

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through XII qualification of)
social workers and professional)
counselors to perform psychological)
testing, evaluation, and assessment)

TO: All Concerned Persons

1. On April 14, 2011, the Board of Social Work Examiners and Professional Counselors (board) published MAR notice no. 24-219-22 regarding the public hearing on the proposed adoption of the above-stated rules, at page 533 of the 2011 Montana Administrative Register, issue no. 7.

2. On May 5, 2011, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the May 13, 2011, deadline.

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

Support MAR Notice 24-219-22

COMMENT 1: Numerous commenters responded favorably to the proposed new rules regarding psychological evaluations.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: One commenter observed that some tests can be administered by LCPCs/LCSWs without additional training beyond what is specifically necessary for the test.

RESPONSE 2: The board believes that licensees should only perform evaluations if they have been trained so that they are familiar with the reliability, validity, related standardization, error of measurement, and proper application of the chosen assessment technique.

COMMENT 3: One commenter stated that the board should require specific training in the specific assessment being administered.

RESPONSE 3: The board agrees that it will usually be necessary to have test-specific training, and this is contemplated by the rules as proposed.

Oppose MAR Notice 24-219-22

COMMENT 4: Some commenters stated that the proposed rules do not provide a method to ensure competence to do psychological evaluations.

RESPONSE 4: The board disagrees with this comment. The board researched other states' and professional associations' rules regarding competence to perform psychological assessments and based these rules on such research. The board advises that postgraduate education will often be required to obtain competence.

COMMENT 5: Some commenters asserted that there have been complaints made regarding LCPCs/LCSWs performing psychological evaluations.

RESPONSE 5: The board was not aware of complaints involving its licensees performing such testing. However, the board will always consider such complaints on an individual case-by-case basis.

COMMENT 6: Several commenters suggested the board adopt Wisconsin's rules.

RESPONSE 6: The board did consider the Wisconsin model, but preferred the Ohio rules, and found them to be consistent with the requirements of 37-17-104, MCA.

COMMENT 7: A few commenters objected that the proposed rules are not consistent with the governor's amendatory veto.

RESPONSE 7: The board disagrees with this comment. The bill, as amended, required that the rules be consistent with national associations' guidelines. The board received input from counseling and social work associations that indicated the proposed rules are consistent with the requirements.

COMMENT 8: Numerous commenters stated that the psychological evaluation rules are not sufficient to ensure public protection.

RESPONSE 8: The board acknowledges that it is impossible to monitor every psychological evaluation performed, but has determined that the proposed rules are the best method to guide licensees and protect the public.

COMMENT 9: Many commenters objected to licensees performing psychological evaluations, because it is not taught in masters social work and counselor programs. The commenters suggested that the board specify additional qualifications to ensure competence.

RESPONSE 9: The board acknowledges the commenters' concerns. The board believes it will usually be necessary for licensees to obtain additional postgraduate education in psychological evaluations.

COMMENT 10: Several commenters complained that the proposed rules do not prescribe specific education and experience requirements, and opined that additional training will be necessary to ensure licensee competence.

RESPONSE 10: The board agrees that licensees could not ordinarily rely on their undergraduate or masters-level survey courses in testing to demonstrate competence, but the board concluded that it is not appropriate to dictate a specific level of training due to the wide array of testing methods and instruments available. The proposed rules state the required level of understanding necessary to competently perform evaluations. Licensees must use that guidance to determine whether they have reached the requisite level of competence before performing evaluations. The board notes that each test and testing situation is different, and a licensee must assess his or her competence, based upon the specific circumstances of each case.

COMMENT 11: One commenter observed that training in individual assessments will not ensure competence.

RESPONSE 11: The board agrees that only training in an individual test, without broader knowledge regarding psychological testing in general, will likely not ensure licensee competence.

COMMENT 12: Some commenters alleged that the rules do not provide a means to evaluate whether a licensee is competent to perform psychological evaluations.

RESPONSE 12: The board believes that the standards proposed in the rules are sufficient to put licensees on notice that they must be knowledgeable about the performance of psychological evaluations in general, and familiar with the use of each instrument in particular. Some evaluation methods specify unique standards for competence, and it would be impossible to cover all standards in specific rules.

COMMENT 13: A few commenters stated that the board should not wait until a problem arises in the complaint/compliance process to review competence.

RESPONSE 13: The board believes it should not attempt to preemptively specify the level of expertise required for each method of evaluation. Just as the board does not determine which clinical methods a therapist may be competent to use, it should not attempt to define one particular standard of competence for all evaluations. Each licensee must assess whether he or she is able to competently provide services and refrain from providing services where there is any doubt as to his or her ability to provide such services. Should a licensee fail to meet these proposed standards, the disciplinary process would compensate and protect the public.

COMMENT 14: One commenter stated that the board should specify discipline for conduct in psychological evaluations.

RESPONSE 14: The board disagrees with this comment, because the consequences for a violation of professional standards are unique in every case. The board also notes that the sanctions imposed should reflect the particular circumstances, conduct, and violations involved in each case.

COMMENT 15: A commenter suggested that the board should have a method to verify qualifications for psychological testing.

RESPONSE 15: The board reiterates that these rules do not preemptively verify qualifications for any particular specialization that a licensee might have. Licensees must assess their own knowledge and abilities before employing any technique, whether it is a therapeutic skill or a method of psychological evaluation. The proposed rules are consistent with the board's approach in other areas, which has always proven adequate to protect the public.

COMMENT 16: One commenter noted that the final rules will be completed later than the October 1, 2010 date described in the statute.

RESPONSE 16: The board began working on the proposed rules immediately after the bill became law. The board met with other licensing boards, held committee meetings, and conducted research into standards promulgated by national associations and enacted in other states. As a result of the thoroughness of the board's efforts to come up with the best standards for psychological evaluations, consistent with the new law, the board was not able to meet the deadline. With the adoption of these rules, qualified licensees will now be permitted to describe their methods of assessment as psychological evaluations.

COMMENT 17: One commenter opined that the board did not discuss the matter sufficiently.

RESPONSE 17: The board notes that the proposed rules were discussed at numerous committee meetings, multiple board meetings, and at meetings of another licensing board. During that process, the board heard from individuals and associations representing consumers, counselors, marriage and family therapists, social workers, psychologists, and others involved in providing mental health services. The board then responded to each comment and concern raised.

COMMENT 18: One commenter opined that the board does not have the expertise to determine whether a person is competent to do assessments.

RESPONSE 18: Board members cannot possess the highest level of skill and knowledge in every discipline in the field. Therefore, the board solicited feedback from the public and from experts in the field to help the board develop appropriate standards. In addition, the board researched the evaluation standards used by other states and based its proposal on the best standards, which were determined to be consistent with the guidelines of the counseling and social work professions.

COMMENT 19: One commenter recommended that the board use the Standards for Education and Training in Psychological Assessment.

RESPONSE 19: The board did previously consider and rejected this model while the board was researching and writing the proposed rules. The board concluded that the proposed rules are better suited to the needs of the public and consistent with the mandate of 37-17-104, MCA.

4. The board has adopted NEW RULE I (24.219.1001), NEW RULE II (24.219.1005), NEW RULE III (24.219.1011), NEW RULE IV (24.219.1014), NEW RULE V (24.219.1017), NEW RULE VI (24.219.1020), NEW RULE VII (24.219.1023), NEW RULE VIII (24.219.1026), NEW RULE IX (24.219.1029), NEW RULE X (24.219.1032), NEW RULE XI (24.219.1035), and NEW RULE XII (24.219.1038) exactly as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMETT, 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 October 3, 2011