

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.219.301 definitions,)
24.219.401 and 24.219.405 fees,)
24.219.501 application, 24.219.504)
licensure, 24.219.509 status)
conversion, 24.219.601 application,)
24.219.604 licensure, 24.219.609)
status conversion, 24.219.2101 and)
24.219.2201 continuing education,)
24.219.2301 and 24.219.2305)
unprofessional conduct, pertaining to)
social work examiners and)
professional counselors)

TO: All Concerned Persons

1. On December 24, 2008, the Board of Social Work Examiners and Professional Counselors (board) published MAR Notice No. 24-219-21 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2583 of the 2008 Montana Administrative Register, issue no. 24.

2. On January 20, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. On May 28, 2009, the department published a notice of extension of comment period on the proposed amendment of the above-stated rules at page 812, 2009 Montana Administrative Register, issue number 10. Several comments were received by the extended June 11, 2009, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

General Comments:

COMMENT 1: Two commenters requested that the board extend both the hearing and the time period for public comment regarding the proposed amendments. The commenters asserted that nonlicensed students did not receive notice of the hearing and that everyone should have a chance to fully understand the proposed amendments.

RESPONSE 1: The board notes that the board and department complied with all statutory requirements in this administrative rulemaking project. The board takes notice of the importance of contact between the board and the relevant associations

during all rulemaking processes. The board did extend the comment period in response to the requests.

COMMENT 2: One commenter asked if "direct observation of service delivery" can be video-taped or whether "they have to be in the office in the session."

RESPONSE 2: This comment does not appear to apply to any rule changes proposed in this rulemaking notice. The board notes that this question is beyond the scope of the amendments proposed in the original notice.

COMMENT 3: One commenter suggested that Montana require applicants to show evidence of training or competence in the specialty areas of mental health counseling or clinical mental health counseling to qualify for licensure as Licensed Clinical Professional Counselors.

RESPONSE 3: The board notes that this question is beyond the scope of the amendments proposed in the original notice.

ARM 24.219.301:

COMMENT 4: One commenter stated that only Psychiatrists, Licensed Clinical Social Workers (LCSW), and licensed Psychologists should qualify to supervise social work applicants for 1,500 of the required 3,000 hours as they are Medicare-qualified supervisors.

RESPONSE 4: The board determined that the four types of licensees shown in the rule are qualified to supervise and that no restriction should be placed on who supervises what portion of post-graduate hours. The board is amending the definition of supervisor at ARM 24.219.301 accordingly.

COMMENT 5: One commenter questioned whether a LCSW can supervise a social work applicant for the entire period of required supervision.

RESPONSE 5: The board agrees that a LCSW is able to supervise a social work applicant for the entire period of supervision and notes that this will be clarified by the amendments to the definition of supervisor in ARM 24.219.301.

COMMENT 6: Two commenters asked the board to amend the definition of supervisor to allow for flexibility or exceptions in rural areas where supervisors oftentimes do not have three years experience in supervising and may not be of the same licensure as the supervisee.

RESPONSE 6: The board believes the commenters' concerns will be addressed by the amendments to the definition of supervisor in ARM 24.219.301.

COMMENT 7: One commenter suggested the board delay implementation of the experience or training requirements for supervisors to allow supervisors and trainees time to adjust to the new requirements.

RESPONSE 7: The board agrees that more time is needed to ensure that trainees will be able to find qualified supervisors. The board decided to address supervisor training and experience requirements in a future rulemaking project and is amending the rule accordingly.

COMMENT 8: Two commenters opposed the proposed definition of dual relationship as being unnecessary and too broad and suggested that current rules are sufficient.

RESPONSE 8: The board agrees that the proposed definition leaves some room for interpretation by licensees but determined that amending the rule as proposed would be better than the lack of clarity under current rules.

COMMENT 9: One commenter stated that the proposed definition for exploitation is too vague, leaves too much to question, and invites complaints against licensees based on the slightest pretext.

RESPONSE 9: The board does not believe it is possible to identify every type of exploitative behavior. The board concluded that the proposed definition is as specific as possible and is not changing the definition at this time.

ARM 24.219.504:

COMMENT 10: One commenter stated that requiring three years of practice and/or training for supervisors places an undue burden on the social work applicants. The commenter urged the board to instead adopt the clinical supervision standards of the NASWB Model Social Work Act.

RESPONSE 10: The board previously examined the NASWB Model Social Work Act and its clinical supervision standards. The board decided, however, to implement more stringent clinical supervision standards and is amending ARM 24.219.504 exactly as proposed.

COMMENT 11: A commenter expressed concern that not all of the specific areas of minimal competency required for social workers in ARM 24.219.504 occur in every supervised experience environment. The commenter suggested the board amend these rules for additional flexibility.

RESPONSE 11: The board intends that an applicant's minimal competencies will be demonstrated by a review of the entire application and not necessarily that each area of minimal competency will be addressed in every record of supervision. The board is amending the rule exactly as proposed.

COMMENT 12: One commenter was concerned that social work applicants would not receive credit for supervised hours reported on supervision logs prepared under previous standards of ARM 24.219.504.

RESPONSE 12: The board will accept supervision logs that satisfied previous rules for work supervised prior to amendment of the rules. Experience gained after the rule changes should be recorded on forms that satisfy the new documentation requirements.

ARM 24.219.604:

COMMENT 13: One commenter asked if Licensed Clinical Professional Counselor (LCPC) course curriculum will be clearly defined following the deletion of (1)(a) through (c) from ARM 24.219.604.

RESPONSE 13: The course curriculum is already defined in the Council for Accreditation of Counseling and Related Educational Programs (CACREP) standards. The board concluded there is no need to restate the curriculum in rule.

COMMENT 14: Several commenters asked the board to also accept the Council on Rehabilitation Education's (CORE) core curriculum for LCPC applicants in ARM 24.219.604 in addition to CACREP core courses, as they are nearly identical and already accepted in thirteen states. The commenters stated that doing so would encourage people to enter the field of rehabilitation counseling and would improve services offered to disabled Montanans.

RESPONSE 14: The board decided not to make the suggested change at this time, noting that the board currently accepts courses that meet CACREP and equivalent standards. The board may approach this issue in a future rulemaking project.

COMMENT 15: A commenter expressed concern that not all of the specific areas of minimal competency required for professional counselors in ARM 24.219.604 occur in every supervised experience environment. The commenter suggested the board amend these rules for additional flexibility.

RESPONSE 15: The board intends that an applicant's minimal competencies will be demonstrated by a review of the entire application and not necessarily that each area of minimal competency will be addressed in every record of supervision. The board is amending the subsection on minimal competences exactly as proposed.

COMMENT 16: One commenter was concerned that professional counselor applicants would not receive credit for supervised hours reported on supervision logs prepared under previous standards of ARM 24.219.604.

RESPONSE 16: The board will accept supervision logs that satisfied previous rules for work supervised prior to amendment of the rules. Experience gained after the

rule changes should be recorded on forms that satisfy the new documentation requirements.

COMMENT 17: One commenter asserted that the word "current" in reference to CACREP standards in ARM 24.219.604 could be problematic due to the delay between the time a new accreditation standard is developed by CACREP and the time a university's curriculum is accredited or reaccredited by CACREP.

RESPONSE 17: The board agrees and is amending the rule to delete the word "current." This change will allow acceptance of an applicant's education if the institution's curriculum was accredited by CACREP when the applicant attended.

ARM 24.219.2101 and 24.219.2201:

COMMENT 18: Several commenters opposed the mandatory requirement for two hours ethics CE as unnecessary and difficult to obtain.

RESPONSE 18: The board considered the comments and is amending ARM 24.219.2101 and 24.219.2201 to not require any CE in ethics.

COMMENT 19: One commenter requested the board allow licensees to carry over ethics CE credits from year to year.

RESPONSE 19: The board notes that carryover of CE hours is allowed under current rules. The board is amending the CE rules to not require any CE in ethics.

COMMENT 20: Two commenters stated that two hours of CE in ethics is inadequate and recommended the board increase the required ethics hours.

RESPONSE 20: The board acknowledges the comments but decided to amend the CE rules to not require any CE in ethics at this time.

ARM 24.219.2301 and 24.219.2305:

COMMENT 21: Two commenters stated that prohibiting sexual relationships with clients for a three-year time period seemed arbitrary and questioned why other dual relationships have no time limit. The commenters noted that it could lead licensees to believe that it is acceptable to enter into exploitative relationships with clients as long as three years had elapsed since the professional relationship ended.

RESPONSE 21: The board agrees and is amending the rules to remove the three-year language to clarify that all sexual relationships with former clients are prohibited unless the licensee demonstrates the relationship was not exploitative.

COMMENT 22: One commenter suggested that any kind of bartering relationship could be risky for both licensee and client.

RESPONSE 22: The board understands the risks associated with bartering. However, the board is amending ARM 24.219.2301 and 24.219.2305 as proposed to allow clients with no other means to obtain professional assistance to continue to receive treatment, while encouraging licensees to ensure bartering arrangements do not harm clients.

COMMENT 23: A commenter stated that dual relationships may occur unexpectedly in a large state like Montana, especially in rural communities. The commenter suggested the board amend the rules to set a time limit similar to the three-year limit for sexual relationships.

RESPONSE 23: The board is amending the rules to delete the three-year time limit on sexual relationships. The board does not want to impose an arbitrary time limit on any dual relationships but will consider each circumstance individually.

4. The board has amended ARM 24.219.401, 24.219.405, 24.219.501, 24.219.504, 24.219.509, 24.219.601, and 24.219.609 exactly as proposed.

5. The board has amended ARM 24.219.301, 24.219.604, 24.219.2101, 24.219.2201, 24.219.2301, and 24.219.2305 with the following changes, stricken matter interlined, new matter underlined:

24.219.301 DEFINITIONS (1) through (7) remain as proposed.

(8) "Supervisor," when used to refer to a person who supervises the work of an applicant for licensure, means a licensed clinical social worker, a licensed clinical professional counselor, a licensed psychologist, or a licensed and board-certified psychiatrist. ~~A supervisor shall have three years of post-licensure experience or board-approved training in clinical supervision. For social work applicants, a licensed psychologist or psychiatrist shall only qualify to supervise up to one half of the total post-graduate hours required, and a supervisor holding the license for which the applicant has applied must supervise at least half of the total post-graduate hours required for licensure.~~

24.219.604 LICENSURE REQUIREMENTS (1) and (1)(a) remain as proposed.

(b) completion of ~~current~~ Council for Accreditation of Counseling and Related Educational Programs (CACREP) core courses as evidenced by submission of a summary sheet on education on a form prescribed by the board;

(c) through (5) remain as proposed.

24.219.2101 HOURS, CREDITS, AND CARRY OVER (1) Each social work licensee of the Board of Social Work Examiners and Professional Counselors shall earn 20 clock hours of accredited continuing social work education each year. ~~The 20 clock hours required shall include a minimum of 2 clock hours of instruction in ethics.~~ Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) through (5) remain as proposed.

24.219.2201 HOURS, CREDITS, AND CARRY OVER (1) Each licensee of the Board of Social Work Examiners and Professional Counselors shall earn 20 clock hours of accredited continuing professional counselor education each year. ~~The 20 clock hours required shall include a minimum of 2 clock hours of instruction in ethics.~~ Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) through (5) remain as proposed.

24.219.2301 UNPROFESSIONAL CONDUCT FOR SOCIAL WORKERS

(1) through (2)(e) remain as proposed.

(f) Engage in sexual contact with a former client ~~for at least three years after termination of professional services.~~ unless the licensee who engages in such activity ~~after three years~~ following termination of professional services ~~bears the burden of demonstrating~~ demonstrates that there has been no exploitation, in light of all relevant factors, including:

(i) through (l) remain as proposed.

24.219.2305 UNPROFESSIONAL CONDUCT FOR PROFESSIONAL COUNSELORS (1) through (2)(e) remain as proposed.

(f) Engage in sexual contact with a former client ~~for at least three years after termination of professional services.~~ unless the licensee who engages in such activity ~~after three years~~ following termination of professional services ~~bears the burden of demonstrating~~ demonstrates that there has been no exploitation, in light of all relevant factors, including:

(i) through (l) remain as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMET, LCSW, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 2, 2009