



# MINUTES

## NOVEMBER 2024 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Mike Klimesh, Chair  
Senator Nate Boulton  
Senator Mike Boussetot  
Senator Chris Cournoyer  
Senator Cindy Winckler

Representative Michael R. Bergan, Vice Chair  
Representative Amy Nielsen  
Representative Rick L. Olson  
Representative Michael V. Sexton  
Representative David E. Young

EX OFFICIO, NONVOTING MEMBER: Steve Blankenship, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Division Editor/Supervisor, 515.281.6329

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### **BULLETINS NEEDED FOR THIS MEETING: 10/16/24, 10/30/24**

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#### **Procedural Business**

Senator Klimesh convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 11:05 a.m. on Friday, November 8, 2024, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the October 15, 2024, meeting were approved. The December meeting was scheduled for Monday, December 16, at 11:00 a.m. The January meeting was scheduled for Monday, January 13, at 8:00 a.m. The meeting was adjourned at 12:05 p.m.

#### **Fiscal Overview**

Mr. Chris Ubben, Division/Editor Supervisor, presented the LSA fiscal report.

#### **TRANSPORTATION DEPARTMENT**

Representing the agency: Brooks Glasnapp

ARC 8247C (NOIA), Junkyard Control, Ch. 116

No discussion on ARC 8247C.

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

## **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

Representing the agency: Colin Tadlock, Robin Pruisner

### **ARC 8326C (NOIA), Hemp, Ch. 96**

Committee members asked about the enforcement aspects of working with the United States Department of Agriculture (USDA) and local law enforcement to address complaints and review permits and contracts. Ms. Pruisner responded that the USDA would approve accredited samplers who would work directly with local law enforcement to address those issues. She stated that she would also be available to assist with issues.

No action taken on ARC 8326C.

## **UTILITIES COMMISSION**

Representing the agency: Kerrilyn Russ

### **ARC 8256C (AF), Electronic Filing, Ch. 14**

Committee members asked if stakeholders were satisfied with the changes made by the commission. Ms. Russ answered in the affirmative.

No action taken on ARC 8256C.

### **ARC 8276C (NOIA), Electric Lines, Ch. 11**

Committee members asked if changes were made to the process that permits co-location on existing transmission lines and whether ITC Midwest or Farm Bureau weighed in on the changes. Ms. Russ stated she was not certain but would obtain that information and follow up with the committee.

No action taken on ARC 8276C.

## **MEDICINE BOARD**

Representing the agency: Charles Hill, Amy Oetken

### **Regulatory analysis, Physician Supervision of a Physician Assistant, Ch. 21**

Committee members asked for clarification on what the rulemaking does and does not address. Ms. Oetken stated that Iowa Code chapter 148C.3 directs the Board of Medicine (BOM) and the Board of Physician Assistants (BPA) to adopt joint rules for physician supervision of physician assistants (PAs). The rulemaking before the committee only addresses how that supervision should occur when the supervision takes place. Members asked if BOM and BPA had adopted the rules required by Iowa Code section 148C.3. Mr. Hill responded that the two boards are not in agreement on the rules and it was his understanding that if the boards cannot come to an agreement that the matter would be returned to the Legislature. He explained that the law calls for PAs to be supervised by physicians during the first two years of a PA's independent practice.

Ms. Sydney Gangestad, speaking on behalf of the Iowa Physician Assistant Society (IPAS), stated that under Iowa Code chapter 148 and 2023 Iowa Acts, House File 424 (House File 424), the BOM's authority to adopt rules related to the supervision of PAs had been repealed and the BOM did not have the statutory authority to promulgate the rules before the committee. She asked that the committee object to the rules.

Ms. Kate Walton, speaking on behalf of the Iowa Medical Society (IMS), stated that IMS supported the rulemaking and wanted the joint rules required under Iowa Code chapter 148C.3 to be promulgated collaboratively between the two boards. She further stated that IMS supported the rulemaking currently before the committee.

Committee members asked how far apart the two boards were in the joint rulemaking process. Mr. Hill stated that the BOM had proposed rules that were very defined in terms of supervision of PAs, including regular case review and quarterly reporting. The last time he had reviewed BPA's proposed rules BPA had proposed that PAs agreed to be supervised but did not include any specifics. He stated that it was the Department of Inspections, Appeals, and Licensing's (DIAL) intent that the two boards have discussions and come to an agreement so that the issue was not returned to the Legislature. He did not, however, think that the boards would be successful in reaching an agreement. Ms. Gangestad

clarified that she does not represent the BPA; she represents IPAS. She stated that House File 424 had been passed in a bipartisan manner and signed by the Governor. The specific provisions of the law that required joint rulemaking were related to the initial supervision of a new PA who wanted to practice independently and had not already had two years of supervision or collaboration with a health care provider. In 2023, the BOM and the BPA met and did not come to an agreement on the joint rulemaking. The position of IPAS is that the rules proposed by the BOM went beyond House File 424, and usurped legislative authority. The BPA rejected the proposed rules. Since that time, the BPA had drafted extensive rules and the BPA accepted the rules at the BPA's meeting on July 18, 2024. The rules had been sent to the BOM for review and the two boards were still working together on the joint rulemaking. She stated that the BOM does not have the statutory authority to promulgate the rules as House File 424 struck the specific provision in Iowa Code chapter 148 that allowed the BOM to unilaterally adopt rules related to the supervision of PAs. She also stated that if the BOM asserted that the rules were promulgated under Executive Order 10, that was not the purpose of Executive Order 10, and she asked that the committee object to the rules. Members asked for further clarification on why the BOM would lack the statutory authority to promulgate the rules. She reiterated that House File 424 struck the provision that allowed the BOM to unilaterally adopt rules related to the supervision of PAs. Members asked if the BPA had the sole authority to promulgate rules regarding the supervision of PAs. She replied that the BPA has the authority to independently regulate PAs and had been doing so since July 1, 2023. She added that if the BOM wanted to promulgate rules related to PAs, it needed to be within the scope of House File 424. Members asked if the BOM had a response. Mr. Hill stated that the rule covered the governance of physicians and the requirements for physicians' supervision of PAs and further stated that was within the BOM's authority. Ms. Oetkan stated that the rulemaking is only directed at the role of the physician, what made a physician ineligible to supervise a PA, and what a physician must do to advise the BOM regarding the physician's supervision of a PA. She stated all those matters were under the purview of the BOM. Members asked for clarification whether the BOM had the authority to regulate oversight of PAs by physicians, and the authority to define that oversight. Mr. Hill stated that he needs to better understand IPAS's argument, and that the BOM would prefer the rulemaking before the committee be included with the joint rulemaking; however, he stated that he did not think that would occur. Members stated that the rules need to be promulgated jointly between the two boards for consistency and to avoid conflicts. Mr. Hill replied that the professional members of both boards had not been able to agree on joint rules and that may have been foreseen by the Legislature which had the authority to return the matter to the Legislature. He explained that board members have the statutory power to make their own decisions and therefore joint rulemaking may not happen. He stated that both boards were aware that the matter would be turned over to the Legislature if agreement was not reached.

Committee members asked if there were PAs currently practicing independently who have not worked under the supervision of a physician for two years. Ms. Gangestad replied that there were no PAs currently practicing independently who had not been supervised for two years by a physician. Members asked what rules currently applied to a physician's supervision of a PA practicing and why the existing supervision practices were not just copied into the proposed joint rulemaking. Ms. Gangestad replied that under House File 424 supervision of PAs was no longer required and PAs could practice collaboratively with health partners. So, as of 2023, there was not an existing supervision framework.

Committee members asked Mr. Ewing to clarify the process for the rulemaking currently before the committee. He replied that the first step was the regulatory analysis, then notice of intended action, and the third step was adoption. Each step could be reviewed by the committee. Members asked if it was possible for the committee to impose a delay for the regulatory analysis. He replied that he needed to do further investigation but does not think that the committee had the power to take action on a regulatory analysis. Members asked if the issue was that the two boards had different interpretations of House File 424. Ms. Gangestad replied IPAS had no recourse against the rulemaking except through the committee. She reiterated that the joint rulemaking was separate from the rulemaking currently before the committee. Ms. Walton explained that IMS supported the rulemaking before the committee as the BOM regulated the practice of medicine and if physicians could be disciplined or have their license challenged based on failure to adequately supervise PAs, then IMS agreed with the BOM clearly laying out the expectation for physician supervision of PAs. House File 424 specifically eliminated supervision of all PAs with an exception for two years of physician supervision of newly graduated PAs who want to practice independently because they did not have experience working collaboratively in a health care environment. Ms. Gangestad reiterated that the BOM did not have the

authority to unilaterally promulgate the rules that were before the committee, and confirmed that it was IPAS's position that the rules should be jointly promulgated. Members asked if House File 424 completely removed supervision of PAs. She replied in the affirmative and stated that the exception was for new PAs and those rules were required to be promulgated jointly by the two boards. Members agreed that the BOM did not have the authority to unilaterally promulgate the rules before the committee. Ms. Oetken reiterated that the rules only dealt with the eligibility of supervision by physicians and the grounds for discipline of supervising physicians. She clarified that she is an attorney with DIAL and not with the Attorney General. Mr. Hill stated that he would conduct further review of House File 424 to ensure that the BOM had not exceeded its statutory authority.

Committee members urged the two boards to work together on the rules before the committee and to include the rules in the joint rulemaking required by House File 424. Members asked Mr. Ewing to share historical information related to the rules before the committee. He replied that he had looked more closely at the statute on objections and arguably the committee could object to a regulatory analysis. An objection was unlikely to have an impact as an objection is text inserted into a rule after the rule is adopted and published that articulates a defect identified by the committee. An objection makes a rule more difficult to defend in court, and in this case, litigation was unlikely to ensue over a regulatory analysis as the regulatory analysis has no legal effect. He stated that since he had been staffing the committee, it was the second time the Legislature enacted a joint rulemaking requirement for these two boards to adopt rules related to PA supervision. The two boards were unable to adopt joint rules the first time and the Legislature eventually repealed the requirement for joint rulemaking, and set out specific standards for each board detailing how the supervision standards should be set. At the time, the committee asked him to draft a memo detailing what joint rulemaking means. He explained that unless the Legislature set standards in a bill as to what it expected joint rulemaking to look like, the Legislature was trusting the boards to interpret joint rulemaking as the boards saw fit and to come to a satisfactory resolution. He further explained that there was precedent in other contexts for the Legislature to set standards for what joint rulemaking should look like; however, that did not occur in House File 424.

Committee members encouraged the two boards to work their issues out or stated that the Legislature would resolve the matter.