

**GOVERNOR'S REGULATORY REVIEW COUNCIL (GRRC)  
MINUTES OF THE  
SEPTEMBER 1, 2015 COUNCIL MEETING**

The Governor's Regulatory Review Council Meeting was held on **Tuesday, September 1, 2015**, at **10:00 a.m.**, at the Pharmacy Boardroom located at 1616 West Adams, Suite 120, Phoenix, Arizona 85007, in the Land Department building.

**PRESENT:**

<b>Council Chair:</b>	Bret Parke
<b>Council Member:</b>	Brenda Burns (telephonically)
<b>Council Member:</b>	Lori Daniels
<b>Council Member:</b>	Jason Isaak (telephonically)
<b>Council Member:</b>	Michael Lofton
<b>Council Member:</b>	Connie Wilhelm
<b>Attorney General Representative:</b>	Christopher Munns
<b>GRRC Staff Attorney:</b>	Scott Cooley
<b>GRRC Staff Attorney:</b>	Christopher Klemminich
<b>GRRC Staff Assistant:</b>	Dolores Habre
<b>GRRC Intern:</b>	Kara Kerker

**A. CALL TO ORDER:**

**Council Chair Parke** called the Council Meeting to order at 10:00 a.m. and led the pledge of allegiance.

**B. DISCLOSURE OF CONFLICTS OF INTEREST:**

None

**C. CONSENT AGENDA**

- 1. Council Meeting Minutes – 8/4/15**
- 2. Study Session Minutes – 8/25/15**
- 3. Five-Year Review Reports:**

**3.1: ARIZONA MEDICAL BOARD (F-15-0901)**

Title 4, Chapter 16, Article 3, Dispensing of Drugs; Article 6, Disciplinary Actions

**3.2: INDUSTRIAL COMMISSION OF ARIZONA (F-15-0902)**

Title 20, Chapter 5, Article 11, Self-Insurance for Individual Employers

**3.3: ARIZONA STATE BOARD OF PHARMACY (F-15-0904)**

Title 4, Chapter 23, Article 7, Non-Pharmacy Licenses Outlets – General Provisions; Article 9, Penalties and Miscellaneous; Article 10, Uniform Controlled Substances and Drug Offenses

**4. Rules:**

**4.1: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-15-0903)**  
Title 9, Chapter 22, Article 13, Children's Rehabilitative Services (CRS)

Amend: R9-22-1301  
Amend: R9-22-1303  
Amend: R9-22-1304

**ACTION:** Council Member Daniels moved to approve the consent agenda items. Council Member Wilhelm seconded the motion. The motion passed unanimously. Chairman Parke pointed out that Member Burns and Member Isaak voted telephonically.

**D. CONSIDERATION AND APPROVAL OF FIVE-YEAR-REVIEW REPORTS:**

The Council will consider five-year-review reports filed under A.R.S. §41-1056 and may approve or return the reports, in whole or in part. The Council may request information from the agency or members of the public.

(None)

**E. CONSIDERATION AND APPROVAL OF RULES:**

The Council will consider rule packages filed under A.R.S. § 41-1052 and may approve or return the packages, in whole or in part. The Council may request information from the agency or members of the public.

**1. NATUROPATHIC PHYSICIANS MEDICAL BOARD (R-15-0801)**

Title 4, Chapter 18, Article 1, General Provisions; Article 2, Licenses; Specialist Certificates; Continuing Medical Education; Renewal; Article 5, Naturopathic Clinical Training and Preceptorship Training Program Requirements; Article 9, Certificate to Dispense

Amend: R4-18-101  
Amend: R4-18-107  
Amend: R4-18-202  
Amend: R4-18-203  
Amend: R4-18-204  
Amend: R4-18-206  
Amend: R4-18-501  
Amend: R4-18-502  
Amend: R4-18-904

New Section: R4-18-207  
New Section: R4-18-208  
New Section: R4-18-209

**Christopher Klemnich** presented legal analysis for this item.

**Chairman Parke** commented on the request for an immediate effective date.

**Mr. Klemminich** responded that the Board requests an immediate effective date for all of the rules, as the rules are necessary to protect public health and safety. Specifically for the fee rule, the Board seeks to avoid a violation of statute.

**Chairman Parke** commented that, with regard to the consistency with models or regulations for other states, it creates an easier path for practitioners to move between states if things are similarly handled.

**ACTION:** Council Member Daniels moved to approve the agenda item. Council Member Wilhelm seconded the motion. The motion passed unanimously. Chairman Parke pointed out that Member Burns and Member Isaak voted telephonically.

**2. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-15-0902)**  
Title 18, Chapter 14, Article 3, Permit and Compliance Fees

New Article: Article 3  
New Section: R18-14-301  
New Section: R18-14-302  
New Section: R18-14-303

**Christopher Klemminich** presented the legal analysis for this item.

**Chairman Parke** invited ADEQ staff to present comments to the Council.

**Wendy LeStarge**, Rules Analyst for ADEQ, asked if there were any particular questions on the issue of tiered fees.

**Council Member Michael Lofton** asked if the Department considered basing the fee on a percentage of an operator's revenue, as that would seem to affect a small operators and large operators equivalently.

**Ms. LeStarge** responded that the Department considered alternative options, but one of the issues is that the certification belongs to the individual operators, not the water systems. There are differences in complexity between small facilities and large facilities. The Department does not have authority to license or permit drinking water systems, and only has the authority to certify operators.

**Chairman Parke** commented that the Department has a concern with respect to the resource demand for smaller facilities. The Department has identified that resources expended by staff are equivalent for the individual operator certification, no matter the size of the facility, and that the Department does not license or certify the facility, but certifies the operator. Those are limitations on the ability of the Department to have a revenue-based model for fees in this instance.

**Ms. LeStarge** agreed with Chairman Parke and noted that stakeholders with larger systems would see a tiered fee model, based on the size of the system, as a subsidy for smaller systems. The fee model throughout the Department has been based on trying to recover the Department's costs.

**Council Member Lofton** asked for clarification on how a large facility would be subsidizing a smaller facility.

**Ms. LeStarge** responded that would be the case if an operator worked for a larger facility and paid more than an operator that worked for a smaller facility.

**Chairman Parke** added that it could be viewed as unfair if an operator working at a larger facility was paying more.

**Council Member Burns** noted that the money has to come from somewhere, so if some are paying less, others would have to pay more.

**Council Member Lofton** asked if, in terms of quantity, an operator for a larger facility is responsible for more drinking water than an operator working for a smaller facility.

**Daniel Czecholinski**, Drinking Water Section Manager for ADEQ, said that the answer is very complex and depends on the grade of the water system. Level 1 and Level 2 systems can have a remote operator, and only need an onsite representative for day-to-day maintenance. Level 3 and Level 4 are required to have an operator onsite.

**Chairman Lofton** commented that it seems as though the larger facilities may have an unfair advantage with the way that the Department has structured its fees.

**Mr. Czecholinski** responded that it is not an advantage or a disadvantage, as it is not the system, but the operator, that is responsible for certification.

**Trevor Baggione**, Water Quality Division Director for ADEQ, stated that there are no guarantees as to what happens at the Governor's Office or Legislature. However, this rulemaking has been approved by the Governor's Office, with the knowledge that the money goes to the General Fund, and the Department has assurances that the Governor's Office will work with the Department to have this statute changed. This does depend on the focus of the Legislature this year, and what the Governor's priorities are. The Department will advocate to make it clear where this funding goes, because we need the money for our program.

**Council Member Burns** asked, why is the Department is not getting legislation passed this year and bringing the rule to Council next year?

**Mr. Baggione** responded that it is a chicken-and-the-egg problem. The Department has statutory authority to charge fees, and is working toward receiving the funds for their program.

**Council Member Burns** expressed concern about approving the rule before it goes to the Legislature, as moving forward at this time is not going to fulfill the Council's obligation to approve rules that have the least burden and costs on those individuals regulated by the rules.

**Mr. Baggione** noted that the program is not entirely funded by the federal government, and other state funds that the Department is getting right now are also at risk, in the sense that the Department has to go to the Legislature every year to request these funds.

**Council Member Burns** inquired as to whether the Department has spoken with the Appropriations Chairman.

**Mr. Baggione** responded that he has not spoken to the Appropriations Chairman personally, but that, as he is new to his position, he did not know what conversations might have taken place earlier in the rulemaking process.

**Council Member Burns** indicated that while she agrees with the Department's goals, she remains concerned.

**Chairman Parke** stated that the expense of doing the program is being borne by the state as we speak, so there is not any revenue being recouped from that. Money is being taken from a different fund, because it is not coming from the General Fund. This is a remnant from when the Department was on the General Fund. The Department had to find different resources during the Great Recession to bring money about to support programs previously supported by general funds. Arguably, there is a cost-shift from the certified operators to other entities that the Department regulates. With respect to GRRC's purview, the Department has statutory authority for the rules, and the Department has responded to comments in addressing the notice and comment process through rulemaking. It puts agency in a difficult position, both with legislators and the Governor's Office, in asking whether the Department has yet made contact. The priorities of legislators and the Governor's Office can change. There is a legitimate concern, but there is question as to the extent of the power of the Council.

**Council Member Burns** stated that she understands Chairman Parke's point of view, but the goal of the Department is to become financially self-sustaining, and if this money goes to the General Fund, and not back to the Department, then it's not self-sustaining. She is concerned because the Council needs to live up to its responsibilities to the regulated community.

**Chairman Parke** added that, as was mentioned by Director Baggione, the Governor's Office had a very good look at this rule package, the exemption request was reviewed by the Governor's Office closely, and Director Baggione has provided assurances that this is a priority of the Department and something they intend on reconciling as quickly as possible given the limitations that they live under.

**Council Member Lofton** asked about the Department's directive to become financially self-sustaining.

**Mr. Baggione** commented that ultimately the recession pushed the Department to the fee-for-service model. General Fund cutbacks were going to damage the agency, and the Department had to find a model under it could survive and continue to pursue the mission of protecting and enhancing public health and the environment.

**Council Member Wilhelm** asked, if the Department gets these fees in January, but the FY 17 budget doesn't become effective until July 1, how will the Department get that money appropriated from January through June?

**Mr. Baggione** responded that there are possible avenues, such as the legislative change, which would probably not be a quick solution, or to get a level of General Fund money appropriated to the Department, hopefully equivalent to what the Department would be collecting from these fees.

**Council Member Wilhelm** asked, is there was a reason why they didn't make an effective date of July 1, 2016, when the new budget goes in for next year?

**Mr. Klemminich** noted that, originally, when this rulemaking was submitted to the Council in late 2014, the effective date would have been July 1, 2015.

**Mr. Baggione** responded that the original plan was to tie the effective date to the fiscal year. Part of our concern was the optics of going forward with a rulemaking that says “we really need these fees” but we don’t really need them until July 2016. The Department has no significant objection to moving the effective date to July 1, 2016, if that would help to resolve the Council’s concerns.

**Council Member Daniels** asked, if the Council were to table this fee, how would the Department fund the program at this time?

**Mr. Baggione** responded that we are robbing Peter to pay Paul, and that would have to continue until the fees are established and we get that revenue. For the current budget, Peter has already been robbed, so for the current fiscal year, the program can survive.

**Council Member Burns** commented that once the operator starts paying fees, the problem is not going to be corrected unless the money goes directly to the agency.

**Council Member Lofton** asked for clarification, that even if the Department was able to charge the fees, there is still no guarantee that these funds will go to the Department instead of the General Fund?

**Mr. Baggione** concurred with Member Lofton.

**Council Member Daniels** asked staff that, if this was to be tabled for 4 or 5 months, or until we knew what the Legislature would be doing, would the Department have to go through the whole process?

**Mr. Cooley** responded the Council would only have 120 days to take action.

**Mr. Klemminich** commented that tabling is not an action, and an action would be either an approval or a return. The Council has 120 days to approve or return rules. There is no set timeline in statute, upon resubmittal of a returned rule, for how long a period the Council then has to act.

**Council Member Isaak** commented on how challenging this rule is, because he understands what the Department is trying to do, and is in agreement with that, but he is not sure the Council is meeting their fiduciary responsibility to those regulated if the rules are approved.

**Mr. Baggione** commented that the appropriate model would be for the money to come to the program itself. However, he does not see how having a different set of people continuing to pay for this program is appropriate. There is no reason, under the fee-for-service model, that the operators should continue to get a free service from them. Yes, there is a challenge to have the money delivered to the Department, and that is an unclear and uncertain process. We need to start the process to start having people pay some level of fee for the services they are receiving. The Department will continue to advocate with the Governor’s Office, and with the appropriate folks in the Legislature, to get that money appropriated to the Department.

**Council Member Isaak** commented that, as the Ducey administration asked for this rule to move forward, he is inclined to move forward, but is wondering if tabling for a month to review would be a better option.

**Council Member Burns** inquired as to whether the Council could give the Department an opportunity to go through the legislative process, and have the opportunity to bring the rules back to the Council, without having to go through and start from scratch.

**Mr. Klemich** again noted that there is no timetable in statute for the Council to take action on a returned rule that had been resubmitted, but, as there is no precedent on the matter, cautioned that the Council not delay for too long.

**Council Member Daniels** commented that she needs more time to think this all through. At this point, she doesn't feel she could vote aye, and wants to talk with staff more.

**Chairman Parke** received clarification from Mr. Klemich that the 120-day period for the Council to act would not lapse before the October meeting.

**Chairman Parke** stated that he has some reluctance to table the rules. The Department has made the rules consistent with statute, staff has recommended approval, and the Department has performed analysis in the EIS that indicates that the rules impose the least burden and costs. The issue of the funds is not going away. Funds that come into the government are shifted often and regularly to support other uses. It is difficult to potentially punish the agency when the legislature holds the purse strings. The Department has done the work to demonstrate that the rules impose the least burden and costs, and the Department has done it in accordance with statute.

**Mr. Baggione** noted that, if the decision is to table the rule for a month, there still will be no guarantee from the Governor's Office or anybody else at that point, and he is not sure of the benefit of tabling the rule for an additional month.

**Council Member Daniels** indicated that she would like more time to study the issues.

**Council Member Lofton** commented that he needs time to research as well before he can vote.

**Council Member Burns** reiterated that discussions with JLBC, OSPB, and the Appropriations Chairmen could potentially be helpful.

**Chairman Parke** indicated that he was not sure if it was appropriate for the Department to comment on those discussions.

**Council Member Isaak** commented that he appreciates Chairman Parke's reservations about tabling, and is inclined to support the rules, but he is not ready as yet.

**ACTION:** Council Member Daniels moved to table consideration of the item for one month, and place the item on the October agenda. Council Member Lofton seconded the motion. The Motion passed 5-1. Council Members Burns, Daniels, Isaak, Lofton, and Wilhelm voted aye. Chairman Parke voted nay.

**F. ADJOURNMENT**

**Chairman Parke** commented that staff is instituting a request by members to track proposed actions in five-year-review reports. In addition, staff is reaching out to Council members and to agencies to ask what they value and what the Council can do better.

**Chairman Parke** adjourned the meeting at 11:17 a.m.

Respectfully submitted,

/S/dh

*GRRC Executive Staff Assistant*