

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Tuesday, September 12, 2017
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Kim Koppelman, Scott Louser, Brandy Pyle, Jay Seibel, Nathan Toman; Senators Howard C. Anderson, Jr., Kelly M. Armstrong, Joan Heckaman, Ralph Kilzer, Jerry Klein, Scott Meyer, Nicole Poolman, David S. Rust

Members absent: Representatives Mary Schneider and Robin Weisz

Others present: See [Appendix A](#)

It was moved by Representative Seibel, seconded by Representative Boschee, and carried on a voice vote that the minutes of the June 14, 2017, meeting be approved as distributed.

At the request of Chairman Devlin, the Legislative Council staff presented a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

At the request of Chairman Devlin, the Legislative Council staff presented a memorandum entitled [Administrative Rules Committee - Background Memorandum](#).

GAME AND FISH DEPARTMENT

Chairman Devlin called on Ms. Kim Kary, Chief, Administrative Services Division, Game and Fish Department, for testimony ([Appendix B](#)) regarding rules adopted by the Game and Fish Department.

In response to a question from Senator Armstrong, Mr. Jeb Williams, Chief, Wildlife Division, Game and Fish Department, said for consistency reasons, the limitation on when game cameras may be used in a wildlife management area is the same as for tree stands. He said an individual may fly a drone over a wildlife management area; however, the individual may not operate the drone while in the wildlife management area.

STATE BOARD OF PHARMACY

Chairman Devlin called on Mr. Mark J. Hardy, Executive Director, State Board of Pharmacy, for testimony ([Appendix C](#)) regarding a rule held over from the June 14, 2017, meeting.

In response to a question from Representative Koppelman, Mr. Hardy said the proposed amendment to North Dakota Administrative Code Section 61-04-13-01(5) would apply to new prescriptions mailed from both in-state and out-of-state pharmacies. He said the rule would require the pharmacist to assess whether written instructions are sufficient or if it would be more appropriate for the pharmacist to engage the patient through a telephone conversation.

Chairman Devlin called on Mr. Patrick Ward, Bismarck, for testimony regarding the proposed amendment offered by the State Board of Pharmacy. Mr. Ward, who represents Express Scripts, said he and representatives of a number of other companies offering mail order prescriptions attended the meeting of the State Board of Pharmacy at which the proposed language was discussed. He said he agrees with the proposed amendment.

It was moved by Representative Koppelman, seconded by Representative Boschee, and carried on a roll call vote that North Dakota Administrative Code Section 61-04-13-01(5) be amended to reflect the language offered by the State Board of Pharmacy. Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Pyle, Seibel, and Toman and Senators Anderson, Armstrong, Heckaman, Kilzer, Klein, Meyer, Poolman, and Rust voted "aye." Senator Heckaman voted "nay."

PUBLIC SERVICE COMMISSION

Chairman Devlin called on Mr. Patrick Fahn, Director, Public Utilities Division, Public Service Commission, for testimony ([Appendix D](#)) regarding rules adopted by the Public Service Commission.

In response to a question from Representative Koppelman, Mr. Fahn said Sections 69-02-04-01 and 69-02-04-02 protect certain information filed by telecommunications companies, including detailed information concerning telecommunications infrastructure projects and detailed service outage information that is filed in an annual report to the Public Service Commission. He said the rule change extends this prescribed protection to those information types contained in any filing with the commission.

Chairman Devlin called on Mr. Randy Christmann, Chairman, Public Service Commission, for testimony regarding the rules adopted by the Public Service Commission. Mr. Christmann said he is proud of the commission's history of communicating with regulated industry. He said the commission receives 80 or more filings each year. He said the rule change regarding information that is protected will result in a more efficient administrative process and will save resources for the regulated community and the state.

In response to a question from Senator Anderson, Mr. Christmann said the information is available for in-person review. He said anyone who exercises this option must sign a confidentiality agreement.

STATE SUPERVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS STUDY

Chairman Devlin called on the Legislative Council staff to present a memorandum entitled [State Supervision of Occupational and Professional Licensing Boards - Background Memorandum](#).

Representative Koppelman said it is important for the state to review and develop policy in response to the antitrust issues raised in *North Carolina Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015). He said antitrust concerns arise when a profession is allowed to be regulated by board members who are members of that profession.

Senator Poolman said it is important the committee move forward with this study.

In response to a question from Representative Boehning, the Legislative Council staff said having a licensing board on which the majority are not active market participants may not be sufficient to meet the active supervision requirement if the majority relies on the active market participant members when making decisions.

Chairman Devlin called on Ms. Bonnie Staiger, Chief Executive Officer, Staiger Consulting Group, for testimony regarding the study. Ms. Staiger said her organization represents several regulated professions. She said increased education and awareness is needed. She said the North Carolina case has resulted in greater awareness of the antitrust concerns. She said that awareness has resulted in self-correcting by professional boards. She said the state exercises active supervision by using assistant and special assistant attorneys general to represent the boards and provide legal counsel. She said the Federal Association of Regulated Boards may be able to provide the committee with information regarding the study.

Chairman Devlin said the committee will receive information from the Attorney General at the next meeting. He said the National Conference of State Legislatures and the Council of State Governments also are resources the committee may want to use. He said the involvement by the Governor's office is needed as well.

No further business appearing, Chairman Devlin adjourned the meeting at 11:20 a.m.

Vonette J. Richter
Code Revisor

ATTACH:4