

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 PUBLIC HEARING ON
RULES I through XII qualification of) PROPOSED ADOPTION
social workers and professional)
counselors to perform psychological)
testing, evaluation, and assessment)

TO: All Concerned Persons

1. On May 5, 2011, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on April 29, 2011, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdswwpc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted Chapter 453, Laws of 2009 (Senate Bill 235), an act expanding the exemption from licensure as a psychologist to include psychological testing, evaluation, and assessment by qualified members of other professions, including licensed professional counselors. The bill was signed by the Governor on May 5, 2009.

The 2009 Montana Legislature also enacted Chapter 199, Laws of 2009 (House Bill 530), an act revising the definition of social work to clarify that the term includes the administering, evaluating, and assessing of tests. The bill was signed by the Governor on April 9, 2009. Both bills became effective on October 1, 2009.

Senate Bill 235 amended 37-17-104, MCA, to require that the board adopt rules to qualify licensed social workers and professional counselors to perform psychological testing, evaluation, and assessment. Further, these rules must be consistent with the guidelines of the national associations of social workers and professional counselors. Therefore, the board is proposing to adopt New Rules I through XII to set the qualification standards in compliance with the statutory requirements and further implement the legislation.

4. The proposed new rules provide as follows:

NEW RULE I GENERAL USE OF ASSESSMENT AND TESTING INSTRUMENTS (1) The primary purpose of educational and psychological assessment is to provide measures that are objective and interpretable in either comparative or absolute terms. Counselors and social workers shall interpret the statements in this rule as applying to the whole range of appraisal techniques, including test and nontest data.

(2) Counselors and social workers shall promote the welfare and best interests of the client in the development, publication, and utilization of educational and psychological assessment results and interpretations, and take reasonable steps to prevent others from misusing the information these techniques provide. They shall respect the clients' rights to know the results of the interpretations made and the basis for their conclusions and recommendations.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE II COMPETENCE TO USE AND INTERPRET ASSESSMENT AND TESTING INSTRUMENTS (1) Counselors and social workers shall recognize the limits of their competence and perform only those testing and assessment services for which they have been trained. They shall be familiar with reliability, validity, related standardization, error of measurement, and proper application of any technique utilized.

(2) Counselors and social workers using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used, prior to using this type of computer application.

(3) Counselors and social workers shall take reasonable measures to ensure the proper use of psychological assessment techniques by persons under their supervision.

(4) Counselors and social workers are responsible for the appropriate selection, application, scoring, interpretation, and use of assessment instruments whether they score and interpret such tests themselves or use computerized or other services.

(5) Counselors and social workers responsible for decisions involving individuals or policies that are based on assessment results shall have a thorough understanding of educational and psychological measurement, including validation criteria, test research, and guidelines for test development and use.

(6) Counselors and social workers shall provide accurate information and shall not make false claims when making statements about assessment instruments or techniques.

(7) Counselors and social workers shall seek to identify and correct client misconceptions about assessment instruments or techniques and about the meaning of scores, charts, or graphs given to them as an assessment product. Special efforts shall be made to avoid unwarranted connotations of such terms as "IQ" and grade equivalent scores.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE III INFORMED CONSENT IN THE USE OF ASSESSMENT AND TESTING INSTRUMENTS (1) Prior to assessment, counselors and social workers shall explain the nature and purposes of assessment and the specific use of results in language the client (or other legally authorized person on behalf of the client) can understand, unless an explicit exception to this right has been agreed upon in advance. Regardless of whether scoring and interpretation are completed by counselors and social workers, by assistants, or by computer or other outside services, counselors and social workers shall take reasonable steps to ensure that appropriate explanations are given to the client.

(2) The examinee's welfare, explicit understanding, and prior agreement shall determine the recipients of test results. Counselors and social workers shall include accurate and appropriate interpretations with any release of individual or group test results.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE IV RELEASE OF INFORMATION TO COMPETENT PROFESSIONALS OF ASSESSMENT AND TESTING INSTRUMENT RESULTS

(1) Counselors and social workers shall not misuse assessment results, including test results and interpretations, and take reasonable steps to prevent this misuse of such by others.

(2) Counselors and social workers shall ordinarily release data (e.g., protocols, counseling or interview notes, or questionnaires) in which the client is identified only with the consent of the client or the client's legal representative. Such data shall usually be released only to persons recognized by counselors and social workers as competent to interpret the data.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE V PROPER DIAGNOSIS OF MENTAL DISORDERS WITH THE USE OF ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall take special care to provide accurate diagnosis of mental disorders. Assessment techniques (including a personal interview) used to determine client care (e.g., locus of treatment, type of treatment, or recommended follow-up) shall be carefully selected and appropriately used.

(2) Counselors and social workers shall recognize that culture affects the manner in which clients' problems are defined. Clients' socioeconomic and cultural experience shall be considered when diagnosing mental disorders.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE VI TEST SELECTION IN THE USE AND INTERPRETATION OF ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall carefully consider the validity, reliability, psychometric limitations, and appropriateness of instruments when selecting tests for use in a given situation or with a particular client.

(2) Counselors and social workers recognize that the psychometric characteristics of a test (e.g., reliability, validity) are a function of the cultural composition of the population in which they were evaluated, validated, or normed. Licensees shall exercise due diligence in selecting tests to be used within a culturally diverse population in order to minimize the risk of inappropriate interpretation of test scores.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE VII CONDITIONS OF TEST ADMINISTRATION WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall administer tests under the same conditions that were established in their standardization. When tests are not administered under standard conditions or when unusual behavior or irregularities occur during the testing session, those conditions shall be noted in interpretation and the results may be designated as invalid or of questionable validity.

(2) Counselors and social workers shall be responsible for ensuring that assessment administration programs function properly to provide clients with accurate results when computer or other electronic methods are used for test administration.

(3) Counselors and social workers shall not permit unsupervised or inadequately supervised use of tests or assessments, unless the tests or assessments are designed, intended, and validated for self-administration and/or scoring.

(4) Prior to test administration, conditions that produce most favorable test results shall be made known to the examinee.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE VIII DIVERSITY WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall be cautious in using assessment techniques, making evaluations, and interpreting the performance of populations not represented in the norm group on which an instrument was standardized. They shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, and socioeconomic status on test administration and interpretation, and place test interpretation results in proper perspective with other relevant factors.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

NEW RULE IX TEST SCORING AND INTERPRETATION WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

(1) In reporting assessment results, counselors and social workers shall indicate any reservations that exist regarding validity or reliability, because of the circumstances of the assessment or the inappropriateness of the norms for the person tested.

(2) Counselors and social workers shall exercise caution when interpreting the results of research instruments possessing insufficient technical data to support respondent results. The specific purposes for the use of such instruments shall be stated explicitly to the examinee.

(3) Counselors and social workers who provide test scoring and test interpretation services to support the assessment process shall confirm the validity of such interpretations. They shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use. The public offering of an automated test interpretation service is considered a professional-to-professional consultation. The formal responsibility of the consultant is to the consultee, but the ultimate and overriding responsibility is to the client.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

NEW RULE X TEST SECURITY WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall maintain the integrity and security of tests and other assessment techniques consistent with legal and contractual obligations. Counselors and social workers shall not appropriate, reproduce, or modify published tests or parts thereof, without acknowledgment and permission from the publisher.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

NEW RULE XI OBSOLETE TESTS AND OUTDATED TEST RESULTS WHEN USING ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall not use data or test results that are obsolete or outdated for the current purpose. Counselors and social workers shall make every effort to prevent the misuse of obsolete measures and test data by others.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

NEW RULE XII TEST CONSTRUCTION FOR ASSESSMENT AND TESTING INSTRUMENTS

(1) Counselors and social workers shall use established scientific procedures, relevant standards, and current professional knowledge for test design in the development, publication, and utilization of educational and psychological assessment techniques.

AUTH: 37-17-104, MCA

IMP: 37-17-104, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Social Work Examiners and Professional Counselors (board), 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswwpc@mt.gov, and must be received no later than 5:00 p.m., May 13, 2011.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.swpc.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdswwpc@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 8, 2009, by electronic mail.

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

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 April 4, 2011