

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

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.101.413, 24.219.301,)	ADOPTION, AND REPEAL
24.219.401, 24.219.415, 24.219.421,)	
24.219.422, 24.219.423, 24.219.501,)	
24.219.502, 24.219.504, 24.219.505,)	
24.219.512, 24.219.604, 24.219.605,)	
24.219.704, 24.219.705, 24.219.907,)	
24.219.923, 24.219.2301,)	
24.219.5008, 24.219.5013; the)	
adoption of New Rules I through IV;)	
and the repeal of 24.219.405,)	
24.219.409, 24.219.507, 24.219.509,)	
24.219.607, 24.219.609, 24.219.708,)	
24.219.709, 24.219.807, 24.219.905,)	
24.219.921, 24.219.925, 24.219.927,)	
24.219.929, 24.219.931, 24.219.2001,)	
24.219.2201, 24.219.2305,)	
24.219.2309, 24.219.5002,)	
24.219.5012, 24.219.5015,)	
24.219.5016, 24.219.5017,)	
24.219.5018, and 24.219.5019)	
pertaining to application and licensing)	
rules for licensed clinical social)	
workers (LCSW), licensed)	
baccalaureate social workers (LBSW),)	
licensed master's social workers)	
(LMSW), 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 February 14, 2020, the Board of Behavioral Health (board) published MAR Notice No. 24-219-35 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 278 of the 2020 Montana Administrative Register, Issue No. 3.

2. On March 10, 2020, 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 March 13, 2020 deadline.

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

General Comments

COMMENT 1: A commenter appreciated the board updating the rules.

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

COMMENT 2: One commenter thanked the board for being notified of the proposed rulemaking.

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

COMMENT 3: One commenter asked if the rule changes mean licensees will need to take additional classes or if the board is incorporating the National Association of Social Workers (NASW) code of ethics as a standard reference manual.

RESPONSE 3: The board notes that NASW is a professional organization designed to further the profession and advocate for its members. It does not regulate, license, and/or discipline licensees for public protection. There may be overlap between the NASW code of ethics and the board's proposed rules. However, the board is not adopting the NASW code of ethics by reference into its rules. If there are any differences between the NASW code of ethics and the board's statutes and rules, licensees must comply with Montana's laws since it is their Montana license that allows them to practice in Montana, not membership and compliance with NASW.

General Comments on Supervision – ARM 24.219.421, 24.219.504, 24.219.604, 24.219.704

COMMENT 4: Multiple commenters believed there should be increased uniformity for LCSW, LCPC, and LMFT candidate supervision requirements since they are licensed to provide similar billable services. The commenter also asserted that any of the qualified supervisors (LCSW, LCPC, LMFT, licensed psychologist, or licensed and board-certified psychiatrist) should be allowed to supervise all the hours without special supervisor hour limits for specific license type.

RESPONSE 4: Only LCSW candidates have a specific number of hours (50 hours individual and supervised face-to-face) within the total 3000 required hours of supervised work experience that can only be supervised by an LCSW as opposed to the other approved supervisor types. LCPC and LMFT candidates may be supervised by any of the approved supervisor types for all the 3000 hours. The board concluded that due to the specific skill set required to practice clinical social work, only an LCSW is qualified to supervise those hours and that this requirement

is consistent with national standards. The skill sets to supervise these types of hours are taught and clinically supervised at master's in social work level programs and are not necessarily contained as part of the education for future LCPC and LMFT licensees.

The board is unclear if these comments are related to the specific requirements for each individual license type or whether the commenters are asking the board to standardize the specific hour and practice requirements across all three license types and cannot respond specifically. Generally, the board notes that each license type under the board's jurisdiction is distinct and requires its own rules to set minimum competencies for the public's protection.

Finally, because the board did not propose changes to any of the supervision requirements for LCSW, LCPC, and LMFT, such changes cannot be accomplished in a final notice.

COMMENT 5: Numerous commenters stated there should be increased uniformity for LCSW, LCPC, and LMFT supervision and requested the same minimum number of supervision hours required for licensure as an LCSW, LCPC, and LMFT. The commenters suggested the board amend the supervision rules to require these candidates to complete 125 hours of qualifying supervision.

RESPONSE 5: The board is unclear exactly what the commenters asked the board to standardize. LCSW, LCPC, and LMFT all must obtain 3000 hours of supervised work experience to meet minimum experience requirements for licensure. Because the board is not clear on the commenters' intent regarding 125 supervision hours, the board is unable to respond specifically. Additionally, changing the LCSW, LCPC, and LMFT supervision requirements was not included in the proposal notice and may not be accomplished in a final notice. The board may be open to stakeholder discussions regarding future rule changes.

COMMENT 6: Many commenters requested more uniformity for LCSW, LCPC, and LMFT supervision and suggested requiring candidates cease providing services upon reaching 80 hours of care without a minimum of two hours of supervision.

RESPONSE 6: The board notes that anyone practicing under a candidate license must continue to follow all laws and rules pertaining to candidates, including those regarding supervision. The board does not have a maximum number of hours a person can be supervised, only the limitation on annual renewal/registrations in NEW RULE I. While the suggested amendments exceed the scope of this rulemaking, the board may be open to reviewing national standards for these three professions and participating in stakeholder discussions regarding future rulemaking. Also see RESPONSE 4.

ARM 24.219.301

COMMENT 7: A commenter suggested the board use the same definition of "exploit" in ARM 24.219.301(12) and ARM 24.219.2301(2)(j). The commenter also

suggested the board amend both rules to clarify that "former" applies to clients, supervisees, supervisors, students, and research participants, and not just clients.

RESPONSE 7: The board agrees there should not be multiple definitions for "exploit" and notes the board's intent was for a single definition. Since "exploit" is defined in ARM 24.219.301(12) it is redundant to define it again in ARM 24.219.2301(2)(j). The board is amending the rules to utilize a single definition and a simple reference to that definition.

The board is not amending the definition to include former students, former employees, former supervisors, or former research participants as such a change was not in the proposal notice and cannot be accomplished in a final notice. The board may be open to stakeholder discussions regarding future rule changes.

ARM 24.219.401

COMMENT 8: One commenter supported the reduction in renewal fees.

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

ARM 24.219.501

COMMENT 9: A commenter asked if Montana LCSW candidates (SWLC) will sign notes as an LMSW under these rules if they had been licensed as the equivalent of a Montana LMSW in another state.

RESPONSE 9: An SWLC licensed under this board would not sign notes as an "LMSW" under these rules. LCSW candidates, also known as "social worker licensure candidates" or "SWLC" must continue to correctly represent the license they have been issued by the board as required by 37-23-313(3), MCA, and ARM 24.219.2301(2). Under Montana's statutes and these proposed rules, LMSW and LMSW candidate licenses are distinct licenses and not connected to the LCSW or LCSW candidate licenses. Experience hours gained during an LCSW candidacy count toward qualifications for a full LCSW license but would not count toward a full LMSW license. To qualify for a full LMSW license in Montana a person must earn hours in Montana under an LMSW candidate license or under the equivalent under another state's or jurisdiction's laws.

COMMENT 10: One commenter asked if following the proposed changes there will be additional documentation required to apply for full licensure once an LCSW candidate (SWLC) completes all 3000 hours of supervised work experience and passes the ASWB clinical exam.

RESPONSE 10: Yes, an additional application will be required. The board is standardizing the application process for all license types through the proposed rule changes. Upon completion of all supervised work experience hours and passage of the required exam (if applicable), LCSW, LCPC, LMFT, and LAC candidates wishing

to become licensed as full licensees must submit an application and fee for the appropriate full license. To apply for a full license all applicants must submit proof of having completed the required hours of supervised work experience along with all other required materials. If the experience was completed in Montana, the applicant can submit the appropriate evaluation of supervised work experience form(s) signed by both the applicant and the supervisor who supervised the hours. Following review of the complete applications, if the applicants meet minimum licensing requirements they will be issued full LCSW, LCPC, LMFT, and/or LAC licenses.

Candidates may continue practicing as a supervised candidate under an active candidate license during the application and review period. However, while practicing under a candidate license, an individual must continue to follow all laws pertaining to candidates, including but not limited to supervision and recordkeeping.

COMMENT 11: One commenter noted that the board is not proposing changes to ARM 24.219.501(2)(e) which was effective 12/28/19 and requires LCSW applicants to provide reference letters per 37-22-301, MCA. The commenter believes the board erred in its previous rulemaking and did not intend to remove the requirement that one of the reference letters be from a supervisor. The commenter further asserted that since the board only requires verification of completed supervised experience hours from a candidate's supervisor, it does not adequately protect the public because supervisors cannot make a recommendation as to whether a candidate should be granted full licensure or not. Other licensing boards such as the Board of Psychologists continue to rely on recommendations from supervisors as to whether an individual qualifies for full licensure. The commenter stated the public is best protected by allowing supervisors' recommendations or lack thereof to factor into the board's determination of whether an applicant qualifies for LCSW licensure.

RESPONSE 11: The board did not propose any changes to the LCSW licensing requirements in this rulemaking. The board notes that when a supervisor signs the Evaluation of Supervised Experience form, the supervisor attests that the candidate has met the minimum requirements for the supervised hours. If a candidate submits a form that is not signed by the supervisor on the form, those hours will not count toward the total supervision hours required for full licensure.

COMMENT 12: A commenter asked board to clarify the meaning of "within four years of the date of application" in (3)(c). The commenter was concerned that if it meant within four years of post-completion of supervised work experience then LMSW and LBSW could potentially practice for seven years without being fully licensed. The commenter stated the same concern regarding the existing rule language for LCSW licensure, where licensees could be practicing for up to nine years without a full license.

RESPONSE 12: The board notes the intent of this time requirement is within four years of the date of application for licensure as a full LCSW, LMSW, or LBSW in Montana. The rule does not refer to four years from the date the individual may have applied for a candidate license. As described in RESPONSE 9, separate

applications are required for candidate licenses and full licenses. Further, individuals practicing under candidate licenses after submitting applications for full licensure must continue to adhere to the candidate supervision requirements regardless of how many supervised work experience hours they have obtained. To qualify for a full license, a person must have passed one of the requisite exams in ARM 24.219.502 or qualify for a temporary practice permit under 37-1-305(2), MCA.

ARM 24.219.504

COMMENT 13: One commenter cited (1)(a) and asked if the board was now only requiring 100 hours of supervised work experience for LCSW licensure instead of 3000 hours.

RESPONSE 13: The board is not proposing any changes to the number or specific subsets of supervised work experience hours a person must gain to meet supervised work experience requirements for licensure as a full LCSW. The board may be open to stakeholder discussions regarding future rulemaking.

COMMENT 14: Several commenters asked if the board would allow some type of consideration so that individuals with bachelor's degrees in social work with national certifications and/or those already practicing social work for many years under supervision could count those hours previously worked toward the 2000 hours of supervised experience required for an LBSW license. The commenters stated they had no recommendations at this time but asked the board to think about how to "smooth" the path for licensure for those with bachelor's degrees who had been practicing in the field for years.

RESPONSE 14: The board is not proposing alternate ways for individuals not currently licensed in any other jurisdiction to count national certifications and/or obtained hours outside of a jurisdiction's licensing laws toward the required number of hours for a Montana LBSW license. The Legislature did not implement a specific grandfather clause to this effect in statute and gave the board rulemaking authority to set the licensing and supervision requirements. A change like this would be outside the scope of this rulemaking. The board may be open to stakeholder discussions regarding future rulemaking and/or legislative proposals.

Commenters should note that individuals who gained supervised work experience hours for an LBSW license under another jurisdiction's laws who are currently licensed in that jurisdiction or gained those hours within five years of the date of the Montana application can submit those hours for review as part of their applications.

COMMENT 15: A commenter observed the board seemed to be writing rules to ensure broad scope of practice for LBSW and LMSW licensees but was unclear as to the definition of "client populations" referenced in (2)(b)(ii).

RESPONSE 15: Examples of client populations are listed in (5) and include child, adolescent, adult, and chemically dependent/substance use disorder. The examples

were not obvious in the proposal notice due to the standard formatting of rule notices where only sections with proposed changes are shown. In the proposal, (5) was referenced as "(6) remains the same but is renumbered (5)."

Because the board did not include changes in the proposal to more specifically define client populations, the change is beyond what can be accomplished in a final rule notice. The board may be open to stakeholder discussions regarding future rulemaking although attempting to define all types of possible client populations could be difficult.

ARM 24.219.512

COMMENT 16: One commenter noted that in some states people hold both LCSW and LMSW licenses. The commenter asked if the new rules will require someone with a Montana LCSW license to take another test to qualify for an LMSW license.

RESPONSE 16: Under Montana's statutes and these rule changes, LMSW and LCSW candidates have distinct licenses not connected to the LCSW or LCSW candidate licenses. Someone licensed as an LCSW will be able to conduct "independent practice" as now defined under these rules while LBSW and LMSW will not. The board notes that different jurisdictions may have different scopes of practice so potentially licensees in another jurisdiction would need to hold multiple licenses in that jurisdiction to do what they can under an LCSW license in Montana.

ARM 24.219.2301

COMMENT 17: Multiple commenters supported amending the unprofessional conduct rule to apply the prohibition on sexual contact with a former client within two years following termination of professional services to all licensees, not just LACs.

RESPONSE 17: The board appreciates all comments received during the rulemaking process.

COMMENT 18: One commenter thanked the board for updating the ethics and unprofessional conduct rules and providing much needed modernization.

RESPONSE 18: The board appreciates all comments received during the rulemaking process.

COMMENT 19: Multiple commenters requested the board clarify the provisions of the unprofessional conduct rule regarding recommending a client seek or discontinue prescribed medication or failure to provide a supportive environment for a client receiving prescribed medication. The commenters noted that many licensees speak to clients regarding medication as some symptoms interfere with them taking medication as prescribed.

RESPONSE 19: To clarify, the board is not categorizing the language in (2)(o) as a boundary violation. Rather, the prohibition on committing boundary violations

pertains to (2)(a)(i) through (xi). Subsection (2)(o) reads: "A licensee shall not ... recommend a client seek or discontinue prescribed medication, or fail to provide a supportive environment for a client who is receiving prescribed medication...."

As to the comment regarding the fact that licensees speak to clients about medication, the board notes that referring a client for medication evaluation is within scope of practice for licensees and is not the same as telling the client to seek or discontinue medication.

COMMENT 20: A commenter stated that if an LCSW, LCPC, or LMFT refers clients being treated for attention deficit hyperactivity disorder (ADHD) to another provider for an ADHD medication evaluation, the licensee is technically recommending the clients seek medication and may be violating (2)(o). The commenter also wondered if (2)(o) conflicts with (3)(e) which requires all licensees to attempt to make appropriate referrals pursuant to a client's needs. The commenter believed the board might be trying to limit scope of practice by not allowing licensees to make referrals for medication evaluations but wanted clarification.

RESPONSE 20: The board notes that the proposed amendments do not add new restrictions to licensees' current scopes of practice. Also see RESPONSE 19 regarding referral for medication evaluation.

NEW RULE III

COMMENT 21: Several commenters wondered if someone holding two licenses with the board would need 20 or 40 hours of continuing education (CE) annually. The commenters stated that if 40 hours of CE are required it would be doubling the CE and would be a financial hardship that would require licensees to drop one license due to increased costs. The commenters asserted that a total of 20 hours is sufficient for both license types since the scopes of practice and skill sets are similar and the same type of training would apply for multiple licenses. One commenter asserted that the "new" CE requirements could create a financial hardship for businesses who pay for employee-licensees to obtain continuing education training and cost small businesses between \$6,000 and \$10,000 annually.

RESPONSE 21: The board is not proposing to change the total number of CE hours required for any license type. Licensees holding two or more licenses (e.g., an LCPC and LMFT license) must still obtain 20 hours of CE for each license as described in this new rule. However, those licensees could conceivably count CE obtained in one setting toward multiple licenses' CE requirements since there are overlapping scopes of practice and they are separate licenses from a regulatory standpoint.

COMMENT 22: One commenter stated that in addition to requiring two hours of suicide prevention CE, the board should require two hours of CE in ethics and two hours in supervision for all supervisors.

RESPONSE 22: The board notes that the suggested changes exceed the scope of this rulemaking as they were not included in the proposal notice. The board may be open to stakeholder discussions regarding future rule changes.

COMMENT 23: One commenter requested the board provide specifics on suicide prevention training and more details on how that training is going to happen.

RESPONSE 23: The board does not pre-approve CE sponsors or courses, nor does it develop or offer its own CE courses for licensees. It is up to each individual licensee to choose CE courses that meet the professional education objectives set forth in rule, including the two hours related to suicide prevention. The board purposely chose broad terminology since there are a wide variety of trainings and courses pertaining to suicide prevention already offered by professional associations, state and local health agencies, etc.

COMMENT 24: Multiple commenters believed CBHPSS should be required to get CE the first partial year they are licensed, not just beginning after the first renewal. Training courses are an important part of CBHPSS' ongoing recovery as they provide peer support to others. The commenters urged the board to continue to require CE for the first incomplete year of licensure for public protection.

RESPONSE 24: The board determined that the requirement for 40 hours of board-approved training to qualify for initial CBHPSS licensure meets the minimum amount of training necessary for an individual's first year of licensure and that CE is not necessary until after the first renewal. Additionally, the suggested changes were not included in the proposal and cannot be accomplished in a final notice. The board may be open to stakeholder discussions regarding future rule changes.

COMMENT 25: Several commenters stated that CBHPSS should not be allowed to carry over any CE credits from year to year because they have the lowest level of education/training of all board licensees, and the commenters believed that annual, ongoing CE is important.

RESPONSE 25: See RESPONSE 24. Also, CBHPSS are supervised throughout the entire course of their practice which adds a further level of ongoing education through the supervisors and contributes to the public's protection. Finally, the suggested changes were not included in the proposal and cannot be accomplished in a final notice.

New Rule IV

COMMENT 26: Multiple commenters asked the board to confirm that LMSW will not be eligible to provide counseling and psychotherapy to individuals, families, or groups.

RESPONSE 26: Per 37-22-308(3)(b) and 37-22-102(5)(b) through (5)(g), MCA, LMSW and LMSW candidates are not allowed to provide counseling or psychotherapy. The practice of psychotherapy is restricted to clinical practitioners.

4. The department has amended ARM 24.101.413 exactly as proposed.

5. The board has amended ARM 24.219.401, 24.219.415, 24.219.421, 24.219.422, 24.219.423, 24.219.501, 24.219.502, 24.219.504, 24.219.505, 24.219.512, 24.219.604, 24.219.605, 24.219.705, 24.219.907, 24.219.923, 24.219.5008, and 24.219.5013 exactly as proposed.

6. The board has adopted New Rules I (24.219.431), II (24.219.430), and IV (24.219.508) exactly as proposed.

7. The board has repealed ARM 24.219.405, 24.219.409, 24.219.507, 24.219.509, 24.219.607, 24.219.609, 24.219.708, 24.219.709, 24.219.807, 24.219.905, 24.219.921, 24.219.925, 24.219.927, 24.219.929, 24.219.931, 24.219.2001, 24.219.2201, 24.219.2305, 24.219.2309, 24.219.5002, 24.219.5012, 24.219.5015, 24.219.5016, 24.219.5017, 24.219.5018, and 24.219.5019 exactly as proposed.

8. The board has amended ARM 24.219.301 and 24.219.2301 with the following changes, stricken matter interlined, new matter underlined:

24.219.301 DEFINITIONS (1) through (11) remain as proposed.

(12) "Exploit" means to manipulate or attempt to manipulate or use a professional relationship with a client, former client, student, employee, supervisor, or supervisee, or research participant for:

(a) through (29) remain as proposed.

24.219.2301 UNPROFESSIONAL CONDUCT AND CODE OF ETHICS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, CBHPSS, AND LCSW, LMSW, LBSW, LCPC, LMFT, AND LAC CANDIDATES (1) through (2)(i) remain as proposed.

(j) exploit, as defined in ARM 24.219.301, in any manner ~~the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;~~

(k) through (4) remain as proposed.

9. Staff discovered a non-substantive drafting error in proposed New Rule III. While consolidating all continuing education requirements for all board license types in this new rule, the renewal date of December 31 was inadvertently used in (1). While most licensees renew on this date, licensed addiction counselors renew June 30, and these dates are clearly reflected in department rule at ARM 24.101.413. To correct this inadvertent error, the board is amending New Rule III with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (24.219.435) CONTINUING EDUCATION REQUIREMENTS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, and CBHPSS (1) Licensees are required to obtain 20 hours of continuing education (CE) annually, prior to renewal on ~~December 31~~.

(2) through (11) remain as proposed.

10. Staff discovered a clerical error while preparing replacement pages. To correct a numbering error, ARM 24.219.704 is amended as follows:

24.219.704 LMFT SUPERVISED WORK EXPERIENCE REQUIREMENTS

(1) and (2) remain as proposed.

(4) remains as proposed but is renumbered (3).

BOARD OF BEHAVIORAL HEALTH
CATHY JENNI, LCPC, LMFT
CHAIRPERSON

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 28, 2020.