

**Plumbing and Mechanical Systems Examining Board
Administrative Rules Committee Meeting Minutes
August 4, 2009**

Committee Members Present:

Susan Salsman Chairperson
Ron Masters
Ken Sharp
Dennis Molden

Committee Members Absent:

Stuart Crine

Staff Attending:

Matt Oetker, Assistant Attorney General
Cindy Houlson, Executive Officer
Susan Van Horn, Program Planner
Mary Swinehart, Secretary 1

Susan Salsman, Chair called the meeting to order at 4:02 p.m.

REVIEW OF JULY 15, 2009 MINUTES

The minutes were approved with changes.

WAIVER APPROVAL

Matt Oetker presented Waiver Approval document. This waiver approval allows the Board to waive the exemption. This will allow the Board to set an exception to an administrative rule that may exist. Iowa Code Section 17A.9 gives every public board the right to waive its own rules so long as that board has a rule that authorizes waiver. In order for this board to waive an administrative rule we have to create waiver rules.

Question: In terms of the way we are handling waivers now, those come out over my signature – They are taken to the board for a final decision, Ken signs off on. If we go with the adoption of this rule does that final decision making come out over the board chairs signature

Response: It will be the Board chairs signature. We can create rules where the Executive Officer can provide these orders on behalf of the Board chair.

Question: Does staff handle in a similar fashion, or does every request have to be brought back to the board at regular meetings.

Response: The Board will issue the waivers not the department. Presently, we are going by the department rules because the board does not have one. Under 641 we have taken the position that all rules are department rules. Once we get to the board when we have the authority to grant a waiver from its own rules then the board would take over that authority.

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Question: Procedurally when it becomes the Board authority, and when it becomes the board persons signature that signs off on the waivers either the approval or denial, procedurally do we take that out of staff's hands? Cindy's responsibility (other than preparing the recommendations for the board), since we do not have the internal process we have been using?

Response: We do need action with the waivers. If we get the same type of request for waiver request, it would be time to revisit our rules. The board can issue a standing waiver if specific criteria are met that would establish an automatic approval for waiver. There would be no approval for that waiver because that waiver has already been approval by a standing rule.

Section 641- x.4 is significant in that sets forth the burden of proof for any person seeking a waiver of the rules. It is important because it not only sets forth that the petition has to be set by clear and convincing evidence that all the following factors have to be established. A lot of times a waiver request will be denied because one of the factors has not been established. Those four factors come right out of 17A; therefore the board does not have the discretion to change the criteria, as it sets the standards by the Iowa code.

Sections 641- x.5 & x.6 provides the procedures necessary for the filing of a petition for waiver. Contents of what must be included in a petition.

Section 641- x.7 Allows the board the discretion to request additional information before ruling on a petition for a waiver.

Section 641- x.8 Sets forth the notice provisions. Sometimes a waiver request will have implications for other parties, so the Board has to give appropriate notice.

Section 641- x.9 Contested test rules, which we are also working on. If a petition for waiver is filed and a contested case Iowa 17A rules shall apply in waiver requests.

Section 641- x.10 Sets forth the rules regarding the ruling on the petition for a waiver limitation on the board's authority. The board must be

Section 641- x.11 All waivers are public documents once the board rules on a waiver. When board approves a waiver that is a public document.

Section 641- x.12 Requires the board to prepare a summary of all the waiver requests and all the waivers granted to be submitted to the Legislative Rules Committee.

Comment: Barb does the department summary, which is why she is provided a copy of all of our waivers. Because we are at 641, she may still do those. .

Section 641- x.13 provides that waivers can be cancelled by the board.

Section 641- x.14 Sometimes the board will issue conditional waivers.

Section 641- x.15 If the board grants a waiver and any person acts in condition to that waiver, the board is precluded from bringing disciplinary action against that individual under the condition that they violated the Administrative Rule. That waiver is a complete defense against the violation of the rule.

641 x.16 judicial review wherever the agency or whatever the boards' final decision is in respect to a waiver request can be appealed and it can be appealed through a process known as judicial review from 17A

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Question: In terms of timing of when we move this forward, there are references to the disciplinary chapter. Is this something we need to coordinate the timing of with our disciplinary chapter?

Response: I believe this document can be ready for the next Board Meeting to move forward. There is no reason why this could not move forward if the Committee so chooses.

The Committee would like to have more time to review and bring before the next committee meeting to be held Aug 11 4-6 p.m. Providing numbering is ready and available, will plan to present to the Board at next weeks meeting. We can advance this as a normal rule making process.

Structurally it would make a lot of sense to keep contested, discipline and investigation rules closely together. Waiver could probably go elsewhere with state debt rules. We are going to have to have a new chapter called petitions for rule makings, which allows individuals to file a petition with this board. We are going to have a lot of other rules, which would make sense to keep those rules together, however we just don't have the numbering to do all that.

Question: Will this waiver also cover requests for refunds. Our rule is no refunds. The rule is set by the Administrative Rule Committee that says here will be no refunds.

Response: This would allow a waiver in an extra ordinary circumstance; the board may allow a waiver for that particular circumstance. This waiver is based on the petition – one persons claim for one instance. Factors are so particularized that the individual has to show based on his/her circumstances why. There could also be a standing waiver.

Comment: We have some internal routing to accomplish, however we could have ready for the August Board Meeting. If there are things we have overlooked it may have to wait till the Sept. Meeting.

Question: Once the board adopts the plumbing code, do you see variance requests coming through that process? The one variance request that covers 99% of waiver requests is with restroom facilities (fixture counts). We have a standing approval for those requests. Those are things traditionally handled (as part of our department rules by Mike Magnet, will they now come to the board. This will length the time to get them approved.

Response: Maybe in the adoption of the Plumbing Code, that could be amended, where wouldn't actually have to be a waiver request.

Comment: There may be some opposition from the Plumbers Union regarding that. There may be a committee appointed to look at specific issues. This is a message to get to Tom as they are working on it. When the Plumbing Code Committee is reviewing the various codes and what modifications they would like to make to those codes, to specialize for the State of Iowa. If we are continuously approving a variance request for the number of fixtures in a restroom at a public facility lets take away the need for the waiver on that and modify those rules to whatever is common practice in establishment

of the restroom facilities. The Plumbing Code Committee needs to look at to see if there is a way to minimize the number of waiver requests that come in relative to fixture counts for the plumbing code.

DISCIPLINE CHAPTER

Second page of Discipline Chapter: 32.2(18) added at the very end (32), (33) & (34).

Question: Why are we including another state?

Response: Someday we may have reciprocity. If person holds a license in Minnesota and Minnesota revokes license, this would allow us to remove his license in Iowa. We will want to uphold the standards for all states.

Question: In legal thinking is a habitual violation grounds for disciplinary action.

Response: One violation of the plumbing code is grounds for disciplinary action.

Question: We have two apprentices who are no longer associated with PHCC. They have already fallen out. Where does it say we can pull their license?

Response: In order to be an apprentice, one must be signed up with an apprentice program according to statute. Do not feel we need to address this at this Committee. When they wish to acquire a journeyman license they will not meet the qualifications and can be addressed at that time.

Matt had to leave the meeting.

Question: Are 32 & 34 being a little redundant?

Response: In Sioux City on the mechanical side every contractor that gets a job faxes a permit to me or sends me an email with the permit attached. I enter it into the computer and charge them out accordingly. Then they call for inspection. They do not get a copy of the permit. This is just for local contractors. Those not from Sioux City must pay at the time they apply for the permit. There are rules in ordinances that cover not pulling permits or calling for inspections.

Mike Minnick provided an e-mail in response for input.

Suggestion: A rule to prevent unlicensed contractors from working as a subcontractor.

Response: A licensed contractor can not hire a sub that is not a licensed contractor and do work under that original contractor's license. A contractor or a sub must hold a contractor's license.

Suggestion: A master may only represent one contractor at a time.

Response: As we work through the contractor licensing language we can come back to the master language and add that stipulation that a master may only represent one contractor at a time. That was in Chapter 29 under Licensure originally.

Suggestion: Requiring individuals to carry license with them. Upon request of the inspector, licensee shall immediately be able to present said license.

Response: We will check to be sure included and is not a contradiction with 105. .

IABO Response

Concern: MS4 permit storm waters.

Response: Think is covered by another agency rules.

IAPMO INFORMATION will be forwarded to the membership.

OTHER BUSINESS:

NEXT STEPS FOR CHAPTERS 27, 28 & 29:

Question: How soon are we bringing back for this committee? We need to start reaching out to the private colleges, the geothermal guys, Black Hills Energy guys and the like to get them engaged at this level.

Response: We are shooting for a late September, early October timeline. Cindy and Ken will meet with reps, and then invite them to a meeting, letting them know time is limited to allow them to present their wish list

Comment: I'd like to address ground source heat pump installation licensing. I know they have allowed the ground source heat pump people to be licensed to install heat pump systems. Looking through their criteria the only time they have spent on duct sizing, duct work installation is two hours in the whole course. I've talked to people who have gone to this course and they learn nothing about the installation of duct work in a house. I don't believe they qualify to do that kind of work even though they can put in the rest of the system.

Response: Those are the kinds of conversations we need to have with the geothermal guys to express our concerns and try to find some of that balance

Comment: We have two types of licenses to address. One is the geothermal and the other is the concept of special restricted licenses. If we can get those two things done, I think the licensing in terms of rules is addressed for the next six months. If beyond what we see as appropriate for those two categories of licenses, that is where we will need to have in-depth, detailed discussion in this Committee and perhaps eventually before the Board.

Question: What about the fire place industry? They have contacted us previously.

Response: Start thinking about specialty or restricted license we see and start contacting people we feel would be able to provide input.

Question: Ron asked for an update on the progress of the test questions.

Response: A meeting has been scheduled with Chuck, Matt, Cindy and Ken to meet with Prometrics on Friday.

Next Meetings

Tuesday, August 11th 4-6 p.m.

Chapter 31 of the disciplinary Chapter

Tuesday, September 1st 4-6 p.m.

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Adjournment: 5:46 p.m

Respectfully submitted,
Mary Swinehart