notices and are welcome to appear.

Chairman Devlin called on Mr. St. Aubyn for testimony ([Appendix C](#)) regarding the rules adopted by the State Board of Dental Examiners. Mr. St. Aubyn said he, as a representative of the North Dakota Dental Hygienists' Association, did not have free access to the board to discuss the issues raised at the December 8, 2014, meeting. He said he approached Ms. Sommers several times to inquire as to when the two sides could work to resolve the issues at hand. He said Ms. Sommers said she was willing to take the North Dakota Dental Hygienists' Association's top concern to the board. Mr. St. Aubyn said the association wanted to discuss all concerns, not just their top concern.

In response to a question from Representative K. Koppelman, Mr. St. Aubyn said the North Dakota Dental Hygienists' Association has concerns about public safety. He said supragingival scaling by dental assistants is not allowed in any other state except Kansas. He said the association is also concerned about the difference in the level of supervision of dental assistants in a public health setting versus a private setting.

**It was moved by Representative Boehning and seconded by Representative B. Koppelman that the following portions of the proposed rules offered by the State Board of Dental Examiners be voided:**

1. **For reasons of failure to substantially meet the procedural requirements of North Dakota Century Code Chapter 28-32 for the adoption of a rule and due to arbitrariness and capriciousness, those portions dealing with supragingival scaling on pages 7, 25, 27, 29, and 30; and**
2. **For reasons of arbitrariness and capriciousness relating to the conflict of the level of dentist supervision required for registered dental assistants in a public health setting versus in a private dental setting, those portions of North Dakota Administrative Code Section 20-03-01-01.2 dealing with registered dental assistant in a public health setting on pages 26 and 27.**

Representative Boehning provided a copy of his motion ([Appendix D](#)) which listed the specific portions of the rules to be voided.

In response to a question from Senator Klein, Chairman Devlin said the rules related to the supragingival scaling and the level of supervision rise to the level of being arbitrary and capricious.

Representatives Devlin, Boehning, B. Koppelman, K. Koppelman, Schatz, Silbernagel, Thoreson, Toman, and Weisz and Senators Armstrong and Heckaman voted "aye." Senators Klein and Triplett voted "nay."

### **INSURANCE COMMISSIONER**

Chairman Devlin called on Ms. Sara Behrens, Legal Counsel, Insurance Commissioner's office, for testimony ([Appendix E](#)) regarding the rules adopted by the Insurance Commissioner.

In response to a question from Representative K. Koppelman, Ms. Behrens said some of the comments received indicated the rule was unnecessary. She said another comment indicated the limit of liability was too high. She said the Insurance Commissioner believes the liability limits are appropriate to protect the policy holders and consumers. She said there are concerns that liability provisions will start showing up in policies. She said the Insurance Commissioner wants to be proactive and have a remedy available.

### **PUBLIC SERVICE COMMISSION**

Chairman Devlin called on Ms. Illona Jeffcoat-Sacco, Public Service Commission, for testimony ([Appendix F](#)) regarding rules adopted by the Public Service Commission. Ms. Jeffcoat-Sacco said the commission requests a July 1, 2015, effective date for the new rules in North Dakota Administrative Code Chapter 69-07-02. She said the delayed effective date would more closely match the commission's annual licensing period for grain warehouse and grain buyers under this chapter. She also said the commission requests a correction to a column title in Section 69-07-02-02(1)(a). She said the heading on the first column should be "<7" rather than "≥6."

**It was moved by Representative K. Koppelman, seconded by Representative Boehning, and carried on a voice vote that the change to the effective date in Chapter 69-07-02 and correction to the column heading in Section 69-07-02-02(1)(a) be approved.**

In response to a question from Senator Triplett, Mr. Jim Deutsch, Director, Reclamation and Abandoned Mine Lands Divisions, Public Service Commission, said the change to Section 69-05.2-10-09 related the the information the permittee must provide.

No further business appearing, Chairman Devlin adjourned the meeting at 2:30 p.m.

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Vonette J. Richter  
Assistant Code Revisor

ATTACH:6