MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting — The special meeting of the Administrative Rules Review Committee was held Wednesday and Thursday, April 11 and 12, 1990, Committee Room 22, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of April 10, 1990.

Members Present — Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senator Donald V. Doyle; Representatives David Schrader and Betty Jean Clark.
Not present: Senator Dale L. Tieden who was recuperating from surgery.
Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator; Evelyn Hawthorne, Democratic Caucus.

Convened — Chairman Priebe convened the meeting at 10:05 a.m. and called for disposition of the March minutes.

Minutes — Pavich moved to approve the minutes as submitted. Motion carried.

UTILITIES DIVISION — Appearing on behalf of the division were: Cindy Dilley, Diane Munns and Anne Preziosi for the following:

Response times to board for information, 18.3. Filed ARC 748A	3/21/90
Income taxes on construction advances, 19.3(10)"a," 20.3(13)"a," 21.3(5)"a," 22.3(7). Filed ARC 743A	3/21/90
Gas service — transportation service contracts between local distribution companies and end-users, 19.13(4)"b." Filed ARC 747A	3/21/90
Electric service — exterior lighting, 20.16. Notice ARC 744A	3/21/90
Telephone service checks, 22.10(1)"c." Notice ARC 740A	3/7/90
Low-income telephone connection assistance program, 22.18(3) to 22.18(5), 22.18(8)"a," 22.18(9). Filed ARC 745A	3/21/90
Low-income telephone connection assistance application, 22.18(4). Notice ARC 746A	3/21/90

Preziosi explained amendment to 18.3. There were no questions.

19.3 et al. — Munns reviewed amendments to 19.3(10) et al. which were necessary to implement the Federal Tax Reform Act. Clark and Doyle questioned use of "grossed-up" and Munns responded that it was IRS terminology. No further questions.

20.16 — Preziosi described proposed rule 20.16 as the board's attempt to respond to the energy efficiency measure passed in the 1989 Session [Code Supp. 476.62, 364.23]. An oral presentation was scheduled for April 27. Doyle asked if communities and RECs would be included.

22.10 — Dilley said that amendment to 22.10(1)"c" provided that if a service check determines the telephone difficulty to be on the customer's side of the demarcation point, and the utility has been requested to locate and repair the difficulty, all costs associated with the service check will be assigned to the deregulated services of the utility. She added that some utilities have already filed to remove this tariff charge to create better customer relations. No committee action.

22.18 Preziosi reviewed two sets of amendments to rule 22.18--ARC745A and 746A relative to low income telephone connection assistance program which was established by the Federal Communications Commission to provide federal assistance to low-income households for commencement of telephone services.

Priebe was informed that recipients of food stamps, Title XIX, etc., would qualify. Doyle was interested in the income criteria for eligibility in the program. Preziosi responded that guidelines are not definite but the weatherization scale is followed. A household would be considered eligible if they show evidence of participation in another welfare program.

19.13 In review of amendment to 19.13(4), Munns said it clarifies that the term "contract" referred only to contracts between the local distribution company and its customers. With
20.16 respect to Doyle's question as to whether communities and the RECs would be covered under the exterior lighting rule, Munns said the RECs would be covered by the rule. Because of deregulation, she was not sure about communities but would research the matter and report findings to Doyle. In response to Schrader, Munns explained that "end user" would be the customers--they do not sell to anybody else.

PUBLIC HEALTH Representing the department were: Barb Nervig, Melvin L. Ward, Pierce Wilson, Carolyn Adams, Carol Barnhill, Susan Osmann, and Don Kerns. The following agenda was before the Committee:

PUBLIC HEALTH DEPARTMENT[641]
Standards for certificate of need review, rescind ch 200, amend 203.12(3), 203.12(6)"e," 203.13, Notice ARC 716A 3/7/90
First-response vehicles--patient transportation 641--Ch 132
Special review

Ch 200 203.12, 203.13 Nervig explained the significant changes in rules relative to certificate of need. Chapter 200 will be rescinded since the Committee no longer exists. Standards for Magnetic Resonance Imaging (MRI) will be updated--originally, there was a sunset provision. Also, Standards for certificate of need review of positron emission tomography (PET) will be established. An ad hoc committee of technical experts, third-party payers and public representatives was formed to make recommendations regarding these standards which were intended to serve as guidelines for the council when they review applications. Commenters at the public hearing regarding the MRI contended that the volume threshold of 3000 procedures was excessive for a low field magnet--203.12(3)b. Department officials indicated that a conditioning statement would be added to paragraph b. The Department will also consider including guidelines for mobile units in these standards.

Pavich in the chair.

UTILITIES DIVISION Contd.

Discussion of 203.13 pertaining to positron emission tomography (PET) standards. Nervig recalled that commenters had recommended "preference to an enhanced unit" . This was not done since these standards are intended to serve as guidelines. Another suggestion was to delete the word "enhanced" from 203.13(3)b. Nervig indicated that modifications would be made to ensure equal standing for basic and enhanced units.

Clark asked if the Department anticipated that some hospitals would acquire PET installations and then apply for the certificate of need. Nervig said that the University of Iowa had received approval for an enhanced unit costing about $5 million. This prompted the Council to ask for standards.

Priebe resumed the chair.

Royce was interested in the difference in function of the basic and advanced unit. Nervig described an enhanced PET unit as involving a medical cyclotron, which can produce a large variety of radio isotopes to be used in the imaging process. Whereas, a basic unit uses a generator to produce isotopes and it limits the type of isotopes. Generally, basic units are used for cardiac applications. No Committee recommendations.

PROFESSIONAL LICENSURE

Susan Osmann and Carol Barnhill presented the following agenda:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Board of mortuary science examiners, 101.2(2), 101.3, 101.212, 101.212(1), 101.212(1)"h," Notice ARC 753A 3/21/90
Board of mortuary science examiners — reinstatement of lapsed license, grounds for disciplinary action, 101.5, 101.212(15), Filed ARC 706A 3/7/90
Speech pathology and audiology examiners, 302.2, 302.4(2), Notice ARC 754A 3/21/90

There were no questions.

Special Review 641--Ch 132

At Committee request, Don Kerns, Public Health, was present to discuss existing rules 641--Chapter 132 relating to advanced emergency medical technicians and paramedics. Priebe reported on an incident where an individual had broken a hip and was refused ambulance service by Lona. They had been called to an accident scene and advised the individual that she would have to wait for Fenton service. Des Moines and Mason City also declined to help contending that they lacked appropriate facilities. Don Kerns responded that 99.9 percent of the cases in the state, "first response services" do not transport patients--that is the general rule. He admitted that the administrative rule does not preclude the transportation but it is seldom done. The rule indicates a "first response service" as a "nontransport service." Kerns agreed that "reasonableness" has to apply and he was willing to revise the rules to clarify that first response vehicles could transport in the case of unusual circumstances or disaster.

HEALTH DATA COMMISSION

Pierce Wilson and Rose Vasquez represented the Commission for amendments to 5.5, 6.3(6) and 6.3(7) on uniform hospital billing and submission of data, ARC715A, Noticed in 3/7/90 IAB. Also present: Jeanine Freeman, Iowa Hospital Association and Jan Walters, Human Services. According to Wilson, the rules require direct submission of severity and outcome information to the Commission, provide sanctions if hospitals do not submit data and provide for the specific DRG s which are to be reported. In the public hearing they did have public comment regarding the time frames for submitting data as well as the sanction section that was included. Some opposition was voiced against the time frame for submission of data--within 45 days of each quarter. Also, question was raised as to the statutory authority for imposing sanctions. Wilson offered copies of the comments. Clark suggested the word "stated" be substituted for "defined" in 5.5 where it appears twice and in 6.3(6).

Wilson informed Schrader that the Commission would discuss the sanction issue at their meeting that afternoon.

Freeman commented that the Hospital Association had raised questions regarding the sanctioning and authority of the Health Data Commission. They recognized Commission concern for noncompliance by hospitals. The Association takes the position that principle enforcement should rest with the administrative agencies that sit on the Health Data Commission, namely the Department of Health with authority over hospitals, the Department of Insurance with authority over third-party payers and the Department of Human Services which administers the Medicaid program. With respect to implementation of the severity system, Freeman thought all hospitals were in the process of signing contracts.

Vasquez saw a need for stronger statutory language relative to enforcement and was hopeful that sanctions could be avoided. Currently, she was unaware of any serious problems. No further questions.

RACING AND GAMING

Mick Lura represented the Racing and Gaming Commission for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"
Organization and operation, rule making and declaratory rulings, public records and fair information practices, practice and procedure before the racing commission and board of stewards, applications for track licenses and racing dates, greyhound racing, mutuel departments, harness racing, thoroughbred racing, amendments to chs 1 to 5 and 7 to 10. Filed ARC 718A 3/7/90

Chs 1-5, 7-10

Lura reviewed changes from the Notice which included a time limit on appeals to an administrative law judge of a steward's ruling, and clarification of 8.2(4) as to the quiniela double payoff. Lura and Schrader discussed the meaning of "starter." Lura recalled a problem last year at Prairie Meadows when they required eight starters for a trifecta race. When an unforeseen situation at the gate resulted in scratching a horse, wagers would have to be refunded. Delays irritated all involved and now the rules provide that once the horse enters the track, it will be considered a "starter."

RACING AND GAMING Contd.

Lura indicated that Iowa was "a little tougher than other states" in terms of only allowing the trifecta on eight entries. As a result, the rule differs from the Association of Racing Commission Uniform Rules in terms of a definition of starter. Schrader asked if other states run a trifecta with six horses and Lura responded in the affirmative. Other states have varied from the Uniform rule in terms of limiting the wager on the trifecta. Lura concluded that horse race trifecta wagering was probably "the most dangerous" in terms of integrity and they wanted to keep a tight grip. No committee action.

REVENUE AND FINANCE

Carl Castelda, Deputy Director, of Revenue and Finance and Dennis Meridith, Supervisor of the Policy Section of Technical Services Division, represented the Department. The following was before the Committee:

REVENUE AND FINANCE DEPARTMENT[701]
Casual sales exemption. 18.28(1). Notice ARC 765A 3/21/90
Taxation of property used in Iowa only in interstate commerce. 33.6. Notice ARC 717A 3/7/90
Insurance deductions. 206.2, 206.14. Notice ARC 766A 3/21/90

18.28

Castelda described amendment to 18.28(1) as basically "cleanup." Examples of casual sale were changed to coincide with the rule.

33.6

Castelda said that rule 33.6 was in response to a recent Iowa Supreme Court case, Grudle v. Iowa Department of Revenue. The Court determined there was no statutory authority to rely on a taxable moment concept when taxing or exempting property in interstate commerce. Castelda spoke of the complexity of the issue. In the Grundle case, the Supreme Court stated that the proper standard for determining when property used in interstate commerce can be taxed by the State of Iowa was the "four-prong" test. Castelda informed the Committee that the rule has been revised to correct a technical reference and this version will appear in the 4/4/90 IAB.

Priebe referred to 33.6(2), paragraph 2. "Iowa use tax is fairly apportioned in relation to taxes imposed by other states" and he asked if all states apportion the same. Castelda answered that they do not and that is the reason the D. H. Holmes case is quoted in the rule.

Doyle asked what kind of tax was involved in the Transit case and Castelda replied that it was use tax on vehicles. Doyle wondered if this would affect rental car business. Castelda said that it would in a fringe area because the Hertz rent-a-car issue was that they did not want to pay use tax on vehicles registered in Iowa. Hertz wanted to pass that tax on in a form of a consumption tax to consumers who would pay the tax at retail along with the state sales tax. Through audits, the Department found that car rental firms were registering cars in other states, bringing them into Iowa, and paying no tax. These firms contended that the

REVENUE AND FINANCE Contd.

cars were not subject to Iowa tax because they were used in Interstate Commerce. The Department disagreed. They saw the transaction as intent to exercise the right of ownership of the property in the state of Iowa at or near the time of purchase--also a doctrine that has come down from the Iowa Supreme Court in the case of Herman M. Brown and Co. Castelda added that Iowa was one of three states that impose this tax. He pointed out that Iowa has given a number of exemptions to other facets of the rental industry. However, it has not allowed exemptions to the car rental industry so they feel discriminated against. From a policy standpoint, the Department was hopeful the General Assembly would eliminate all the exemptions and provide equal treatment of rental companies. This could be accomplished by providing that "a purchase for lease is a purchase for resale."

from other states. Castelda stated that if a car were bought in Omaha and brought to Iowa where it was rented right away, the tax would be owed. On a car rental, a tax is paid when the car is registered. The Department also collects a state sales tax on the rental receipts. On other types of property, there is no tax on the purchase price if a sales tax or use tax is collected when it is rented.

No Committee action.

206.2, 206.14

No questions regarding Chapter 206 amendments.

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] "umbrella"
Minerals program, ch 60. Notice ARC 764A 3/21/90

SOIL CONSERVATION DIVISION

Ch 60

Ken Tow, and Joel Pille represented the Soil Conservation Division to explain the "Minerals Program," being proposed 27--Chapter 60, 3/21/90 IAB. According to Tow, the rules are the procedures used to administer the requirements of Iowa Code Chapter 83A which address nonfuel minerals. It involves registration and a reclamation bond for limestone quarries, gypsum quarries, clay pits, sand and gravel pits, of which there are approximately 1100 to 1200 in the state. Legislation passed in 1985, which became effective in 1988, will also be implemented by the rules. Tow pointed out that a hearing was set for April 17. So far, subrule 60.75(3) dealing with an excavation setback distance from the fence of the adjacent property seems to be generating the most attention. Tow informed Doyle that the state does not own any gravel pits--60.100. Royalty fees to DNR are covered in other rules. Areas where gravel is taken from river bottoms would be a subset of the 1100 to 1200 quarries.

In response to question by Priebe, Tow explained that the Division does not regulate the site activity. They register all mine sites and try to visit them every two or three years to determine if the reclamation bond is sufficient to cover the statutory requirements in the event the business is closed or forfeited. Tow also told Priebe that the

SOIL CONSERVATION Contd.

problem he recounted relating to an underground storage tank would not be covered under these rules. Tow pointed out that exploration activities are exempt from registration unless more than 10,000 square feet are affected. Tow clarified the regulation of clay was relative to the production of tile or brick and tile, etc. Doyle voiced his opinion that 12 months was too long to wait for an inspection--60.60(2).

Royce noted that 60.30(8), pertaining to signs required at the site entrance, required only the city and state for the business address. Tow recalled that reaction from some industry people was negative on the statutory provision for signing. They oppose inclusion of the phone number and use of "city and state" was a compromise. Tow concluded that signs create problems for a business to maintain because of vandalism and they are an "attractive nuisance." No formal action.

Royce Salary

Clark moved that Royce's salary be increased two steps effective June 22, 1990, and Pavich seconded the motion. Motion carried.

Recess

Chairman Priebe recessed the Committee for lunch.

Reconvened

Chairman Priebe reconvened the meeting at 1:30 p.m. and called up the Transportation Department for the following:

TRANSPORTATION

TRANSPORTATION DEPARTMENT[761]

Highway and bridge construction. 125.1. Notice ARC 751A	3/21/90
County and city bridge construction funds. ch 160. Filed ARC 704A	3/7/90
Special mobile equipment, ch 410; rescind 400.2(7), 400.48, 400.49. Filed ARC 705A	3/7/90
Regulations applicable to carriers. 520.2 to 520.4. Notice ARC 741A	3/21/90
Rail rate regulation. ch 840. Notice ARC 767A	3/21/90

Representing the DOT was H. E. Sims, E. Rees Hakanson, John Hocker, Specifications Engineer; Stan Johnson, Larry Jesse, Ralph Ager, Valerie Hunter and Ruth Skluzacek. Hocker

125.1

explained that amendment to 125.1 incorporates 13 revisions to Sections 1101 through 1105 of the "Standard Specifications for Highway and Bridge Construction." He described the changes in detail, pointing out that the first six were housekeeping items.

Hocker distributed copies of their Supplemental Specifications which showed the proposed changes. The last seven revisions were requested by the Federal Highway Administration to ensure that Iowa continues their eligibility for federal aid. No Committee action.

Ch 160

Jesse presented adopted rules in Chapter 160. He said that city and county organizations accept the rules and they have worked with the development of a priority and ranking system. No questions.

Ch 410

Ruth Skluzacek reviewed Chapter 410 which makes it clear that the only time a special mobile equipment registration

DOT Contd. plate and certificate of identification are required is when it is transported on a trailer, registered for the gross weight of the vehicle without load. No action.

520.2 to 520.4 Ager discussed amendments pertaining to carriers. Terms in Code sections 321.449 and 321.450 are clarified. In response to question by Priebe, Ager was unsure whether medical tests every 24 months would be required under the new CDL legislation. Priebe asked that the Department check on need for possible coordination of these rules with the Federal. It was noted that DOT follows Federal requirements now and the rules will not affect school bus drivers.

Doyle questioned out-of-service order in 520.4. Ager said that this was not "tied to the CDL bill." It deals physically with the vehicle and certain safety factors that the officer determines are faulty in the vehicle and should be placed out-of-service until repairs are made.

Chairman Priebe recognized Kevin Vinchattle, Iowa Grain & Feed Association, who read from a prepared statement where in he contended that rules lacked equitable application. The primary issue would be that the federal government has viewed the regulation of local IGFA employees and their local activities in the same light as over-the-road truckers who may haul coast to coast. IGFA disagrees with this approach. Vinchattle stated that IGFA, along with other associations, has worked for a more equitable regulatory framework. The proposed rules submitted by the Iowa DOT will deal with some of these issues and IGFA is analyzing them. He requested the ARRC to consider accepting any comments at a subsequent meeting. Schrader urged DOT and IGFA to work to resolve difference since ARRC authority was "fairly limited."

Dawn Carlson, Legislative and Regulatory Affairs Analyst for the Iowa Institute of Cooperation, representing nearly 300 cooperatives in Iowa, expressed concern that the rules contradict the exemption intended by law and may require unnecessary and costly records to be maintained by intrastate operators. Carlson continued that by adopting 49 CFR Part 395 in the definition of "recordkeeping" the Department has determined it to be limited to "hours of service." It was the Cooperatives understanding that "recordkeeping requirements" included all items in the driver qualification files of 49 CFR Part 391, Subpart F (Files and Records). The exemption issue had been discussed with federal DOT personnel, who concurred with the Coops assessment. Carlson pointed to Iowa Code section 321.449, unnumbered paragraph 2, which supported her argument and requested that "Part 391, Subpart F" be substituted for "Part 395."

Ralph Ager interpreted Code sections 321.449 and 321.450, as pertaining to the driver and not the contract.

DOT Contd.

Priebe suggested that specific information be gathered on the matter for review at a later date.

Vinchattle believed that legislative intent was that the driver and employer had exemption.

Pavich in the chair.

Ch 840

Sims presented proposed Ch 840 intended to implement Code chapter 327C--Supervision of Carriers, and 327D--Regulation of Common Carriers. These rules are required for recertification by the ICC and will allow Iowa to retain its regulatory jurisdiction over intrastate freight rates. They contain the criteria for determining the reasonableness of rates, provide the procedures for filing protests and complaints, establish time limits for completing rate proceedings and provide for the exemption of certain commodities and services. Doyle and Sims discussed railroad abandonment. Sims indicated that Congress has taken renewed interest in railroad matters and the recently appointed ICC Chairman has demonstrated that he intends to administer the interstate commerce law objectively. No Committee recommendations.

COLLEGE AID COMMISSION

Stu Vos, represented the Commission for the following:

COLLEGE AID COMMISSION[283]
EDUCATION DEPARTMENT[281] "umbrella"
Stafford loan program — eligible borrower, 10.2(1)"2," 10.11. Filed ARC 709A 3/7/90

10.2, 10.11

Vos explained that amendments to Chapter 10 expand the eligible borrower definition for Iowa-based lenders who make loans to out-of-state students. It has been the experience of the Commission that a greater chance for default on loans exists when the student borrows from more than one lender. The intent ot the rules is to keep one lender throughout his or her college career. Priebe voiced his reservations about the rules. Vos stated that the Commission wants to avoid becoming a national guarantee agency where other states with a weaker program can "dump bad paper on Iowa." The 10 percent limitation any given year for students out of state should help. Vos discussed the function of the Iowa Student Loan Liquidity Corporation, which helps Iowa students.

ECONOMIC DEVELOPMENT

Douglas Getter and Melanie Johnson appeared for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Emergency shelter grants program, ch 24. Filed ARC 749A 3/21/90
Iowa targeted small business procurement program, ch 54 title, 54.1, 54.2, 54.3(2), 54.3(3), 54.3(5), 54.4, 54.10, 54.11, 54.12(1), 54.13(1), 54.14, 54.15. Filed ARC 750A 3/21/90

Ch 24

Johnson spoke of comments at the public hearing on Chapter 24. Interested persons questioned time lines dictated by the federal rule. In response to Priebe, re 24.12(4), amendments to contracts, Johnson cited as an example,

ECONOMIC DEVELOPMENT Contd.

requests for extensions of time for meetings, etc. Johnson agreed to provide Doyle information relative to 75 percent costs mentioned in the definition of "renovation"--24.2.

Ch 54

In reviewing amendments to Chapter 54, Getter said they were an outgrowth of a Supreme Court decision last year which overturned the setaside programs for female minority businesses. Following the Notice, there was clarification of the definition of "minority business enterprise" to be consistent with language re women business enterprise--54.2. Paragraph 54.14(2)f was modified to allow departments to count 60 percent of their expenditures for construction projects, if the supplier is not a manufacturer. This will be consistent with Iowa DOT. Getter pointed out that federal DOT sets different criteria as to what is an allowable minority business. Their definitions do not recognize a women-owned business as being minority-owned as they do in Iowa.

Priebe observed that the definition of "minority" did not include Mexican or women. It was noted that the definition was taken from the statute.

Doyle wondered if the rules were consistent with the DOT DBE. Royce clarified that the DBE was different. DOT can still use percentages as opposed to goals. At the suggestion of Doyle, Getter agreed to modify the definition of "contractor" by substituting "personal representatives" for "executors and administrators." No formal action.

EDUCATION

Bob Roush appeared for the following agenda and there were no questions:

EDUCATION DEPARTMENT[281]
Driver education, 26.2(1), 26.2(2)"g," 26.5, 26.8, 26.8(4), 26.9, 26.9(1), 26.9(2), 26.9(2)"b," 26.9(3), 26.9(4), Filed ARC 708A 3/7/90
Educational support programs for parents of at-risk children aged birth through three years, ch 67, Notice ARC 737A, also Filed Emergency ARC 738A 3/7/90

AGRICULTURE

Darrell Frey represented the Department for rule 45.51 pertaining to restrictions on distribution and use of pesticides containing atrazine. The rule was adopted emergency after Notice and was published in the 3/7/90 IAB as ARC 739A. The language was implemented upon recommendation of the Pesticide Advisory Committee. Discussion of mixing and contamination problems resulting from back-siphoning.

45.51

Priebe wondered how areas for pesticide management were determined--45.51(4)e. Frey admitted that the decision was somewhat subjective but was based on the combination of things including the presence of sinkholes and ag drainage wells. Also considered was geological data in areas which could reasonably be assumed to be vulnerable to contamination either through naturally occurring or artifically constructed point sources or through leeching.

Schrader expressed his disappointment that the Advisory Committee failed to take stronger action on atrazine. Frey

AGRICULTURE Contd.

indicated that the Department's instructions to the Advisory Committee were to seek ways to mitigate the contamination of both ground and surface waters. However, the Committee wants to scrutinize hard unprocessed data from the DNR and the University of Iowa study which may give them direction.

ENERGY & GEOLOGICAL RESOURCES

There were no questions on the following:

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]
NATURAL RESOURCES DEPARTMENT[561] "umbrella"
School energy bank program for school districts, merged area schools and area education agencies, ch 6, Filed ARC 727A 3/7/90

MEDICAL EXAMINERS BOARD

Special Review Acupuncture

Dennis Carr, Chairman, and William S. Vanderpool, Executive Secretary, Board of Medical Examiners, appeared at ARRC request to discuss the Declaratory Ruling by the Board in March 1990 wherein they contend that acupuncture constitutes the practice of medicine. In response to Schrader, Vanderpool said there were few practicing in Iowa who are not doctors. He mentioned a Mr. Roberts in Des Moines and possibly three or four others who are not physicians. Vanderpool recalled proposed legislation to license acupuncturists which failed to pass a few years ago. He spoke of possible ways to address the matter. Vanderpool reasoned that if legislation provided for certification, registration and licensing of acupuncturists, a reliable accrediting body would be needed. It could also be done in conjunction with physicians in some way. With respect to options for the board, Vanderpool stated they refer to the Attorney General's office for an injunction and to the County Attorney for any criminal charges. Clark asked about the type of training Mr. Roberts had and Vanderpool said that he holds himself out as a certified acupuncturist through Colorado, but supposedly graduated from a College of Acupuncture in Arizona. He also has trained in China. Patients would probably presume that he was certified in Iowa.

Vanderpool saw a need to learn what other states are doing--what they accept as valid credentials and background for acupuncture. The Board's position has been that acupuncture may have an appropriate use. No further discussion.

Recess

Chairman Priebe recessed the meeting at 3:45 p.m.

Reconvened

The meeting was reconvened at 10:05 a.m., Thursday, April 12, 1990 by Chairman Priebe. All members and staff were present with the exception of Senator Dale Tieden.

HUMAN SERVICES

Human Services rules were before the Committee as follows:

HUMAN SERVICES DEPARTMENT[441]
Census income exemption in computing eligibility for ADC, food stamps, and cash bonus program: Medicaid coverage for children whose income does not exceed 133 percent of federal poverty level, 41.7(7)"aa," 65.29(3), 75.1(28)"a," 75.13(1), 92.3(3). Notice ARC 731A, also Filed Emergency ARC 730A 3/7/90
SSI cost-of-living adjustment increases: personal needs allowance for residents of residential care facilities, 51.4(1), 51.7, 52.1(1), 52.1(2), 52.1(3)"a"(2)"1," Filed ARC 733A 3/7/90
Conditions of eligibility — disposal of resources, 75.15, 75.15(1), 75.15(1)"a," "b," "e," "f," 75.15(3)"a" and "b," Notice ARC 729A, also Filed Without Notice ARC 734A 3/7/90
Hospice — certification of terminal illness and adjustment to rates, 78.36(4)"a," 79.1(14)"b," Notice ARC 714A 3/7/90
Hospice — certification of terminal illness, 78.36(4)"a," Filed Emergency ARC 713A 3/7/90
Hospice — adjustment to rates, 79.1(14)"b," Filed Emergency ARC 712A 3/7/90
Nurse aide training and testing programs, 81.1, 81.15, Notice ARC 710A, also Filed Emergency ARC 711A 3/7/90
Social services block grant funds eligibility, 130.3(1)"d"(2), Filed ARC 732A 3/7/90
Gamblers assistance program, ch 162 preamble, 162.1 to 162.13, Notice ARC 735A 3/7/90

Department officials in attendance: Mary Ann Walker, Mary Helen Cogley, Rita Vodraska and Mike Baldwin, Nanette Foster-Reilly, Mary Roberts, Don Herman and Ruth Schlesinger.

41.7
51.4

Walker summarized amendments to 41.7(7) et al. and 51.4(1) et al. and there were no recommendations.

75.15

Discussion of amendments relative to conditions of eligibility--disposal of resources--which according to Walker, was mandated by OBRA of 1989. These amendments prevent the community spouse of an institutionalized spouse from transfering assets without a penalty within 30 months of the time they applied for Medicaid to pay for their nursing facility care, effective May 1. Doyle referred to 75.15(3)a and b which provided for...."consultation with an attorney...." It was Walker's understanding that legal aid was available for those with hardships.

78.36,
79.1

Walker advised that changes in rules governing the hospice program were required by federal legislation. There were no questions.

81.1,
81.15

Walker reviewed amendments to 81.1 and 81.15 with respect to the nurse-aide training and testing programs. No questions.

130.3

No questions on 130.3.

Ch 162

According to Walker, proposed amendments to expand services through the Gamblers Assistance Program will be terminated since the Council on Social Services voted April 10, 1990, not to disallow this expansion.

76.6(2),
et al.
Medipass

Chairman Priebe called up the rules addressing Medicaid patient management which were delayed 70 days by the ARRC at their March meeting. In attendance on the Medipass issue were: Stephen M. Aigner, Iowa State University; Sandra Kohler, Allen Memorial Hospital of Waterloo; Nancy Rosemans of Allen Memorial Hospital, Waterloo; Jackie Lux of Hillcrest Family Services of Dubuque; Marcella Prevo of American Home Finding in Ottumwa-Wapella County; Carolyn Levine and Betty Hoffman-Bright of Muscatine Community Medical Services; Sheryl Nuzum of the Iowa Medical Society; Mary Oliver, Dept. of Inspections and Appeals; David Freis, Public Health Department; Jodi Tomlonovi of Family Planning Council of Iowa; Mack Shelley of Iowa State University; Kai Argus and former Senator Tom Slater of Iowa-Nebraska Primary Care Association; Jeff Hackett, Florence Crittenden Home in Sioux City; Carol Machael, Womens Health Services in Clinton.

Herman reported on a meeting which included all Iowa maternal health centers. Compromise language was developed as an amendment to the contract with physician-patient managers. These managers would be required to make a referral of a pregnant Medicaid client to a maternal health center if that client were already using the services of the center or requested to use the services.

The following additional compromise language was proposed: "The patient manager is expected to provide the appropriate range of services to pregnant enrollees or to refer them to another source such as a maternal health center for these services." Herman said consensus was that this language

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would ensure that no patient currently going to a center would be refused care. Further, they believed that any pregnant enrollee who asked to go to the center, would be referred by the physician. Herman spoke of the Department's commitment to use of maternal health centers to provide additional prenatal care and their belief that these centers are an effective way of providing it. Herman added that the Department's position is that elimination of the patient-manager program from the centers would undermine the philosophy of the program. The Department sees a need for a physician to be involved in the medical care of the patient. Further, it is appropriate for the physician to be aware of where that person is receiving services and it is important for that physician to work cooperatively with the maternal health center.

Clark was interested in how the program would be implemented. Herman responded that with respect to the services provided by the center, the centers may contact the physician and receive a standing referral. If the center could not provide the patient's needs, the patient would go back to the physician.

Chairman Priebe recognized Hoffman-Bright who pointed out that their patients lack the ability and facilities to travel from one place to another. The centers have been case managers from the beginning and she was doubtful that the amendment would help. Hoffman-Bright concluded that Medipass was not cost effective and would not provide continuity of care.

Clark recognized a problem in phrasing the rules to avoid taking away the patient's right of choice.

Chairman Priebe called on Hackett who voiced his concerns with the Medipass program. He suspected that clients would not get to the centers even though there was physician referral. A full 66% of the patients served in his clinic are without adequate means of transportation, many of the minorities lack English skills and an estimated 23 percent of the clients use drugs or alcohol during pregnancy. Hackett contended that the private medical sector was not equipped to handle this situation. His clinic has been providing a broad range of services since 1895, including a GED program for those patients who have not completed high school. Even with all the benefits, approximately 20 percent fail to come in on clinic day. Hackett had seen no evidence that this new system would even equal the present one. Recent business and administrative journals that he has read also express reservations about managed health care.

Tom Slater read a letter from William P. Rogers, Chairperson for the Iowa-Nebraksa Primary Care Association. They could foresee that limited access to the programs would jeopardize the "health status of Iowa's poorest citizens." Slater continued that the maternal and child health care centers have played a significant role in

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bringing the health status of Iowa residents to an enviable level. Although they have been assured by DHS and DPH staff that child health services have been exempted under this program in language referencing health screening and APSDT programs, the Association felt the language was unclear. Clearly, maternal health services would be subject to Medipass rules and come under the auspices of the physician manager. Slater reasoned that without revisions in the rules, the contracts would have no basis in the law.

He emphasized that his Association does not oppose the concept of managed care, as case management is part of the foundation of their services, but they want assurance that programs for low-income residents will not be "thinned." Slater concluded that if programs are eroded, the state of Iowa should assure their existence, particularly in the event that this pilot program does not attain its goals.

There was discussion as to the procedure of assigning patients to doctors. A list of physicians who are participating as patient managers would be provided to the recipient. The recipient would be given a choice among the patient managers. Patients who do not make a choice, will be assigned, in no particular order. Also, clients have the option of identifying a particular center as their patient manager.

Slater referenced a Departmental mailing to clients and stressed the importance of avoiding confusion for these clients.

Foster-Reilly discussed the type of calls by clients who use the hotline. Essentially, they were limited to questions on selecting physicians. She clarified that the mailing referenced earlier did not address services. It simply indicated that care would need to be received by a regular primary care physician or it would need to be referred by that primary care physician. Clients were encouraged to select the doctor whom they were seeing currently. However, she agreed there had been some confusion.

Clark commented that clients with language programs would not call on a hotline. Priebe agreed and added that some would not even have telephones and would be embarrassed about their dilemma.

Slater reasoned that referring to the program as a "pilot project" was a misnomer since it is being tested in eleven of Iowa's largest counties and involves about 80 percent of the recipients. Hoffman-Bright reiterated that the rules look "great on paper" but realistically would not work.

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Machael expressed frustration of the Women's Health Services at being unaware of the rules until last December when she heard about the Medipass program at a Grantee Committee meeting. As they became aware of the potential impact this program could have on their individual maternal and child health program, as well as their family planning program, they voiced opposition. However, the time for input had already passed. About a month ago Machael heard that the matter would be before the ARRC and she wrote a letter. The first time that they received any input from DHS was on April 6, 1990,at an administrative meeting of the State Health Department. She believed that there was an eleventh hour attempt to work with the State Health Department on programs affected. Regrettably there should have been a cooperative effort among the various factions months ago, but Machael was hopeful the issue could go back to the drawing board.

Clark was interested in response from the Public Health Department since it was her understanding that the Human Services Department had furnished information to the DPH. It was her opinion that DPH should have been the catalyst.

Fries recalled that when the DPH was provided with copies of the proposed rules in March 1989 they did not react. It was their understanding that the rules were going to be totally rewritten. Fries continued that to his knowledge DHS did not afford opportunity to see any revision until December 1989 when DPH attended the Grantee Committee meeting. He said that the Department of Health and the Grantee Committee expressed a great deal of concern when they learned of the intent of the program. They requested an appearance before the Council on Human Services in January 1990 to speak to the issue and express their concern. Since the March ARRC meeting, DPH has worked with all factions in an attempt to reach a compromise.

In conclusion, Fries stressed that both Departments recognize the need to confer on a regular basis concerning those programs that impact on both departments. He stressed the importance of precise directions and education of all the parties involved, so that they understand the concept of the program.

Foster-Reilly took the position that DHS made every effort to involve the DPH. She was at a loss to know why anyone thought the rules were "shelved." The letter in question did go to the Director of the Department of Public Health in March of 1989. Human Services received a response giving them names of contacts including Liz Boardmire, Bureau Chief for the DPH. Foster-Reilly and her supervisor met with Boardmire and other staff in May [1989] and saw an updated copy of the rules. The Health Department was involved six months before the rules were Noticed. Comments on the rules were received in May but opposition being expressed by the maternal health center was not in those written comments. Foster-Reilly indicated that another copy of the rules was sent to Boardmire in June for her comments, in particular, about EPSDT or OB. With mixed

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messages being received, she was not sure how the DHS was expected to respond.

Hoffman-Bright declared that the "confusion here is nothing compared to that in the field," not only with the patients but with the center staff. She reiterated her dismay at the March 30 letter from the Department of Human Services saying that the program was going into effect April 1. The ARRC delay had already been imposed and the letter added additional confusion.

Hackett mentioned a 40 percent cut in their state Department of Health budget for their maternal health center. Medipass will add to their burden. Hackett would prefer to spend his "scarce time and resources working with patients." He concluded that it is becoming increasingly difficult to serve more and more people with fewer resources.

Chairman Priebe questioned Dierenfeld as to the position taken by the Governor's office. Dierenfeld responded that the Department followed the rule making process to implement legislation that was passed a year ago. The program was not put together "underground" and there was no intent to bypass any group. Dierenfeld did not have direct input in the rule making but was aware of it and the Governor's office is supportive of the program. She believes that the DHS has made some compromises and she failed to see where the maternal health centers seem compromised.

After listening to all arguments, Clark could see merit in going back to the drawing board and for a real pilot project with full cooperation between the DPH and DHS in the development of the rules.

Priebe requested that the Departments, a provider or two, Dierenfeld and Royce meet in an attempt to compromise within the next 30 to 60 days. If resolution is not possible, Committee options include a delay into the General Assembly.

Pavich was optomistic that compromise was possible.

Schrader thought the original concern brought to the ARRC had been addressed. He felt that the department had reacted in good faith to that concern. However, they have a whole new group of concerns and the scope of the issue has really broadened to cover the entire spectrum of medical care for these people, but yet they are still focused on the maternal and family health care clinics. He had not heard from any other providers outside of the scope of maternal and family clinics. Schrader suspected that opposition was to this type of management program in total.

Hoffman-Bright stated that they became fully aware of the impact after they had seen the rules, contract, etc.

Schrader reasoned that the ARRC had been placed in a difficult position where they took an action based on specific issues and now that action seems to have brought in many others.

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Department of Human Services officials expressed a willingness to talk further. Herman was still waiting for some compromise language from the Maternal Health Centers.

Priebe urged resolution of the matter before the May 9 ARRC meeting.

Schrader asked Royce if there were any question as to the DHS's authority to adopt the rules. Royce advised that there was authority. The Department was asked in a very briefly worded bit of appropriation to start proceeding with a Medipass type of program. Guidance or detail was nonexistent. No formal action by ARRC.

NATURAL RESOURCES DEPARTMENT EPC

Appearing for the DNR were: Rex Walker, Keith Birdson, Randy Clark, Wayne Reed, Ralph Hubbard, Vic Kennedy, Richard Bishop, Terry Riley, Gregory Jones,John Beame, and Bob Walker. Rex Walker and Randy Clark explained the following rules of the EPC:

Emission standards for contaminants, 23.1(3), 23.1(3)"a." Notice ARC 756A	3/21/90
Requirements for properly plugging abandoned wells, ch 39. Filed ARC 755A	3/21/90
Technical standards for underground storage tanks, 135.7(9), 135.8(3), 135.8(4), 135.9, Notice ARC 760A	3/21/90

Walker told the Committee that an additional pollutant category would be added to hazardous air pollutants standards--the demolition renovation operations. Walker added the regulation was already effective for the people of the state but the Department planned to take delegation for the program. Priebe questioned the meaning of "take delegation" and Walker said they would do the inspections, take notifications, be closer to the whole project. An opinion from their Legal Staff advised that they have authority.

Priebe suggested that Royce review the opinion inasmuch as it was from the Staff rather than the Attorney General's office. No action.

Ch 39

Randy Clark reviewed the final rules relative to plugging of abandoned wells. Many changes had been made since the Notice of Intended Action, the most significant include deletion of the requirement for Affidavit of Wellplugging to be filed with the County Recorder. It need be filed with the Department only. Several definitions were clarified.

Discussion focused on portions of 39.8 which precluded the use of agricultural lime as fill material for closing wells. Priebe quoted from Senate File 441 [455B.190(1)f] which stated that "Filling materials means agricultural lime. Filling materials may also include other materials, including soil, sand, gravel, crushed stone, and pea gravel as approved by the department." R. Clark said the Department did a substantial amount of study on the use of agricultural lime and found that, it did not function well as a sealing material below the static water level. Priebe maintained that S.F. 441 did not provide the department an option, that it was very specific that lime rock could be used to within four feet of the top of the well. R. Clark

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viewed the Department's effort as following legislative intent to prevent contamination of groundwater.

Royce advised that the law clearly allowed use of the lime but the Department seemed to be saying, in this case, that the law does not work. The action by the Department would have the effect of repealing a statute by a rule.

Priebe noted that the fund for well closing was inadequate but he considered it very important to close these wells. He cited $28.20 as opposed to $188.40 for the same well-closing if Department guidelines are followed.

Discussion of possible formal objection.

Schrader was hesitant to object to the entire rule. Language of the statute was reviewed again. R. Clark pointed out that ag lime was acceptable for a filling material in some wells. He cited static water level as the problem.

Schrader could not see that cost of the program would be increased whether ag lime or sand was used. Priebe stated that sand was not readily available in some parts of the state. Royce read from 455B.190(1)f and advised that the first sentence becomes a freestanding absolute--"'Filling materials' means agricultural lime." The second sentence has the condition: "as approved".

Priebe offered legislative history on the language and wondered why the Department had not made the General Assembly aware of problems. Reed recalled that the question of the suitability of ag lime and why it was not used was specifically asked of the department and they prepared a written response. Soon after the Ground Water Protection Act was passed, the Department spent the better part of a year assembling information from many sources outside of the state and within the state a Committee of well drillers and department personnel was formed. They investigated every possibility and uppermost in their minds was the proper plugging of abandoned wells.

Priebe pointed out that the law was written after the December 20, 1988, letter was sent out because the Department had indicated they would not allow the use of ag lime.

Schrader suggested possibly requesting an Attorney General opinion as to whether or not the Department could approve or disapprove the use of ag lime.

Schrader opined that an objection was the only option since it was important to get the balance of the rules into place even though there were some questions.

Priebe indicated he would not support an objection contending that no one would go to court over a $200 water well. He favored a delay.

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Further discussion. Schrader would not support a delay based upon the fact that he thought benefits outweigh the one problem in the rules. Royce suggested that only two sentences of the rules were at issue: 39.8(3) first sentence of the second paragraph; and the first sentence of the second paragraph of 39.8(4)a.

Motion to Delay

After further discussion, Doyle moved to delay for 70 days the first sentence of the second paragraph of 39.8(3) and the first sentence of the second paragraph of 39.8(4)a. Motion carried with 4 ayes. Schrader voted "no."

Pavich in the Chair at 11:55 a.m.

INSURANCE DIVISION

The following rules of the Insurance Division were before the Committee:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181] "umbrella"
Petroleum underground storage tank fund, ch 46. Notice ARC 728A 3/7/90
Petroleum underground storage tank guaranteed loan program, ch 47. Notice ARC 759A 3/21/90

There were no questions.

PETROLEUM STORAGE TANKS

Ron Hubbard, Administrator, Petroleum Underground Storage Tank Fund Board, reviewed the following:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Determination or adjustment of cost factor, 5.2. Notice ARC 757A, also Filed Emergency ARC 758A 3/21/90

Hubbard explained that rule 5.2 was intended to satisfy the requirement in 1989 Acts, H.F. 447, [Supp.§424.3] that notice of diminution change be made through the rules process at least once a year. He pointed out that the rule will be rescinded and rewritten to correct the fee and date. Hubbard told Doyle that the diminution was based on the total sales of petroleum products. The cost factor shall not exceed an amount to generate more than $12 million in annual revenue.

NATURAL RESOURCE COMMISSION

Greg Jones, Vic Kennedy and Richard Bishop presented the following:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561] "umbrella"
Public-owned lakes eligibility process, 31.2, 31.3(1), 31.3(3). Filed ARC 761A 3/21/90
Private open space lands, ch 32. Notice ARC 9778 Terminated. Notice ARC 762A 3/21/90
All-terrain vehicles and snowmobile accident reports and registration display, ch 50 title, 50.1, 50.2, 50.5, 50.9. Filed ARC 763A 3/21/90
Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(2)"k." Notice ARC 726A 3/7/90
Nonresident deer hunting, 94.1, 94.2, 94.6, 94.8. Notice ARC 723A 3/7/90
Wild turkey fall hunting, rescind chs 95 and 99; new ch 99. Notice ARC 722A 3/7/90
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1(1), 96.2, 96.3. Notice ARC 725A 3/7/90
Common snipe, Virginia rail and sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4. Notice ARC 724A 3/7/90
Wild turkey spring hunting, 98.10 to 98.15. Filed Emergency After Notice ARC 707A 3/7/90
Deer hunting regulations, 106.1, 106.2, 106.5(2)"c" and "d," 106.6(2), 106.6(3), 106.8. Notice ARC 719A 3/7/90
Rabbit and squirrel hunting, 107.1 to 107.3. Notice ARC 720A 3/7/90
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and spotted skunk seasons, 108.1, 108.1(2), 108.2 to 108.5, 108.7(2)"j" and "k." Notice ARC 721A 3/7/90

31.2
31.3

No question regarding amendments to Chapter 31.

Ch 32

In review of Chapter 32, Kennedy pointed out that the rules had been before the Committee in April and because of disagreement on the expanded definitions, the first Notice was terminated. He summarized intent of the new proposal.

NATURAL RESOURCE Contd. Ch 50 — Bob Walker stated that amendments to Chapter 50 cover the registration format for snowmobiles and all terrain vehicles as well as the accident reporting system. No questions.

Ch 91 — Bishop stated that information on water fowl and coot hunting would not be available from the U. S. Fish and Wildlife Service until late July. Consequently, their recommendations are the same seasons but adjusted for calendar dates. Doyle and Bishop discussed a complaint from Doyle's constituent regarding zoning of the south edge of the district. Bishop assured him that much thought had gone into boundary decisions and there was no better way.

Ch 94 — According to Bishop, they will issue 1200 nonresident deer licenses next year to implement the new legislation. No questions.

Ch 99 — Bishop pointed out that both nonresident and resident wild turkey fall hunting had been combined into one. Chapter and zones are the same. They are recommending an issue of 150 permits for nonresidents and 7600 for residents. No questions.

Chs 96, 97 — Bishop reported that only calendar days were adjusted for pheasant, quail and gray partridge hunting seasons. The same situation applied for rules in Chapter 97.

Ch 98 — Bishop explained that wild turkey spring hunting was currently in process and there were no changes in the rule from a year ago.

Ch 106 — In explaining proposed amendments to deer hunting regulations, Bishop said that they are reviewing complaints from northern Iowa that too many deer are being shot.

Chs 107,108 — There were no recommendations for Chapters 107 or 108.

Adjourned — The meeting was adjourned at 12:15 p.m.

Next Meeting — Next meeting was scheduled for Wednesday and Thursday, May 9 and 10, 1990.

No Agency Reps — No agency representatives were requested to appear for the following:

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221] "umbrella"
Historical resources development program, ch 49, Filed ARC 752A 3/21/90

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Licensure requirements, standards of practice and professional ethics, 11.2(6)"a" and "c," 13.1(4), Notice ARC 736A 3/7/90

VOTER REGISTRATION COMMISSION[821]
Transfer 845—chs 1 to 7 to 821—chs 1 to 7, amend 2.1(7) and 2.1(8), new 2.1(9), Filed ARC 742A 3/21/90

Phyllis Barry
Phyllis Barry, Secretary
Alice Gossett, Admin.Asst.

Chairman