

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 AND  
ARM 24.219.301 definitions, ) ADOPTION  
24.219.501 and 24.219.601 )  
application procedures, and the )  
adoption of NEW RULE I supervisor )  
qualifications, and NEW RULES II )  
through IX parenting plan evaluations )

TO: All Concerned Persons

1. On April 14, 2011, the Board of Social Work Examiners and Professional Counselors (board) published MAR notice no. 24-219-23 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 540 of the 2011 Montana Administrative Register, issue no. 7.

2. On May 5, 2011, a public hearing was held on the proposed amendment and 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:

General Comments:

COMMENT 1: The board received many comments generally supporting the proposed rules on both supervision of licensure candidates and parenting plan evaluations.

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

COMMENT 2: One commenter expressed support for the amendments to ARM 24.219.601.

RESPONSE 2: The board appreciates all comments made during the rulemaking process.

New Rule I: SUPERVISOR QUALIFICATIONS

COMMENT 3: One commenter supported proposed New Rule I, stating that it is hard to find a licensed clinical social worker (LCSW) supervisor in rural areas.

RESPONSE 3: The board agreed that the proposed rules should make it easier for LCSW candidates to find qualified supervisors.

COMMENT 4: Numerous commenters argued that proposed New Rule I will create problems with mobility and licensure by reciprocity, because other states require that supervision of social work licensure candidates is done by other social workers.

RESPONSE 4: The board researched this issue and discovered that a minority of states require supervision by social workers. Therefore, the board concluded that this rule should not be a major impediment to mobility for individuals who obtain initial licensure in Montana. Furthermore, the change to eliminate the requirement for a social worker occurred in a previous rule notice, and reverting to the previous rule is beyond the scope of this proposal.

COMMENT 5: A few commenters stated that the Association of Social Work Board's (ASWB) model act required that social worker candidates be supervised by LCSWs.

RESPONSE 5: The board responded that it is not bound to follow the model act, and that the rural nature of Montana makes it very difficult for some social worker candidates to find qualified supervisors who are LCSWs.

COMMENT 6: Several commenters observed that New Rule I could create issues with Medicare.

RESPONSE 6: The board discovered that, in order to bill Medicare, candidates must have supervision from social workers if the state does not license social workers. Because social workers are licensed by the board in Montana, there should not be any issues for Medicare billing.

COMMENT 7: Several commenters requested that the board return to language proposed in a prior rulemaking notice, MAR 24-219-21, which required that social workers supervise 50 percent of the required hours for a social worker candidate.

RESPONSE 7: As noted in a prior response, the board cannot amend the rules to return to the previous 50 percent requirement, as that change would exceed the scope of this proposal. The board previously determined that supervision by social workers for half of the required hours is not a necessary qualification for licensure.

COMMENT 8: Several commenters suggested other ways to supervise social worker candidates, including teleconference supervision and the growing number of master of social work (MSW) graduates and licensees.

RESPONSE 8: Although alternative methods of supervision are beyond the scope of this proposal, the board is researching and considering alternative supervision methods for inclusion in a future rulemaking project.

COMMENT 9: One commenter stated that the board should not set a specific number of hours for training, and recommended the board use language proposed by the ASWB.

RESPONSE 9: The board determined that specifying supervisor qualifications will enable licensure candidates to be confident that their supervisors meet the qualifications, and know that all of their supervised hours will count toward the licensure requirements.

COMMENT 10: Some commenters suggested that the board require a 16-hour course in supervision based on a similar program offered in Missouri.

RESPONSE 10: The board does not believe that a 16-hour course is adequate to ensure that a person with less than three years of experience as a licensee would be able to provide competent and appropriate supervision to recent graduates of counseling, marriage and family therapy, and social work programs.

COMMENT 11: Several commenters observed that clinical social work, professional counseling, marriage and family therapy, psychology, and psychiatry are different professions. The commenters stated that these professions should be treated differently and a person supervising the clinical experience hours for each profession should possess the same degree and license as the candidate.

RESPONSE 11: The board acknowledges the differences in the professions, but notes that the clinical demands faced by candidates are similar. The board concluded that experienced licensees from other professions are well qualified to supervise candidates in a clinical setting.

COMMENT 12: Some commenters complained that the process of promulgating the 2009 rules notice # 24-219-21 was not open and transparent.

RESPONSE 12: The board notes that the 2009 rulemaking proposal was discussed and debated at numerous rule committee and full board meetings and that those meetings were publicly noticed and open to the public pursuant to requirements in law.

COMMENT 13: One commenter opined that the training requirement to be a supervisor is too difficult to meet for those in rural areas.

RESPONSE 13: The board is considering allowing videoconferencing and other alternative methods of supervision to facilitate supervision of candidates in remote areas. In addition, under this proposal, the board allows a person to become qualified as a supervisor in a variety of ways.

COMMENT 14: One commenter argued that psychologists and psychiatrists should not be permitted to supervise social worker candidates.

RESPONSE 14: The board had previously determined that psychologists and psychiatrists are qualified to supervise counselors, social workers, and marriage and family therapists, and amended the rules accordingly. Reverting to the previous rules is not consistent with the board's prior decision and beyond the scope of this rulemaking project.

New Rules II through IX: PARENTING PLAN EVALUATIONS

COMMENT 15: Several commenters stated that the parenting plan evaluations are a form of forensic evaluation and the board should require higher educational qualifications for licensees who perform these evaluations.

RESPONSE 15: The board disagrees and notes that licensees have been safely and effectively performing these evaluations for many years. Rather than expanding or restricting the scope of practice for licensees, these rules promote public safety by prescribing specific standards of conduct for those who perform custody evaluations.

COMMENT 16: One commenter opined that the child custody evaluation proposed new rules are not covered under rulemaking authority for 2009's Senate Bill 235.

RESPONSE 16: The board agreed that Senate Bill 235 does not impact this proposal. The board has authority under the statutes cited in the proposal notice to promulgate these rules to promote the general welfare of those impacted by child custody evaluations.

COMMENT 17: A commenter stated that licensees should not be required to ask for permission to speak with others.

RESPONSE 17: Although the board understands that obtaining consent may be problematic for licensees in some scenarios, the board determined that the dangers posed by a failure to obtain informed consent are a greater threat to the public. In some cases, licensees may be able to enlist the assistance of the court in obtaining the required written consents.

COMMENT 18: One commenter speculated that the update requirements to evaluations may not be allowed by some district courts.

RESPONSE 18: The board concluded that licensees are bound by the standards of ethics and professionalism embodied in rules promulgated by the board and that licensees should inform all parties and the courts regarding these requirements. As done whenever a complaint is reviewed, the board will always consider the unique circumstances of each case in determining whether a licensee has committed unprofessional conduct. The board will consider amending the rule in the future if this becomes a recurring problem.

4. The board has amended ARM 24.219.301, 24.219.501, and 24.219.601 exactly as proposed.

5. The board has adopted NEW RULE I (24.219.421), NEW RULE II (24.219.1201), NEW RULE III (24.219.1205), NEW RULE IV (24.219.1207), NEW RULE V (24.219.1209), NEW RULE VI (24.219.1211), NEW RULE VII (24.219.1213), NEW RULE VIII (24.219.1215), and NEW RULE IX (24.219.1217) 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 September 12, 2011