

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, January 20, 2021

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Riggs, Senators Heider, Harris, Zito, Stennett, and Wintrow

ABSENT/ EXCUSED: Senators Lee and Agenbroad

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Martin** called the meeting of the Senate Health & Welfare Committee (Committee) to order at 3:00 p.m.

GUBERNATORIAL APPOINTMENT: **Chairman Martin** called for the vote on the gubernatorial appointment of Jess Byrne as Director of the Idaho Department of Environmental Quality.

MOTION: **Senator Harris** moved to send the gubernatorial appointment of Mr. Byrne to the floor with recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion.

DISCUSSION: **Chairman Martin** commented there are good, quality people in the state agencies, and he is happy to see someone from Idaho promoted from within the agency. **Chairman Martin** said he has confidence in Mr. Byrne's ability.

VOICE VOTE: The motion to send the gubernatorial appointment of Mr. Byrne to the floor with recommendation that he be confirmed by the Senate passed by **voice vote**.

PASSED THE GAVEL: Chairman Martin passed the gavel to Vice Chairman Riggs.

DISCUSSION: **Vice Chairman Riggs** distributed a list of dockets on the agenda with a brief explanation of how they were organized on the list.
Tim Frost, Legislative and Regulatory Affairs Manager, Division of Occupational and Professional Licenses (DOPL), introduced himself to the Committee on behalf of the health profession boards. **Mr. Frost** stated Nicki Chopski, Section Chief for the Health Professions, DOPL, was also present.

DOCKET NO. 24-0301-2000F **Rules of the State Board of Chiropractic Physicians**, p. 396. **Mr. Frost** advised Rule 708 was amended to implement S 1331 from the 2020 Legislative Session. He reported the docket reinstated a \$175 certification fee for clinical nutrition that was inadvertently removed in 2019.

MOTION: **Chairman Martin** moved to approve **Docket No. 24-0301-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0501-2000F **Rules of the Board of Drinking Water and Wastewater Professionals (BDWWP)**, p. 413. **Mr. Frost** explained the docket removed two rules that are addressed in Idaho Code. **Mr. Frost** advised the Committee that the omnibus rule dockets are the result of a continued effort to streamline and eliminate redundancies in the regulations based on the Governor's Red Tape Reduction Act.

Senator Stennett inquired how often the BDWWP meets. **Mr. Frost** replied the BDWWP is required by Idaho Code to meet at least annually, but the BDWWP has discretion whether to meet more frequently.

MOTION: **Senator Wintrow** moved to approve **Docket No. 24-0501-2000F**. **Chairman Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0601-2000F **Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants**, p. 431. **Mr. Frost** advised there were no changes made to the chapter.

MOTION: **Chairman Martin** moved to approve **Docket No. 24-0601-2000F**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0901-2000F **Rules of the Board of Examiners of Nursing Home Administrators**, p. 443. **Mr. Frost** stated the docket contains no changes to the chapter.

MOTION: **Senator Harris** moved to approve **Docket No. 24-0901-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1001-2000F **Rules of the State Board of Optometry**, p. 450. **Mr. Frost** advised a rule was eliminated because it duplicated a portion of Idaho Code.

MOTION: **Senator Harris** moved to approve **Docket No. 24-1001-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1101-2000F **Rules of the State Board of Podiatry**, p. 462. **Mr. Frost** advised there were no changes to the rule.

MOTION: **Senator Wintrow** moved to approve **Docket No. 24-1101-2000F**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1401-2000F **Rules of the State Board of Social Work Examiners (SBSWE)**, p. 506. **Mr. Frost** reported a rule requiring the SBSWE to meet at least three times per year was removed because board business dictates the number of meetings to be held annually.

Chairman Martin commented that normally proposed rules are sent out to stakeholders and meetings are held to take public comment. He asked if that process was followed on any of the dockets today, and if there was any public comment in opposition to the proposed rules. **Mr. Frost** responded that negotiated rulemaking was conducted on the Physical Therapy Licensure Board and the Board of Medicine general provisions dockets. The remaining dockets reauthorize last year's rules and involve no changes or minor changes, and no public hearings were held on these dockets. **Mr. Frost** reported the Division of Financial Management posted the dockets and allowed for public comment, and he is unaware of any public comment regarding these dockets.

MOTION: **Chairman Martin** moved to approve **Docket No. 24-1401-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1601-2000F **Rules of the State Board of Dentistry**, p. 534. **Mr. Frost** advised two rules were removed because they duplicated provisions of Idaho Code.

MOTION: **Senator Heider** moved to approve **Docket No. 24-1601-2000F**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Riggs requested that **Mr. Frost** present the remaining seven omnibus dockets together and stated the Committee would vote on them in one motion unless the Committee had questions or concerns.

**DOCKET NOS.
24-1701-2000F,
24-1901-2000F,
24-2301-2000F,
24-2401-2000F,
24-2601-2000F,
24-2701-2000F,
24-3101-2000F**

Rules of the State Board of Acupuncture, p. 545; **Rules of the Board of Examiners of Residential Care Facility Administrators**, p. 554; **Rules of the Speech, Hearing, and Communication Services Licensure Board**, p. 560; **Rules of the Genetic Counselors Licensure Board**, page 575; **Rules of the Idaho Board of Midwifery**, p. 581; **Rules of the Idaho State Board of Massage Therapy**, p. 595; **Rules of the Idaho State Board of Dentistry**, p. 609. **Mr. Frost** advised **Docket No. 24-1701-2000F** contains no changes. **Docket No. 24-1901-2000F** removed Rule 200 because it duplicated Idaho Code. **Mr. Frost** explained **Docket No. 24-2301-2000F** removed Rule 270 because it duplicated Idaho Code. He reported **Docket No. 24-2401-2000F** amended Idaho Administrative Procedures Act 24.24.01.002 to update the referenced code of ethics to the most current 2017 version. **Mr. Frost** stated **Docket No. 24-2601-2000F** removed Rule 100.03 because it duplicated Idaho Code. He said **Docket No. 24-2701-2000F** removed Rule 100.01 because it duplicated Idaho Code. **Mr. Frost** said **Docket No. 24-3101-2000F** contains no changes. **Mr. Frost** commented the foregoing rule dockets involve no fiscal impact to the general fund or any agency dedicated fund.

MOTION:

Chairman Martin moved to approve **Docket Nos. 24-1701-2000F, 24-1901-2000F, 24-2301-2000F, 24-2401-2000F, 24-2601-2000F, 24-2701-2000F, and 24-3101-2000F**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Riggs stated the remaining dockets on the agenda would be heard individually.

**DOCKET NO.
24-1301-2000F**

Rules Governing the Physical Therapy Licensure Board, p. 492. **Mr. Frost** introduced himself on behalf of the Physical Therapy Licensure Board (PTLB) and listed the professions the PTLB regulates. He commented the PTLB reviewed the rules in 2019 and 2020 to eliminate redundant and obsolete rules, and negotiated rulemaking was conducted to implement H 339 passed in 2020.

Mr. Frost stated several rule provisions were either amended or deleted because they were duplicative of Idaho Code. He explained the docket increased the ratio of physical therapy assistants, supportive personnel, and students that a physical therapist may supervise. **Mr. Frost** reported the PTLB added new language to establish an inactive status for licensees, together with new inactive license fees of \$15 for a physical therapist and \$10 for a physical therapist assistant. He added the inactive license fee will be deducted from the active status renewal fee, resulting in no additional cost to the licensee. **Mr. Frost** stated a new dry needling certification and recertification fee of \$25 was added to implement changes to Idaho Code § 54-2225. Minor changes were made to clean up formatting.

Mr. Frost mentioned there is no fiscal impact to the General Fund from this docket, and there is a small positive fiscal impact to the dedicated fund of \$2,500 resulting from the dry needling certification and recertification fee for the anticipated 100 physical therapists who would become certified.

Chairman Martin thanked Mr. Frost for explaining the impact of the change on the agency's dedicated fund. He asked for more information on the ratio change for physical therapist supervision. **Mr. Frost** replied the rule previously set forth a two-to-one ratio for each category of supervision, but the categories were separate and it was confusing to the licensees. He added the rule change clarifies the ratio and specifically allows a three to one ratio for a physical therapist who is using both physical therapy assistants and supportive personnel.

MOTION:

Chairman Martin moved to approve **Docket No. 24-1301-2000F**. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-3300-2000F**

Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho (Omnibus), p. 628. **Mr. Frost** presented the omnibus docket of six chapters from the Board of Medicine (BOM) and listed the licensed professions regulated by the BOM. The first chapter of the rule docket on page 631 relates to licensure to practice medicine and osteopathic medicine. **Mr. Frost** identified each change and provided the page number for each. He explained the docket in the first chapter removed unnecessary definitions, moved licensure requirements to BOM-approved forms, reduced the time period for foreign medical graduates to qualify for a full license from three years to two years, and made permanent rules waived for COVID-19.

Chairman Martin asked why there are no strikeouts on the pages of the rules review book. **Mr. Frost** replied the fee rules are considered new rules, thus no redlines are provided pursuant to the letter of explanation from DFM in the fee rule review book.

Mr. Frost pointed out on page 637 the BOM removed the requirement for a supervising physician to register with the BOM, making permanent a change enacted during COVID-19 and eliminating an estimated total \$2,600 burden for licensees.

Mr. Frost highlighted the changes in the second chapter of the docket pertaining to physician assistants. He advised the docket removed a duplicative definition and the requirement to notify the BOM when working with a supervising physician. **Mr. Frost** related the docket eliminated the weekly record review requirement for a supervising physician and allows the physician to determine when a review is needed.

Mr. Frost stated there were no changes to the third and fourth chapters of the docket relating to naturopathic medical doctors and athletic trainers.

Mr. Frost explained the fifth chapter relates to respiratory therapists, and on page 649, the BOM amended Rule 33 to eliminate supervision requirements for respiratory care providers. He added the requirement was not specified in statute and the rule was waived during COVID-19. **Mr. Frost** informed the Committee there were no changes made to the sixth rule chapter relating to dietitians. He advised there was no fiscal impact to the general fund from this docket and a decrease of \$2,600 per year to the agency's dedicated fund.

Vice Chairman Riggs reminded the Committee that the docket can be approved in whole or in part if there are issues with any portion of the rule.

Chairman Martin asked how long the change to Rule 201 regarding supervision has been in place and if the BOM has identified any problems with the change.

Mr. Frost answered the rule was waived 10 to 11 months ago at the beginning of the COVID-19 pandemic, and the statute requires a supervising physician even if there is no registration. The change simply removed terminology relating to alternate supervising physicians and the BOM's registration requirement because physicians are already licensed and the BOM can take action against a license if necessary.

MOTION:

Senator Wintrow moved to approve **Docket No. 24-3300-2000F**. **Chairman Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-1201-2000F**

Rules of the State Board of Psychologist Examiners, p. 469. **Mr. Frost** presented the docket which removed the requirement for licensed psychologists to be at the same physical location as the service extenders they supervise and authorized electronic communication. He stated the change allows those holding either a master's or bachelor's degree to become a Category III service extender.

Senator Stennett inquired what credentials justify a Category III service extender. **Mr. Frost** replied that Rule 450 details criteria for Category I, II, and III service extenders and describes the education requirements and scope of practice for each. **Senator Stennett** asked for another credential besides a degree that would distinguish between Category II and Category III. **Mr. Frost** answered he is unsure about Category II credentials, but an example for Category III would accept a bachelor's in mental health to work with a licensed psychologist within the scope of practice.

Vice Chairman Riggs asked Mr. Frost to present the remaining dockets that were submitted pursuant to the Governor's executive order in one presentation, and the Committee will make one motion at the conclusion.

**DOCKET NO.
24-1501-2000F**

Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists (BPCMFT), p. 520. **Mr. Frost** reviewed the Governor's Executive Order 2020-13. The BPCMFT amended Rule 300 to provide a process for licensure by endorsement, consistent with the Occupational Licensing Reform Act. The change eliminated a five-year practice requirement and allows a practitioner to obtain an endorsement to practice in Idaho if they have a current license from a state with substantially similar licensing requirements. **Mr. Frost** commented the change has streamlined access to counselors and therapists during COVID-19.

Senator Wintrow expressed her happiness about the change and said she has received several calls from practitioners over the years who were licensed in another state but it had been difficult to become licensed in Idaho.

Mr. Frost commented the change decreases licensure barriers, and he added DOPL is looking at the endorsement processes for all regulatory boards to align the practice.

Senator Stennett mentioned she is thrilled to hear the process will be more streamlined but is concerned about the type of vetting done when bringing in out-of-state providers and inquired whether there is any rigor in the process.

Mr. Frost responded that an endorsement licenses a professional that is already licensed in another state and has undergone a background check and clinical and board examinations. He reported Idaho Code specifies the requirements for licensure by endorsement, and the BPCMFT felt the requirement for an additional five years of experience should be removed. **Mr. Frost** added that the other state of licensure must have substantially the same licensing requirements as Idaho.

**DOCKET NO.
24-3401-2000F**

Rules of the Idaho Board of Nursing, p. 652. **Mr. Frost** stated the docket authorized senior nursing students to begin working 30 days prior to scheduled graduation under direct supervision of another licensed registered nurse, allowing nursing students to prepare for final exams and increase health care capacity to respond to the COVID-19 pandemic. The docket also permanently eliminated the \$10 fee requirement for nurse apprentice applications, resulting in an estimated \$1,000 annual savings for apprentices.

**DOCKET NO.
24-3601-2000F**

Rules of the Idaho State Board of Pharmacy, p. 697. **Mr. Frost** explained the docket simplified the pharmacy technician registration process during COVID-19. He added the changes removed an outdated definition that is not used in law or rule and clarified the pharmaceutical care definition relating to a licensee's ability to perform COVID-19 testing. **Mr. Frost** specified the emergency refill provisions were simplified to align with more than 25 other states to ensure continuity of care during COVID-19. He indicated the docket provides pharmacist clinical exam score transfers into Idaho during the exam process will be accepted up to one year. **Mr. Frost** reported the docket rescinds dispensing limitations for certain drugs.

Mr. Frost remarked there is no impact to the General Fund and a \$1,000 negative impact to the Board of Nursing dedicated fund.

MOTION:

Chairman Martin moved to approve **Docket Nos. 24-1201-2000F, 24-1501-2000F, 24-3401-2000F, and 24-3601-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Chairman Martin commented when the Committee discusses the rules, he thinks of people affected by them and the health care providers in front-line service. He expressed his gratitude for the work they do.

**DOCKET NO.
24-3303-2001**

General Provisions of the Board of Medicine, page 69. **Mr. Frost** advised portions of the BOM's rules were suspended in 2020 to facilitate medical response to the COVID-19 state of emergency, and the BOM conducted negotiated rulemaking on this docket. **Mr. Frost** reported the docket eliminated unnecessary definitions that already appear in statute. He advised the docket removed a provisional licensure requirement for certain new graduates because it duplicates provisions of the respective rules of other allied health boards.

Mr. Frost commented the docket repealed a rule pertaining to notification to licensees of an investigation because it duplicates a posted policy on the BOM's website and removed a reference to a telehealth licensure requirement because it duplicates a provision of Idaho Code. **Mr. Frost** stated the docket contains other minor edits and formatting corrections.

Senator Wintrow inquired about the difference between board policy and a rule.

Mr. Frost responded that a policy is determined in a public session of a board meeting, while a rule must go through the rulemaking process. The Governor issued an executive order regarding transparency of agency documents and policies, and while a policy does not carry the force of law, it is visible to the public.

MOTION:

Senator Harris moved to approve **Docket No. 24-3303-2001**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Riggs passed the gavel back to Chairman Martin.

ADJOURNMENT:

There being no further business at this time, **Chairman Martin** adjourned the meeting at 4:24 p.m.

Senator Martin
Chair

Jeanne Jackson-Heim
Secretary