

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT,
ARM 24.219.301, 24.219.415,) ADOPTION, AND REPEAL
24.219.421, 24.219.501, 24.219.504,)
24.219.505, 24.219.512, 24.219.601,)
24.219.604, 24.219.605, 24.219.612,)
24.219.701, 24.219.704, 24.219.705,)
24.219.712, 24.219.907, 24.219.912,)
24.219.923, 24.219.5005,)
24.219.5006, 24.219.5007,)
24.219.5008, 24.219.5010, and)
24.219.5013, the adoption of NEW)
RULES I through VII, and the repeal of)
24.219.506, 24.219.603, 24.219.703,)
24.219.707, 24.219.901, 24.219.902,)
24.219.903, 24.219.916, 24.219.5001,)
24.219.5003, 24.219.5004,)
24.219.5009, 24.219.5011, and)
24.219.5014, pertaining to application)
and licensing rules for licensed clinical)
social workers (LCSW), licensed)
clinical professional counselors)
(LCPC), licensed marriage and family)
therapists, (LMFT), licensed addiction)
counselors (LAC), and certified)
behavioral health peer support)
specialists (CBHPSS))

TO: All Concerned Persons

1. On October 18, 2019, the Board of Behavioral Health (board) published MAR Notice No. 24-219-34 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1787 of the 2019 Montana Administrative Register, Issue No. 20.

2. On November 13, 2019, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Many comments were received by the November 15, 2019 deadline.

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

COMMENT 1: Multiple commenters stated they understood the intent of the rule changes and appreciated the board's efforts to update and streamline the administrative rules.

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

COMMENT 2: Multiple commenters observed that "gambling dependence impulse control disorder" in ARM 24.219.301(14) does not conform with DSM-5 and recommended the board amend the rule to reference the appropriate definition of "gambling disorder."

RESPONSE 2: The term "gambling dependence impulse control disorder" is codified in Montana statute and can only be changed by the legislature. The board must use the statutory term in rule. However, the board notes the definition in (14) includes "or gambling disorder" to close the gap between statute and the DSM-5 as much as allowed. Further, the board is requesting permission to propose 2021 legislation to update the statutory language to conform with DSM-5 terminology.

COMMENT 3: Multiple commenters asked the board to eliminate the LCSW license requirement for reference letters in ARM 24.219.501(2)(e) since the board can use other elements of the application to assess applicant character. The commenters noted this may require a statutory change.

RESPONSE 3: The board agrees that a statutory change is needed to strike the reference letter requirement from 37-22-301(2), MCA. The board also agrees there are other methods to assess an applicant's character including personal history questions and the FBI fingerprint background check. The board is requesting permission to propose 2021 legislation to remove this requirement from statute.

Comments 4 through 7 pertain to ARM 24.219.504:

COMMENT 4: One commenter who is nearly finished with the supervised work experience needed to register for the national exam was concerned about the impact of the amendments to ARM 24.219.504 on LCSW licensure.

RESPONSE 4: The board is not changing the number of hours or the type of supervised work experience required for full LCSW licensure. Per the proposal notice, the board is reformatting and reorganizing the licensure rules for clarity and ease of use by licensees, educators, program administrators, and the public. The only change to the process itself is that candidates will no longer be required to submit all their supervision logs. New Rule I provides that candidates must maintain those records themselves for the seven-year period. To show proof of completion of hours, candidates and supervisors will continue with the current process of attesting to completion of required hours.

COMMENT 5: One commenter noted that the board's reason for amending ARM 24.219.504 was not to change the specific supervised work experience requirements for LCSW licensure but to clarify the current requirements by reformatting and rewording. The commenter opined that when striking (1)(b) and restating the supervised work experience requirement in (2)(a), the board inadvertently omitted the requirement that the 100 hours be "individual or group supervision." The commenter suggested the board correct this error by amending (2)(a).

RESPONSE 5: The board agrees and is amending the rule accordingly.

COMMENT 6: One commenter believed that LCSW candidates could be supervised for more than 50 hours by LCPCs and suggested the board amend (2) to allow LCPC licensees to supervise LCSW candidates for 100 of those hours.

RESPONSE 6: The board discussed this requirement at the August 2019 meeting prior to filing this rule proposal. The board determined it was necessary for public protection to require LCSW candidates be supervised for a minimum of those 50 hours by an LCSW. Social work is a very specifically defined practice and only an LCSW can properly supervise a candidate in this area. Additionally, the suggested amendment to the requirement exceeds the scope of the proposed changes and cannot be accomplished in a final notice.

COMMENT 7: Multiple commenters stated that "...chemically dependent" in (6) does not conform with DSM-5 and recommended the board amend the rule to reference the appropriate terminology and definition of "substance use disorder."

RESPONSE 7: The term "chemically dependent" is found in Montana statute and the board must use the statutory term in rule. The board is amending (6) to include reference to "substance use disorder."

COMMENT 8: Multiple commenters appreciate the board's commitment to consistency in licensing regulations and believed that six months should be sufficient for applicants to complete a Federal Bureau of Investigation fingerprint background check per ARM 24.219.505(2)(c).

RESPONSE 8: The board appreciates all comments received during the rulemaking process.

COMMENT 9: Multiple commenters recommended the board amend ARM 24.219.512(2)(d) to discontinue requiring reference letters for LCSW licensure since the board can use other elements of the application to assess applicant character. The commenters noted this may require a statutory change.

RESPONSE 9: See RESPONSE 3.

COMMENT 10: Multiple commenters asked the board to remove the statutory requirement for 60 and 45 credit hours from 37-23-202(1) and (2), MCA, as

referenced in ARM 24.219.601(2)(a). The commenters stated that prescriptive education requirements in statute have the unintended consequence of limiting the board's ability to adapt licensing requirements to reflect developing degree standards. The commenters recognized this as a statutory change and anticipated working with the board on a legislative strategy.

RESPONSE 10: The board is requesting permission to propose 2021 legislation to allow the board flexibility to set specific credit requirements through rulemaking for many of the reasons enumerated by commenters.

Comments 11 and 12 pertain to ARM 24.219.604:

COMMENT 11: A commenter asked if the one hour of face-to-face supervision for 20 hours of "counseling experience" in 37-23-102, MCA, refers to direct counseling hours and if candidates can receive one supervision hour in a week for 20 hours direct client contact and 20 indirect hours (paperwork, research, etc.) in a 40-hour work week.

RESPONSE 11: The board notes that 37-23-102, MCA, is the definitions statute and does not contain any of the language the commenter described. The referenced language is found in ARM 24.219.604 and cites to 37-23-202, MCA. Assuming the commenter meant 37-23-202, MCA, neither ARM 24.219.301 nor 24.219.604 defines "indirect hours." ARM 24.219.604(2) refers to all the 3000 supervised work experience hours that candidates are gaining under supervision.

COMMENT 12: Current rule requirements and the proposed amendments to (2) require supervisors provide at least one hour of face-to-face supervision and consultation for every 20 hours of professional counseling by a candidate. One commenter suggested the board change the face-to-face supervision ratio to either two hours for every 80 hours or four hours for every 160 hours.

RESPONSE 12: Changes to the number of hours of face-to-face supervision is outside the scope of the proposed changes and cannot be accomplished in a final notice. Depending on nationwide licensing and supervision trends in this area, the board may be open to stakeholder discussions regarding future rulemaking. However, the board's position is that frequent contact between supervisor and supervisee better protects the public since client situations can change rapidly.

Comments 13 and 14 pertain to ARM 24.219.605:

COMMENT 13: Multiple commenters stated they understood the premise for limiting degree credits to those earned in the six years prior to graduation in (2)(a)(ii) but also believe the six-year range limits the number of eligible applicants when there is a workforce shortage in Montana. The commenters believed this would exclude those who have a change in career later in life such as veterans, school-based counselors, etc. The commenters requested clarification for an alternative path to seeking candidate status or for the board to consider extending the six years to ten.

RESPONSE 13: The board did not propose changes to the six-year "expiration" of degree credits and is unable to accomplish this in a final notice. The board noted that at least one university in Montana adopts the policy that if someone returns for a graduate degree and the credits are older than six years from the graduation date, the individual is not allowed to count those hours without the faculty giving an exam to determine if a person can use those credits. If the faculty did grant permission then the transcript would reflect the new date that the course was approved by the faculty, not the original date. Depending on licensing trends in this area and research into other educational institutions' practices and policies, the board may be open to stakeholder discussions regarding future rulemaking.

COMMENT 14: Section (2)(d) requires applicants provide verification of all professional license(s) ever held in any state or jurisdiction. Multiple commenters questioned whether or not verification of the disclosure beyond the most recent state would unnecessarily delay entry into the workforce. The commenters suggested the board amend the rules to issue provisional licenses until the background checks are completed or the verifications received.

RESPONSE 14: All 31 licensing boards administratively attached to the department require official license verification for all professional licenses ever held by the applicants. The board is amending the rule simply to clarify the standard process. Additionally, 37-1-305(1)(d), MCA, allows boards to issue temporary practice permits to applicants that have requested verification and are not subject to pending charges or final disciplinary action. If the board or its screening panel later finds that the applicant falsely affirmed the other state's verification, the board may summarily suspend the permit pending further action.

Temporary permits do not apply to applicants waiting on results from a background check as that is a statutory licensing requirement for either full licensure or a temporary permit.

COMMENT 15: Multiple commenters recommended the gambling disorder education requirements for current LAC licenses be removed from ARM 24.219.5005 as Montana does not have a gambling disorder crisis, but a substance use crisis and any noncritical license barriers should be eliminated. The commenters stated that this specific continuing education should stay an option under ARM 24.219.5017, for LAC licensees working with gambling disorder patients.

RESPONSE 15: The board disagrees with commenters' position that there is not a gambling disorder crisis. Also, the gambling disorder education requirements are outside the scope of this proposed rulemaking. The board had originally intended to repeal this rule in its entirety as obsolete. However, there are still administratively suspended licensees who could theoretically reactivate their licenses by meeting the gambling requirements. Since this gambling disorder requirement is separate and distinct from the annual continuing education requirements described in ARM 24.219.5017, the board is amending this rule as proposed to retain a clear process

for those administratively suspended licensees to come into compliance until their licenses terminate.

COMMENT 16: Multiple commenters asked the board to reexamine the current gambling disorder contact hours of training requirement in ARM 24.219.5006 and 24.219.5013, asserting the requirement is considered a significant barrier by licensees and potential employers. The commenters recommended several amendments to ensure applicants have a baseline understanding of gambling disorder as a component of the 90 counseling hours in (2)(b)(ii) of these rules.

RESPONSE 16: The board did not propose changes to the gambling disorder education licensure requirements and is unable to accomplish these changes in the final notice. At the time the board implemented the 330-hour requirement, research showed that was the national standard. Depending on licensing trends in this area, the board may be open to stakeholder discussions regarding future rulemaking.

COMMENT 17: Multiple commenters suggested the board strike "...for addiction counselors..." from ARM 24.219.5013(2)(b)(iv) to conform with ARM 24.219.5006(2)(b)(iv).

RESPONSE 17: The board agrees and is amending the rule accordingly.

Comments 18 through 23 pertain to NEW RULE I:

COMMENT 18: Multiple commenters recommended the board add "LAC" to the title.

RESPONSE 18: The board agrees and is amending the rule accordingly.

COMMENT 19: A commenter asked whether candidates would still need contracts with their supervisors with the rule changes.

RESPONSE 19: The board does not require supervisor "contracts" in current rules or the proposed amendments. Both the current application process and the process with the proposed changes require candidate applicants and supervisors to attest on the supervision agreement as to their understanding of the board's statutory and rule requirements for candidates and supervisors. If there are changes to supervision, candidates and supervisors must adhere to the notification requirements in NEW RULE II. Any employer-required supervisor "contract" is separate from the board's requirements in ARM Title 24, chapter 219 and beyond the board's authority.

COMMENT 20: One commenter requested confirmation that candidates no longer need to submit supervision logs but that candidates must maintain logs for seven years following licensure in case of an audit.

RESPONSE 20: Yes, NEW RULE I contains the requirements for candidates to maintain logs for seven years from the date of licensure or from the expiration of

their candidate license if they do not get a Montana license. To prove completion of hours for full licensure, candidates and supervisors will continue with the current process of attesting to completion of hours per board requirements. Candidates will only submit logs if they are audited during the period of candidate licensure or if the board requests the records for disciplinary matters. Under NEW RULE I, supervisors must also maintain records.

COMMENT 21: Multiple commenters believed the burden of recordkeeping should remain the responsibility of the candidate due to concerns about the impact on current and potential supervisors. The commenters asserted that NEW RULE I could make it even more difficult for candidates to find supervisors and stated there is already a shortage of supervisors for behavioral health candidates and additional burdens would further negatively impact the situation.

RESPONSE 21: The board disagrees. To carry out its statutory mission of public protection the board concluded it is necessary to ensure that both sides of the supervision record are represented in the records should discrepancies arise. Both the candidate and supervisor are licensees and requiring that both keep records will help ensure that all licensees are adhering to the board's regulations.

COMMENT 22: Multiple commenters were concerned that some agencies hire/employ licensees and require them to supervise one or more candidates as part of the employer/employee relationship. The commenters asked whether the supervisor recordkeeping requirements apply to the licensee as the licensed provider or to the employer agency that financially supports the supervision. The commenters stated the board should amend (5)(c) to clearly describe the required content of the records. Currently, only LCSW supervisors have consistent access to specific and detailed documentation training and potential supervisors who have been in practice for three plus years are not required to undergo supervisor training. This lack of clarity and consistency could imperil the licenses of current and future supervisors and makes NEW RULE I challenging in terms of understanding documentation requirements.

RESPONSE 22: The board does not regulate facilities or businesses, but licenses only LCPC, LCSW, LMFT, candidates, and CBHPSS. The board only has authority over those it regulates so the requirement to maintain records applies to licensed supervisors, candidates, and CBHPSS, not the facility or business. Additionally, not just LCSW have documentation training. CBHPSS have training in documentation as part of the initial licensure training course, and there are multiple training sources available for all license types. The board disagrees with the commenters and believes the requirements in the rule are clear when read with ARM 24.219.301.

COMMENT 23: Multiple commenters agreed that candidates and supervisors should be responsible for recordkeeping but were concerned about them keeping records when they are not required to submit the records with the final application. The commenters understood the burden of recordkeeping on the state and

recommended the board perform regular and extensive audits to ensure that records are being maintained appropriately.

RESPONSE 23: The board notes that NEW RULE I(8) allows the board to set a percentage by motion to conduct annual, random audits of candidates and CBHPSS who have renewed their licenses. Further, under (7) the board may request records from candidates and CBHPSS at any time. Reasons for requesting records could include an investigation related to a complaint.

Comments 24 and 25 pertain to NEW RULE II:

COMMENT 24: Multiple commenters were concerned with the proposed requirements for candidates or CBHPSS to notify the board at least ten business days prior to a change in supervisor and for the former supervisor to notify the board of the end of supervision within ten days. The commenters did not understand the intention behind the limited notification period and believed it will create additional administrative burden for the state and providers. The commenters recommended the board amend the rule to require board notification within 20 days of the change.

RESPONSE 24: The board agrees and is amending the rule to require notification no later than 20 business days after the change for all individuals named in the rule.

COMMENT 25: One commenter noted there are situations when a candidate licensee leaves a supervisory relationship with no prior notification which could make it difficult for the supervisor to comply with the new notification requirement in (2)(b).

RESPONSE 25: See RESPONSE 24.

4. The board has amended ARM 24.219.301, 24.219.415, 24.219.421, 24.219.501, 24.219.505, 24.219.512, 24.219.601, 24.219.604, 24.219.605, 24.219.612, 24.219.701, 24.219.704, 24.219.705, 24.219.712, 24.219.907, 24.219.912, 24.219.923, 24.219.5005, 24.219.5006, 24.219.5007, 24.219.5008, and 24.219.5010 exactly as proposed.

5. The board has adopted New Rules III (24.219.502), IV (24.219.608), V (24.219.602), VI (24.219.702), and VII (24.219.5020) exactly as proposed.

6. The board has repealed ARM 24.219.506, 24.219.603, 24.219.703, 24.219.707, 24.219.901, 24.219.902, 24.219.903, 24.219.916, 24.219.5001, 24.219.5003, 24.219.5004, 24.219.5009, 24.219.5011, and 24.219.5014 exactly as proposed.

7. The board has amended ARM 24.219.504 and 24.219.5013 with the following changes, stricken matter interlined, new matter underlined:

24.219.504 LCSW SUPERVISED WORK EXPERIENCE REQUIREMENTS
(1) remains as proposed.

(2) As a part of the requirements in (1), at least 100 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421.

(a) through (5) remain as proposed.

(6) A supervisor must have experience and expertise with the candidate's client population (e.g., child, adolescent, adult, chemically dependent/substance use disorder) and methods of practice (i.e., individual, group, family, crisis, or brief interventions).

24.219.5013 LAC CANDIDATE LICENSE REQUIREMENTS

(1) through (2)(b)(iii) remain as proposed.

(iv) minimum of 10 hours in ethics for ~~addiction counselors~~;

(v) through (4) remain as proposed.

8. The board has adopted New Rule I (24.219.422) and New Rule II (24.219.423) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.219.422) GENERAL SUPERVISION AND RECORDKEEPING REQUIREMENTS – LCSW, LCPC, LMFT, LAC, AND CANDIDATES AND CBHPSS

(1) through (8) remain as proposed.

NEW RULE II (24.219.423) CHANGE OF SUPERVISOR (1) remains as proposed.

(2) When there is a change in supervisor, the following individuals must notify the board no later than 20 business days following the change using forms provided by the department:

(a) the candidate or CBHPSS must ~~notify the board at least ten business days prior to the change~~;

(b) the new supervisor ~~must notify the board at least ten business days prior to the change~~; and/or

(c) the individual ceasing to supervise a candidate or CBHPSS ~~must notify the board of termination of supervision within ten business days following termination of supervision~~.

(3) remains as proposed.

BOARD OF BEHAVIORAL HEALTH
CATHY JENNI, LCPC, LMFT
CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 17, 2019.