

MINUTES OF THE REGULAR MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, May 9, 2000, in Room 118, State Capitol, Des Moines, Iowa.

Members present: Representative Clyde Bradley, chair, and Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Geri Huser, and Minnette Doderer. Representative Janet Metcalf was absent.

Also present: Joseph A. Royce, Legal Counsel; Brian Gentry, Administrative Rules Coordinator; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant; caucus staff and other interested persons.

Convened •Chair Bradley convened the meeting at 10 a.m.

ELDER AFFAIRS DEPARTMENT Judy Conlin and Debi Meyers represented the department.

ARC 9791A Amendments to ch 9 change the name of care review committees to resident advocate committees and modify the reporting procedures for resident advocate volunteers.
•Meyers assured Bradley that although volunteers are not required to advise staff of their presence in the facility, they would immediately notify facility administrators of any problems or concerns.

INSURANCE DIVISION Susan Voss represented the division.

ARC 9756A No questions on publication of a consumer guide relating to HMOs and PPOs.

ARC 9795A No action on adopted rules pertaining to reconstructive surgery.

Committee business

Minutes Minutes of the April 2000 meeting were approved.

Waivers The committee discussed the status of House File 2206. Royce confirmed that the executive order will remain in effect as written and will serve as a model rule, but should the bill become law, the law will take precedence over the order, specifically in regard to criteria for granting a waiver. Gentry noted that once the bill becomes law he and Bates will begin to devise a plan to track rules that have been waived and will keep ARRC informed about the plan and any associated costs or problems.

Meeting date Meetings were set for Tuesday, June 13, 2000, and Tuesday, July 11, 2000.

CORRECTIONS DEPARTMENT Michael Savala and Fred Scaletta represented the department. Also present were Randall C. Wilson of the Iowa Civil Liberties Union; Kristie Hirschman, Judi Milosevich, and Rory Calloway of the ombudsman's office; and Joe Kelly on behalf of the Iowa Manufactured Housing Association.

ARC 9813A Savala reported that proposed rule 20.3, which pertains to visits to offenders, addresses the new ion-scanner technology and provides an appeals process for visitors who test positive for significant drug contact.
Savala told Royce that some institutions electronically search every visitor and others search visitors on a random basis. Savala added that the department intends to modify the rule to permit visitors who test positive to request an immediate confirmatory test, but explained that pat-down searches do not provide a sufficient level of security to serve as the basis for granting visiting privileges to a person who tests positive.
•Bradley was informed that an appeal cannot be made on the day of the visit. In response to Bradley's concerns about turning away visitors, Savala responded that even no-contact visits present a security risk and that some institutions lack staff and accommodations to permit large numbers of no-contact visits. Savala confirmed that the sensitivity of an ion-scanner may be adjusted and presented a letter from the scanner manufacturer which explains that current settings detect only significant contact with an illegal substance.
•Harper was told that the department keeps records of searches for five years.
•In response to Rittmer's question, Savala clarified that confirmatory tests would be performed under the same standards and conditions as the first test.
•Savala indicated to Huser that the department will accept a physician's written documentation from a person who has been prescribed a controlled substance for medical reasons. Savala explained that the department has legal authority to contact law enforcement provided that it finds that a visitor possesses a quantifiable amount of an illegal drug and confirmed that minors are also subject to searches. Huser urged the department to include in the rules the qualifications of and training requirements for ion-scanner operators and suggested that the department change the phrase "fails to test negative" to "tests positive" for consistency.
•Doderer asserted that the policies reflect a presumption that every family member or friend of an offender is a possible drug user or supplier and inquired about the severity of the prison drug problem. Savala cited inmates' admissions that they receive drugs primarily through visitor contact and added that results of future inmate drug tests will

indicate whether the scanners effectively aid in controlling drug use. Savala acknowledged that prison employees might also be a source of drugs but added that state law prohibits drug testing of state employees.

- Savala estimated for Rittmer that scanners, which are purchased with funds from a federal grant, cost between \$10,000 and \$15,000 each. Savala will advise ARRC of the actual cost.

- Doderer expressed a preference that grant funds be used for drug treatment. Scaletta responded that, until this year, the funds could be spent only on infrastructure. Scaletta explained that although funds for the next few years have been allocated for construction, the department intends to use funds in future years for drug treatment.

Savala responded to Milosevich's concerns about proper notification of the public by stating that signs at prisons which state that visitors "shall" be searched will be changed to "may" to conform to language used in the rule. Savala also said that the department is preparing a form letter regarding visitors' appeal rights that may be given at the time of the visit to visitors who test positive. Savala explained that records of searches are not confidential and must be supplied when requested through civil or criminal court order.

Wilson outlined ICLU's concerns about the scanner's threshold setting for significant contact, the lack of protections in the rule for persons' reputations, the occurrence of false positives, and the testing of counsel and clergy. Wilson urged the department to consider the potential negative effects on inmate/visitor contact when pursuing the goal of eliminating drugs within the prison system.

- Royce told Huser he would follow up with DHS about mandatory reporting requirements for corrections staff.

ARC 9775A

Savala stated that proposed rule 37.5, which pertains to private sector employment projects, requires that IWD serve as the neutral third party responsible for resolving complaints concerning possible displacement of civilian workers by offender labor.

- Bartz suggested that employers using offender labor be required to reimburse the state for the offenders' health care benefits and that the department add criteria to the preapplication requirements to ensure that jobs posted are competitive.

- Huser expressed concern that companies employing offenders will gain an unfair advantage over competitors. Huser and Bartz urged the department to address the interim study committee's recommendations before adopting the rule.

Gentry reported that the governor's office assisted in drafting the rule and that the appeals process was included as a means to satisfy the concerns of all parties.

Kelly voiced concern about the disparity between wages and benefits for offenders and those for civilians. Kelly challenged the \$6 hourly wage rate set for offender construction jobs in Newton and observed that civilians performing similar jobs in Dyersville are paid \$12 per hour plus benefits.

- In response to Bradley's concern about the extended duration of some project contracts, Savala explained that IWD evaluates unemployment rates for ongoing projects every six months and would initiate action to correct any civilian worker displacement.

ARC 9776A

Proposed rule 37.6 pertains to use of offender labor in construction or maintenance projects.

- Huser stated that her comments about the previous rule also apply to this rule. In regard to worker displacement disputes, Huser questioned IWD's status as a detached, neutral party since it is responsible for supplying data regarding employment levels and wage rates.

- Bartz suggested that wage safeguards be included in the rule to prevent disputes from arising.

- Huser asked Savala to find out whether IWD provides OSHA training free of charge to private employers.

- In response to Carroll, Savala expressed the opinion that employers hire offenders primarily because of the shortage of civilian workers rather than the prospect of paying lower wages.

- Bradley suggested that procedures for making a transition from offender labor to civilian labor be included in the rule.

Committee business

Doderer moved that, due to time constraints, rules review for the public health department, natural resource commission, and secretary of state be removed from the morning schedule and secretary of state be rescheduled in the afternoon.

The motion passed.

PHARMACY EXAMINERS BOARD

- Lloyd Jessen and Terry Witkowski represented the pharmacy examiners board, and Ann Mowery represented the medical examiners board. Norm Pawlewski of the Iowa Osteopathic Medical Association and Jeanene Freeman of the Iowa Medical Society were also present.
- ARC 9757A No questions on the notice of termination.
- ARC 9790A ARC 9790A and medical examiners ARC 9786A, which pertain to supervision of pharmacists who administer adult immunizations, were discussed simultaneously. Pawlewski opposed rules 653—13.3 and 657—8.33 on the grounds that neither board has statutory authority for the action and that pharmacists lack the necessary training, knowledge, and oversight.
- Mowery told Rittmer that she is unaware of any problems that have been caused by pharmacist-administered immunizations.
- Freeman, who asserted that Iowa law does not permit pharmacists to administer immunizations independently, expressed support for the rules, specifically the provisions that require physician oversight of pharmacists.
- Motion Hedge moved that ARRC request an opinion from the attorney general regarding the legality of the rules. Gentry noted that the rules were drafted in consultation with representatives of the attorney general's office.
- Motion carried The motion passed.
- At Carroll's request, Royce stated that, in his opinion, a physician has the right to delegate certain duties to auxiliary personnel. Pawlewski countered that a physician cannot delegate duties to personnel outside the physician's scope of practice.
 - Bartz asked for future discussion on language in Iowa Code section 155A.4.
 - Mowery and Jessen responded to Huser that the pharmacist and physician share responsibility for any problems that occur. Jessen stated that reporting requirements apply only to pharmacists, not to physicians. Mowery stressed the medical examiners board's position that current law provides the authority to adopt this rule.
- MEDICAL EXAMINERS BOARD** Ann Mowery represented the board. Brice Oakley and Libby Cryte of the Iowa Physician Assistant Society, Jeanene Freeman of the Iowa Medical Society, and Linda Goeldner of the Iowa Nurses Association were also present.
- ARC 9786A See pharmacy examiners board ARC 9790A.
- ARC 9794A Chapter 21, which sets out the criteria for determining whether a physician is ineligible to supervise a physician assistant (PA), prohibits a physician from supervising a PA whose area of practice differs from that of the physician.
- Oakley characterized the requirement regarding same area of practice as a significant change in policy and questioned whether the board has the authority to make the change. Oakley expressed the opinion that the requirement will create barriers to access in both rural and urban areas.
- Cryte expressed concerns about continued access to medical care by patients in rural areas, where specialists may currently supervise general practice PAs. The added burden the requirements will cause PAs seeking to obtain approval for new supervisors is also a concern.
- Freeman expressed the Iowa Medical Society's support for the rules.
- TRANSPORTATION DEPARTMENT** Tim Crouch, David Titcomb, Tom Sever, Peter Hallock, Valerie Hunter, and Ruth Skluzacek represented the department.
- ARC 9761A No questions on proposed amendments regarding special mobile equipment.
- ARC 9755A No questions on amendments pertaining to reflective devices for slow-moving vehicles.
- ARC 9779A No action on proposed adoption by reference of federal motor carrier safety regulations.
- ARC 9764A No questions on amendment to ch 529.
- ARC 9800A No action on amendments to ch 604 that permit exceptions to field of vision standards.
- ARC 9778A No action on ch 911 concerning school transportation services provided by regional transit systems.
- NURSING BOARD** Lorinda Inman and Lois Churchill represented the board.
- ARC 9763A No questions on adopted amendments concerning nursing education programs.
- ARC 9762A No questions on proposed amendments pertaining to infusion pump initiation and hypertonic solutions administration.
- EDUCATION DEPARTMENT** Ann McCarthy and Terry Voy represented the department.
- ARC 9774A No action on emergency rules on appeal procedures.
- In response to Huser, Voy expressed satisfaction with the rules on regional transit systems but added that the department would prefer that students be transported only in standard school buses.

EDUCATIONAL EXAMINERS BOARD Chris Scase of the attorney general's office and Anne Kruse represented the board.

- ARC 9805A Adopted amendments to ch 14 pertain to background checks for initial applicants.
 •In response to Bradley's question about costs, Kruse explained that the total fee for each initial licensure will be approximately \$80.
- ARC 9806A No action on amendments concerning alternative preparation licenses.
- ARC 9807A No questions on two-year exchange licenses for substitute teachers.
- ARC 9766A Kruse reported that no comments regarding special education endorsements were received.
- ARC 9808A No questions on adopted amendments concerning staff development units for occupational and postsecondary licensure renewal.
- ARC 9765A Proposed ch 22 pertains to paraeducator certificates.
 •Kruse responded to Bartz that current law requires that teachers be 21 years of age to be licensed; however, an amendment was passed to permit paraeducators to be certified at the age of 18. The adopted rules will reflect this statutory change.
- Special review The delay on ch 11 imposed in March was lifted at the April meeting on the condition that the board provide a progress report in May. Kruse reported that a draft proposal has been provided to the governor's office and the board for review and comment. Kruse intends to present the proposed rules to the board at its June meeting.

IOWA FINANCE AUTHORITY Libby Nelson, Loyd Ogle, Donna Davis and David Binner represented IFA. Charles Krogmeier of Brown, Winick, Graves and Jim Cain of the Iowa Coalition for Housing and the Homeless were also present.

- ARC 9811A Proposed ch 12 incorporates by reference the qualified allocation plan, application, and compliance manual for this year's low-income housing tax credit allocations.
 Krogmeier expressed the opinion that the rules in general are slanted toward nonprofit developers and away from for-profit developers. Krogmeier will outline concerns in written comments to IFA and will send copies to ARRC.
 •In response to Carroll's question on timing, Nelson indicated that the rules will be filed emergency after notice to be effective on June 9. Nelson explained that developers will have until July 17 to apply, the review process will take about 60 days due to the need to visit the proposed sites, and the board will consider the applications in September. Developers will then have from September until the end of this year to spend the required 10 percent of funds. Nelson added that IFA intends to file next year's rules by September 29, 2000, so that next year's awards may be made in time to permit developers to build during the 2001 construction season.
 •Responding to Bartz, Nelson explained that IFA views the program as ongoing and will use this year's experience as a basis for possible modification of the 2001 program. In regard to caps, Nelson added that IFA has researched the effects of caps in surrounding states' programs and found that, except for the first year, applications rates remained steady and that projects and units are smaller. The board supports the use of caps and approves of the current settings but will evaluate cap levels based on this year's experience. Nelson also updated Bartz on the status of the housing corporation contracts.

Special review Royce reported that a special review of the pharmacy and medical examiners rules in June will be scheduled for June.


Request for review •Doderer requested a special review of campaign finance rules.

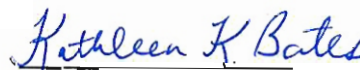
SECRETARY OF STATE Sandy Steinbach, Bob Galbraith, and Chris Scase, legal counsel, represented the secretary's office.

- ARC 9785A Proposed rule 21.201 outlines procedures for deciding which candidate will be designated as a nonparty organization's nominee when multiple nominations are received from the same organization.
 •Rittmer suggested that the secretary's office invite affected parties to be present at the drawing. Hedge added that every name in contention, not just the first name, be drawn and read aloud to ensure fairness.
 •Galbraith indicated to Harper that although the number of names to appear on the ballot is unlimited, only one may be the official representative of the nonparty organization.


Adjourn The meeting was adjourned at 2:46 p.m.

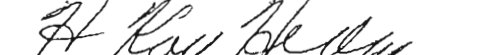
Respectfully submitted,


 Teresa Vander Linden


 Kathleen K. Bates

APPROVED:


 Chair Clyde Bradley


 Vice Chair H. Kay Hedge