

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, April 13, 1976, 7:20 a.m.

Place of Meeting: Senate Committee Room 24, State Capitol, Des Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chairman; Senators E. Kevin Kelly and Minnette F. Doderer; Representative W. R. "Bill" Monroe, Jr., Vice Chairman; Representatives Donald V. Doyle and Laverne Schroeder.

Also present: Wayne A. Faupel, Code Editor
David Charles, Research Assistant

Minutes: Schroeder moved to dispense with reading of the minutes of the February 10 and March 9 meetings and that they stand approved. Motion carried.

AUDITOR OF STATE Ray Yenter, Deputy, represented the Auditor of State for
Chapter 5 review of filed rules 5.1 to 5.12 pertaining to organization and procedures of the office. Said rules were published in IAC Supplement 4/5/76 and were acceptable to the Committee as published.

LABOR BUREAU Jerry Addy, Labor Commissioner, was present for review of the following filed rules:

IOSH—consultative services and training, Ch 6	4/5/76
Adoption by reference, federal standards, 10.21	3/8/76
Adoption by reference, federal construction rules, 26.1	3/8/76
Adoption by reference, federal standards, agriculture, Ch 28	3/8/76
Amusement parks and rides, safety and administration, 61.2, Ch 62	3/22/76
(Reviewed 2/10/76)	
Variances, Ch 77	3/22/76
Hearings and appeals, Ch 78	3/22/76

Addy stated that Chapter 6 was intended to implement 66 GA, chapter 8, §1(3) which mandated the establishment of an "on-site consultative occupational safety and health inspection program" by the bureau of labor.

Federal references were updated in rules 10.21 and 26.1 but would result in no significant changes according to Addy.

The amendment to Chapter 28, adopting federal standards, would require all agricultural tractors over 25 horse power to be equipped with roll bars. Self-propelled implements

LABOR Cont'd

would be excluded. All agricultural tractors manufactured after 10-25-76 must meet the requirements set out in CFR28 1928. 1928.51 b (5) provides exemptions which include "low profile tractors" where vertical clearance would substantially interfere with the normal operations as in vineyards or orchards or inside a farm building or greenhouse. Addy commented that the rule was in the "planning stage" for three years with input from the Farm Bureau. The Iowa State Agricultural Extension Service has prepared a pamphlet on the guidelines, also.

Addy said that Chapters 77 and 78 of their rules were modified somewhat at the suggestion of the Iowa Manufacturers Association.

The Committee made no recommendations for 61.2, Chapters 62, 77 and 78.

REVENUE
Motion

Schroeder made the following motion:

I move that the Department of Revenue be requested to promulgate rules under Chapter 17A of the Code regarding assessments of agricultural, residential, commercial and industrial properties. Motion carried unanimously.

CAMPAIGN
FINANCE
DISCLOSURE

Barbara Snethen, Executive Director, Campaign Finance Disclosure Commission, was present for review of the following filed rules:

Informal disposition of complaints, 1.15, Emergency	3/8/76
Reporting requirements, 4.1(1), 4.9, Emergency	3/8/76
Statements, notices, reports, filing in error, 4.11-4.13	3/8/76
Obtaining and filing information, 5.3, 5.4, Emergency	3/8/76

Snethen pointed out that amendments to 1.15 were as recommended by the Committee. Also, 4.1(1) was amended to provide for "sequential numbering" on the disclosure report form; "incidental expenses" were redefined as recommended by this Committee. Rule 4.11 is new and defines the method for amending the Statement of Organization or Dissolution. Rule 4.12 deals with the manner in which a disclosure report can be amended and 4.13 defines the process for the Commission to remove document filed in error.

The Committee made no recommendations concerning the four sets of rules on the agenda.

INSURANCE
Sex Discrimination

William Huff, III, Insurance Commissioner, explained filed rules 15.50 to 15.54 in re sex discrimination. The rules which were published 3/8/76 were acceptable to the Committee.

SOCIAL SERVICES The Department of Social Services was represented by Judith Welp, Administrator, Office of Procedures, and Margaret Paul, Staff Development Specialist. The following filed rules were before the Committee:

Penitentiary, visiting, 17.2(8)	3/8/76
Men's reformatory, visiting, 18.2	3/8/76
Interstate compact, parolees and probationers, Ch 27	3/8/76
Institution policies, Ch 28	3/8/76
State supplementary assistance, Chs 50 to 52	3/8/76
Food stamp program, administration, Ch 65	3/8/76
Child support recovery, Chs 95 and 96	3/8/76
Resources, general provisions, Ch 130	3/8/76
Veterans home, Ch 134	3/8/76
Payment for foster care, Ch 137	3/8/76
Homemaker-home health aide services, Ch 144	3/8/76
Student loan and grant program, Ch 146	3/22/76
(Above rules reviewed 2/10/76)	

Welp said the amendment to 17.2(8) was to comply with suggestions of this Committee. In answer to Schroeder, Welp knew of no restrictions for former mental patients as to visiting privileges at the penitentiary.

Doderer asked that the Department check on the practice of requiring "husband's permission" to call on an inmate at Ft. Madison. She cited the inconvenience to a married woman attorney, for example.

Amendments to 18.2 limiting visiting at the men's reformatory were necessitated because of overcrowding according to Welp.

Schroeder brought up the matter of wearing apparel of visitors at the penitentiary [17.2(7)] which was not officially before the Committee. He thought the same rule should also apply to the men's reformatory. Doderer suggested that 17.2(7) should be modified by inserting a period after "appropriately attired". and similar rules be changed accordingly.

Motion

Schroeder moved that the department re-evaluate the rules on wearing apparel. Carried viva voce.

Discussion of 18.2. A typographical error in numbering was pointed out: "18.2(2) should be "18.1(2) and "18.2(3)" should be "18.1(3)".

Doderer raised question as to 18.3(1)"b" in requests of institution. [Not officially before Committee]. It was her opinion the word "female" should be deleted before the word "guests". Schroeder suggested the paragraph read: "Guests shall be escorted by staff when deemed necessary." Priebe thought the word "may" would be more appropriate.

In response to question by Doderer in re 18.3(1)a as to who is "responsible adult", Welp indicated the rule could apply to tour groups.

SOCIAL SERVICES Chapter 27 of the rules was acceptable as filed.

Discussion of Chapter 28. Responding to question by Schroeder, Welp said the rules did not contain guidelines concerning visitation privileges at the mental institutions.

Discussion of 28.5 in re photographing patients. No recommendation made, however.

It was noted by Committee members that approval of application for assistance [50.3] had not been revised as they had urged when the rule was under notice. They took the position that payment would often be made for services not delivered. Priebe recalled his opposition on the ground that a recipient admitted to a home on the last day of a month and discharged on the second day of the following month would be eligible for two months' payment.

Monroe moved to object to Chapter 50. Charles pointed out that the rules became effective April 12 and an objection would be ineffective. Schroeder suggested that perhaps the Department should be petitioned to address themselves to drafting a rule to provide payment only for actual time involved.

Department officials commented that the program is implemented by the Social Security Administration and the payment cannot be prorated. Committee members requested that the Department ask a representative from Social Security to explain the program and the method of payment to them.

SPECIAL
MEETING
May 18

Discussion of possible special meeting of this Committee to be held Tuesday, May 18, 1976 in lieu of the regular meeting scheduled for May 11. Members were hopeful the legislature would be adjourned prior to the later date.

Motion

Moved by Schroeder that the Chairman call a special meeting to be held May 18, 1976. Carried

Ch 130
Further
Review
Necessary

In re eligibility for social services, Monroe raised question in 130.3(3) as to exceptions concerning gross income. Committee members concurred that the entire chapter 130 should be studied in depth at a later time.

Department officials indicated the rules were copied from federal regulations.

Ch 146

Discussion of Chapter 146 regarding the student loan and grant program for rural area students.

SOCIAL
SERVICES
Cont'd

Schroeder was opposed to the 50-mile limitation in 146.1(4).

Department officials reported that 242 loans have been granted to 172 students. Of the total funds available, 13.6% is in grants which do not have to be repaid.

Monroe questioned the insurance premium provisions for the loans. He requested that more information as to how the premiums are financially funded be furnished to him.

It was pointed out that HEW guarantees the loan and they pay the interest on the loan while the student is in school. No figures were available on the forfeiture rate on loans.

Monroe recommended that 146.5(1) be clarified to read as follows: "Repayment shall begin nine to twelve months after student completes course or leaves school."

He further recommended that 146.5(2) be amended by substituting the word "repayment" for "payment".

HEALTH
77.3
Chs 170-173

Peter Fox, Hearing Officer, explained filed rules of the Health Department, being 77.3(1)a which increases mileage reimbursement for health board members from 10 to 15 cents per mile, and Chapters 170 to 173--organizational rules. Said rules were published in 4/5/76 IAC Supplement.

Fox stated that no adverse comments were received concerning the rules while they were under notice. They were acceptable to the Committee.

NURSING
HOME
ADMINISTRATORS

Chs 1, 2

The following persons represented the Board of Nursing Home Administrators for review of their filed rules Chapters 1 and 2 which were published 4/5/76:

Dwight Fry, Board Chairman; Dorcas Speer, Phyllis Peters, Dr. James Gannon, Ezra Shener, Blain Donaldson, Dr. Richard Rabe. Also present were Peter Fox and James R. Faust, Health Department.

Doyle raised question concerning qualifications of applicants for licensure. 2.2(1)a provided "each applicant must establish to the satisfaction of the board that he or she is mentally sound and physically able to carry out the duties of the health care administrator." He thought this requirement placed restriction on the handicapped.

Donaldson cited instances where handicapped persons were hired.

With reference to 2.2(1)b Doyle took the position it would be difficult to determine if an applicant were "mature".

NURSING HOME
ADMINISTRATORS
Cont'd

Doyle recommended that 2.2(1)a be revised to read: "Each applicant must establish to the satisfaction of the board that he or she is able to carry out the duties of the health care administrator."

Doyle was concerned with the requirement of a "minimum of fifty beds" in 2.2(3)d. He recommended revision to provide "an average of forty occupied beds".

Monroe questioned 2.2(2)c which read: "Each applicant shall be required to pass a written examination in the nursing home administration subjects listed in 2.6(2)b and may at the board's discretion, be required to pass an oral examination." He asked what would be "the board's discretion" Fry referred to Chapter 600 of the Code and indicated certain handicapped individuals, e.g., blind persons, would be permitted to take the oral examination. Committee members concurred that the language should be clarified if the intent was to allow oral exam in lieu of a written one.

Discussion of the preceptor program.. Board officials pointed out that presently one year or 2000 hours of supervised training as a administrator-in-training is required. Training may be reduced or eliminated on basis of test score in a diagnostic examination.

Doderer recalled it was never legislative intent that the preceptor program be set out by rule. The Board should have requested such a law, in her opinion.

In response to question by Doderer as to how to study for a nursing home administrator examination, Fry said the licensure division of the Health Department could supply the necessary information. He read requirements for becoming an administrator.

Doderer raised question in 2.2(3)b, last sentence, as to what is "equivalent". She thought it should be set out in the rule and determined on "a case by case basis."

Upon request by Doyle, members were supplied application forms referred to in 2.3(5) and made recommendations for improvement in some areas with respect to examinations.

Kelly noted no provision had been made to allow an examinee to review the test to learn of errors. Faust commented that computerized tests are used.

NURSING HOME
ADMINISTRATORS
Cont'd

Schroeder maintained the tests should be on file and available for review. He wondered why the type of test had been changed from PES to NAB. Gannon responded this would be helpful in the reciprocity system.

Schroeder was concerned there could be discrimination with respect to license renewal in 2.4(1)d.

Doyle suggested clarification in regard to fees by striking all references to them except in 2.5 which deals with fees. This would eliminate possible conflicts. The Board was willing to revise the rules.

Doyle expressed opposition to 2.4(2)d, regarding denial, suspension or revocation of a license, as being arbitrary and capricious.

Monroe suggested that the rule cross reference citations set out in 66GA, S.F. 525.

Fry pointed out that the Board cannot revoke a license--this would be done by the county attorney.

Objection

Kelly moved the following objection which was approved by the Committee:

The Committee objects to 2.4(2)d because the broad language is arbitrary in that it does not sufficiently advise an individual under what specific grounds a license may be denied, suspended or revoked under that paragraph. The objection can be overcome by rewriting the paragraph to read: "Willful or repeated violations of any statute, or rules regarding a nursing home."

Monroe recommended that 2.4(1)a be amended by inserting the word "additional" before "board" in line 2.

Doderer noted that 2.6(2)c would require that seventy per cent of the answers be correct for a passing score on the examination. She asked what percentage was required formerly. Fry answered that it was sixty percent but added that such a score is below national average and the upgrading was needed.

Doyle pointed out that it would be helpful to nonresident applicants if information in 2.3(2), 2.6)2c and 2.7(2) were placed in 2.7--reciprocity. The Board was amenable to the suggestion.

Doderer was informed there had never been a time limitation for persons taking the test.

NURSING HOME ADMINISTRATORS Cont'd Monroe was concerned that there would be insufficient time for persons taking the test May 10 to be aware of the new rules.

Donaldson explained that the state test would be conducted under the old rules. If the Health Department has promulgated new rules on care facilities, the Board may administer the November test under their new rules, however,

In answer to question by Monroe, Fry said a public hearing on the rules was not held but no objections were received when the rules were under notice.

Gannon could not recall a test failure in the last five years.

Objection
2.6(2)c

Monroe moved that the following objection be filed:

The Committee objects to 2.6(2)c wherein the Board raises the passing score on the state test from 60 percent to 70 percent. On the particular facts as explained below, the Committee feels that this action arbitrarily and unreasonably raises the required score. They are particularly concerned that some of the material covered in the state examination is being reformulated and may not be available to the examinees in time to allow ample time for study. Therefore, the raising of the required score would place an unreasonable burden on the individual taking the examination.

Motion carried unanimously.

Charles explained that the state test score could remain at sixty percent and the NAB raised to seventy percent for those who want to participate in reciprocity.

Objection
2.6(2)f

Doyle moved that the following objection be filed:

The Committee objects to 2.6(2)f because the provision would deny the applicant due process in that they would not be permitted to complete the examination and would be prohibited from retaking the examination for one year--both without a hearing. It is the Committee's position that the applicant should be permitted to complete the examination and hearing could then be held on the alleged violation.

Motion carried unanimously.

Schroeder thought the examinee should be cautioned about possible violation of the rule and if the problem recurs action could be taken.

Gannon indicated approximately 25 to 35 applicants take the test and there have never been any problems. However, the Board was willing to modify the rule.

NURSING HOME
ADMINISTRATORS
Cont'd

Schroeder asked if a provisional administrator could serve beyond six months and was told there was no authority for an extension. This would, ^{be} under the jurisdiction of the Health Department, in any event. Schroeder thought provision for extension should be considered.

Doyle raised question concerning 2.6(5) in re subpoenas--discovery. He noted that in paragraph a, it was "unusual to subpoena documents before persons."

Objection
2.6(5)

Doderer moved the following objection to 2.6(5):

"The Committee objects to 2.6(5)--subpoenas--discovery as going beyond the Board's authority set out in the statute."

Motion carried.

In re operating procedures of the Board, Doyle recommended that 2.8(1)a(2) be amended by striking "all" before "meetings". He questioned the reason for excluding the chair from voting except to break a tie--2.8(1)a(3).

Objection
2.8(1)a(3)

Doderer moved that the following objection be filed:

The Committee objects to 2.8(1)a(3) in that it is beyond the power of the Board to deny a member the right to vote. Under parliamentary law, all members of the Board should be entitled to vote and a majority of those members should not be permitted to take that right away from the chairman.

Doyle took the position that 2.8(1)f in re time and place for holding Board meetings was confusing. The Board was willing to clarify the rule.

With respect to the preceptor program in 2.9, Doderer recommended that the Board seek legislation on the subject. Fry pointed out that the necessity would be eliminated July 1, 1977 when the program would no longer exist. He thought it might be more feasible to delete 2.9

Doderer requested the Board to submit their forms for review under the rulemaking procedure set out in the APA.

REGENTS

Dwight Wolf appeared in behalf of the Board of Regents concerning corrective amendments to Chapters 1 and 2 of their rules published in IAC Supplement 4/5/76.

A new paragraph would be added to 1.4(6) to permit persons designated by the federal government as refugees to come into Iowa if they have sponsors and become residents immediately for tuition purposes.

4-13-76

REGENTS
Cont'd

The "clean-up" amendments to Chapters 1 and 2 and the residency amendment were acceptable to the Committee.

PUBLIC
SAFETY

The Department of Public Safety was represented by the following persons: Lt. Col. Elton Crystal, Howard Miller and Calvin Rayburn. They explained minor changes in rule 3.13(321B) pertaining to collection of breath or urine for testing of alcohol or drug content.

Doyle expressed opposition to 3.13(2)c(3) as being a conclusion in advance of testimony of a medical expert witness.

In response to question raised by Monroe, Rayburn said the 15-minute observation time prior to collection of the sample for testing has been used effectively for many years.

With reference to 3.13(3)--urine collection, Monroe pointed out that more appropriate collection devices are available than those prescribed by the rule.

RECESS

Chairman Priebe recessed the meeting at 10:45 a.m. to be reconvened at 1:15 p.m.

RECONVENED

Meeting was reconvened by the Chairman at 10:30 p.m. Kelly and Monroe out of the room.

The following filed rules were acceptable to the Committee as published:

CIVIL RIGHTS[240] Complaint procedure, 3.5(2)	4/5/76
ENGINEERING EXAMINERS[390] Land surveying examination, 1.2(5)"f"	4/5/76
LAW ENFORCEMENT[550] Height and weight requirements rescinded, 1.2(2),(3)	3/22/76
NURSING BOARD[590] Licenses for registered and practical nurses, Chs 3 and 4	3/8/76
OSHA[610] Hearing procedure, Ch 1 (Reviewed 2/10/76)	3/8/76
PUBLIC INSTRUCTION[670] Teachers certification, Ch 19 rescinded, Emergency	3/22/76
REVENUE[730] Assessors and deputy assessors, certification, Ch 72	4/5/76
TRANSPORTATION[820] Mud and snow tire, [07,E] 1.3 (Reviewed 1/13/76)	4/5/76

ENVIRONMENTAL
QUALITY

David Bach, Hearing Officer, represented the Department of Environmental Quality for review of the following filed rules:

Air Quality Commission	
Newequipment definition, 1.2(33)	3/22/76
Compliance, existing equipment, 2.1(2)	3/22/76
Controlling pollution, permits, variances, 3.1, 3.2	3/22/76
Emission standards for contaminants, Ch 4	3/22/76
Rules of practice, Ch 14	3/22/76
Water Quality Commission	
Water supplies, Ch 22	3/22/76
(Reviewed with recommendation 12/10/75)	
Solid Waste Disposal Commission	
Exception rules, 32.3(4)"b"(1), Emergency	3/22/76
Chemical Technology Commission	
Rules of practice, Ch 36	3/22/76

Schroeder raised question as to the reference to 4.1(2) in rule 1.2(33).

Bach explained that 4.1(2) relating to new source performance standards had been revised to correct the federal citation. This is turn necessitated amending other parts of their rules where reference was made to 4.1(2), including 1.2(33) and 2.1(2). Previously, new source performance standards were contained in 4.1(1) and 4.1(11) of their rules.

Schroeder was concerned that the rules might require a permit to operate a fireplace in the home. Bach indicated this would not be the case, but that the Department would be willing to be more specific on the matter.

Kelly returned at 1:55 p.m.

On a matter not before the Committee, Doyle asked if the provision governing meat smokehouses [4.4(9)] would also be applicable to fish smokehouses. Bach was not sure.

No specific recommendations were made by the Committee concerning filed rules of DEQ.

Schroeder requested the Department to prepare a comparison between existing and proposed rules on feedlot changes. However, Bach commented the rules would not be ready prior to the hearing date. He pointed out they have worked closely with the livestock producers in drafting the rules.

4-13-76

ADJOURNMENT

Chairman Priebe adjourned the meeting at 2:30 p.m.
Next meeting will be held Tuesday, May 18, 1976.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry
Secretary

APPROVED

Chairman

DATED _____