

Testimony of ND Board of Counselor Examiners

Administrative Rules Committee

June 11, 2014

Good Afternoon, I am Constance Hofland. I am an attorney here in Bismarck and am one of the public members of the ND Board of Counselor Examiners.

In summary, the purpose of these amendments is to update licensing requirements for professional counselors and associate professional counselors, update licensing requirements for professional clinical counselors, update the disciplinary procedures, add certification for supervisors, and bring rules up to date with current national standards.

These rules did not result from statutory changes made by the Legislative Assembly.

These rules are not related to any federal statute or regulation.

The rulemaking notice and comment process followed is outlined below in chronological order:

- July 23, 2013 Notice of intent to amend administrative rules and notice of hearing at 10:00 a.m. on September 5, 2013, in the Roosevelt Park Room at the capitol building.
- August 3 to 8 Publication of hearing notices in newspapers across state
- August 19, 2013 Affidavit of Publication from ND Newspaper Association
- Sept. 5, 2013 Hearing on proposed rule amendments attended by 6 licensed counselors and 4 NDBCE board members/staff/counsel

Comments were received and discussed. The hearing lasted 42 minutes.
- Sept. 18, 2013 Records held open until this date for comments. Two additional comments were received.
- Oct. 25, 2013 The ND Board of Counselor Examiners met. Board reviewed, discussed, and addressed comments received.

In response to the comments concerning if there were enough LPCCs to provide supervision and if it was feasible to have the face-to-face supervision, especially in rural settings, the board broadened the definition of "face-to-face" to include supervision by electronic methods.

In response to the comments concerning the added requirement that counselor had to be a licensed professional counselor for at least two years before applying to be a licensed professional clinical counselor (LPCC), the board removed this language from the first paragraph of 97-02-01.1-01.

In response to the concerns about what defines "appropriate" experience as a licensed counselor, the board removed the word "appropriate" from 97-02-01-08. Applicants for certified supervisors will need to have five years of experience as a licensed counselor.

All other comments were reviewed and discussed as reflected in the minutes of the October 25, 2013, meeting of the NDBCE.

December 31, 2013 Letter from ND Board of Counselor Examiners to AG with the proposed rules as approved by the board.

January 9, 2014 Letter from AG approving the rules as to their legality.

March 10, 2014 ND Board of Counselor Examiners adopted the rules as approved.

The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules was \$5000. This cost includes publication costs and attorney fees from the AG's office.

No regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08.

No regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1.

A fiscal note was prepared for these administrative rules and is attached. In summary, the renewal fee for LPC increased from \$100 to \$150 for a two-year period for 401 LPCs. The renewal fee for LPCC increased from \$50 to \$75 for a two-year period for 154 LPCCs. The new section on certified supervisors has a fee of \$100 for initial application and for renewal every 5 years. Currently there are no certified supervisors.

A constitutional takings assessment was not required or prepared.

These rules were not adopted as emergency rules.

Here is a walk-through of the changes in the rules, by page number:

Page 362 -- added supervision by a licensed professional counselor (LPC) or licensed professional clinical counselor (LPCC) certified as a supervisor as a requirement for the LPC. Previously the supervision was by a LPC or its equivalent.

Page 363 -- Updating the academic programs, but extending effective date to July 1, 2017.

Page 364-5 -- Adding the supervision update for licensed associate professional counselor (LAPC). Updating renewal, still every 2 years, still 30 hours of CE, but now 3 must be ethics.

Page 366 -- Adding certification of supervisors, requires 5 years of experience as a licensed counselor.

Page 367 -- for LPCCs broadening the areas of study required, decreasing the required clinical training hours from 800 to 700, and incorporating the supervision by a certified supervisor, allowing electronic face-to-face.

Page 368 -- Update renewal of LPCCs

Page 370 -- Continuing education for LPCCs

Page 371 -- Disciplinary procedures were updated to eliminate the unnecessary specificity of maximum and minimum action, instead reflecting the disciplinary actions authorized by N.D.C.C. § 43-45-07.1.

Page 373 -- Added requirement to report convictions of an offense or discipline in other jurisdictions

NORTH DAKOTA BOARD OF COUNSELING EXAMINERS

Fiscal Note

2013 Proposed Administrative Rules

State Fiscal Effect: Identify the fiscal effect on the state and agency appropriations compared to funding levels and appropriations anticipated under current law.

The North Dakota Board of Counseling Examiners is supported entirely from special funds through licensure and licensure renewals and other fees in state statute. The Board does not receive an appropriation from the general fund. Three proposed rule changes will have a fiscal effect:

1. The biannual application renewal fee for a licensed professional counselor is increased from \$100 to \$150, an increase of \$50. Currently there are 401 licensed professional counselors. The proposed fee increase would have a fiscal effect of \$20,050 every two years.
2. The biannual application renewal fee for a licensed professional clinical counselor is increased from \$50 to \$75, an increase of \$25. Currently, there are 154 licensed professional clinical counselors. The proposed fee increase would have a fiscal effect of \$3,850 every two years.
3. A new section, N.D.A.C. § 97-02-01-08, is proposed outlining the requirements to become a certified supervisor. The proposed rule requires an applicant to become certified as a supervisor to be a licensed professional counselor or licensed professional clinical counselor, to have five years of experience as a licensed counselor, and to pay a \$100 fee, among other requirements. Because this is a new rule, there are currently no certified supervisors and its fiscal effect is unknown.

In addition, the proposed rule provides that supervisor certifications expire five years after granted or renewed and includes a renewal fee of \$100. No such certifications have been granted yet, and this rule would not have any fiscal effect in the next two biennia.

Revenues: Estimate revenues for the next two biennia.

Licensed professional counselor licenses expire two years from issue. Licensed professional clinical counselor licenses expire at the expiration of the holder's professional counselor license. The proposed fee increase will produce an additional \$23,900 if all current license holders renew during the 2015-17 biennium, and the same for the 2017-19 biennium, assuming the same number of licensed counselors. There

will likely be an increase in revenue from newly-certified supervisors, but there are no applicants or certified supervisors at this time.

Expenditures: Estimate expenditures for the next two biennia.

The Board does not anticipate the proposed rule changes will increase any expenditure.