

Notice of Agency Rule-making Proposal

AGENCY: Maine State Board of Examiners of Psychologists

CHAPTER NUMBER AND TITLE: Chapter 6, Supervision of Unlicensed Personnel

PROPOSED RULE NUMBER *(leave blank; assigned by Secretary of State)*:

CONTACT PERSON FOR THIS FILING: Geraldine Betts, Board Administrator, Office of Licensing and Registration, 35 State House Station, Augusta, ME 04333, (207) 624-8625, geraldine.l.betts@maine.gov

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different):

PUBLIC HEARING (if any): None scheduled. Additional written comment requested pursuant to 5 MRSA §8052(5)(B)

COMMENT DEADLINE: January 8, 2010

BRIEF *SUMMARY: As originally proposed in this rulemaking proceeding, Chapter 6 contained standards for the supervision of unlicensed personnel who participate in the provision of psychological services. The board at this time proposes to add a new Section 2 to Chapter 6 that sets forth qualifications for psychologists who supervise unlicensed personnel. The board also proposes to substitute the phrase “work setting” for the word “program” in Section 1(2) of Chapter 6. Because the rule the board intends to adopt is substantially different than the proposed rule, the board requests additional written comments on these changes.

IMPACT ON MUNICIPALITIES OR COUNTIES (if any)

STATUTORY AUTHORITY FOR THIS RULE: 32 MRSA §§3812-A(1), 3824(2)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different):

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** Check one of the following two boxes.*

The above summary is for use in both the newspaper and website notices.

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

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Notice of Agency Rule-making Proposal

DETAILED BASIS STATEMENT / SUMMARY: Chapter 6 as originally proposed in this rulemaking proceeding was based on the 2003 supervision guidelines of the Association of State and Provincial Psychology Boards for uncredentialed personnel who provide psychological services. Unlike supervised experience for psychologists and psychological examiners, this group of supervisees are not candidates for licensure. For this reason, this chapter does not require any specific amount of supervision, but rather constructs a framework in which supervision will be provided in an employment context.

On August 5, 2008 the board adopted this chapter as part of the recodification of the board's rules that went into effect on September 13, 2008. The Attorney General's office refused to approve this chapter as to legality. The chapter for that reason was not filed with the Secretary of State and never went into effect.

The rationale for the Attorney General's action was that the psychologists licensing law in effect at the time did not permit unlicensed persons to participate in the provision of psychological services. Although the law contained various exemptions for students, student interns and other narrowly-defined categories, none of them applied to persons functioning in an ongoing paraprofessional status as contemplated by this chapter. (See the Memorandum dated August 29, 2008 from Assistant Attorney General Dennis Smith to Board Administrator Geraldine Betts.)

In PL 2009, c. 112, Sec. A-11, the Legislature added 32 MRSA §3812-A to the psychologists licensing law. Section 3812-A authorizes psychologists to delegate certain responsibilities to unlicensed individuals as long as those activities are under the supervision and control of the delegating psychologist. Section 3812-A also authorizes the board to adopt rules "identifying delegated activities and appropriate levels of supervision in the practice setting." This chapter implements this rulemaking authorization by requiring psychologists to have in place a supervisory framework for unlicensed personnel that includes written administrative policies, written job descriptions and written and oral evaluations. The work setting must have a licensed psychologist who is legally and ethically responsible for oversight of the integrity and quality of the services as well as other resources necessary to meet the employment needs of the supervisee.

Chapter 6 as originally proposed in this rulemaking proceeding consisted of only one section. This section contained the supervision requirements for unlicensed personnel discussed above. A commenter on the proposed rule asked if supervision of unlicensed personnel was a type of supervision that obligated the psychologist to obtain three hours of continuing education in supervision pursuant to Chapter 8 of the board's rules.

Chapter 8, Section 1(2)(C) provides:

If the psychologist performs any of the supervisory functions described in Chapter 7, Section 1 of the board's rules, a minimum of 3 hours must be earned in the skills and principles of supervision.

Chapter 7 of the board's rules is entitled Qualifications of Supervisors. Section 1, Applicability, provides:

1. Applicability

The provisions of this chapter apply to—

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1. Psychologists who supervise conditional and temporary licensees as described in Chapter 3, Section 6 of the board's rules;
 2. Psychologists who provide pre-doctoral and post-doctoral supervised experience to psychologists in training as described in Chapter 4, Section 2 of the board's rules;
 3. Psychologists who provide supervised experience to psychological examiners in training as described in Chapter 5, Section 2 of the board's rules;
 4. Psychologists who provide supervision to psychological examiners who provide intervention services as described in Chapter 5, Section 3(4) of the board's rules; and
 5. Psychologists who provide consulting, monitoring or supervisory responsibilities in connection with a board order or consent agreement.

Section 2 of Chapter 7 goes on to set forth the minimum qualifications of the supervisors listed in Section 1.

The chain of rule references – from Chapter 8, Section 1(2)(C) to Chapter 7, Section 1 – leads to the answer of “no” to the commenter’s question. Because supervisors of unlicensed personnel are not listed in Chapter 7, Section 1 of the board’s rules, the supervision of unlicensed personnel does not trigger the supervision component of the continuing education requirement.

This analysis puzzled the board when it reviewed the comments on the proposed rules at its December 1, 2009 meeting. The board chair, in particular, believed that supervisors of unlicensed personnel had been included in the list of supervisors contained in Chapter 7, Section 1.

This turns out to have been correct. As adopted by the board in the August 5, 2008 revisions, Chapter 7, Section 1 contained an additional subsection, subsection 6:

6. Psychologists who supervise unlicensed persons who participate in the provision of psychological services pursuant to Chapter 6 of the board's rules.

This reference to Chapter 6 was deleted from Chapter 7 as adopted in August 2008 following the Attorney General’s refusal to approve Chapter 6 as to form and legality.

Due to an oversight by the OLR staff attorney, the board failed to propose the re-adoption of Chapter 7, Section 1(6) in this rulemaking proceeding to accompany the re-adoption of Chapter 6.

Re-adoption of Chapter 7, Section 1(6) would have had two consequences: (a) requiring supervisors of unlicensed personnel to complete three hours of continuing education in supervision every two years, and (b) requiring supervisors of unlicensed personnel to meet the qualifications for supervisors contained in Chapter 7, Section 2. In the board’s view, requiring supervisors of unlicensed personnel to obtain continuing education in supervision is unlikely to be productive. Continuing education in supervision for psychologists is usually designed for psychologists who provide predoctoral or postdoctoral supervision to persons on track towards licensure as a psychologist or psychological examiner.

On the other hand, requiring supervisors of unlicensed personnel to meet the minimum qualifications for supervisors contained in Chapter 7(2) does have value. For this reason, the board modified these qualifications to reflect their applicability to supervision of unlicensed personnel and incorporated them directly into Chapter 6 as a new section entitled “Qualifications of Supervising Psychologist.”

New Section 2 requires a supervisor of unlicensed personnel who assist in the provision of psychological services to be a fully-licensed Maine psychologist. The supervisor must be competent to supervise, must be able to do the work of the supervisee, and must abide by all ethical and legal requirements relating to supervision. These provisions will help ensure that unlicensed testing assistants perform their jobs under

adequate professional oversight.

As originally proposed in this rulemaking proceeding, Chapter 6, Section 1(2) began with the sentence, “An acceptable employment setting must provide ongoing psychological services in a well-defined and established program.” In this re-advertised proposed rule, the board has substituted “work setting” for “program.” The reason for the change is to eliminate any possible inference that operation of the rule is confined to an academic program or other formal training site. “Work setting,” which appears twice in Section 1(3) (see also “employment setting” in Section 1(4)), can be any practice setting, including private practice.

The board at this time requests additional written comment on these two changes to Chapter 6: (a) the addition of Section 2, “Qualifications of Supervising Psychologist,” and (b) the substitution of “work setting” for “program” in Section 1(2).

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

415 STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 6 – SUPERVISION OF UNLICENSED PERSONNEL

Summary: This chapter establishes standards for the supervision of unlicensed persons who participate in the provision of psychological services and sets forth minimum qualifications for supervisors.

1. Supervision of Unlicensed Persons Who Participate in the Provision of Psychological Services

Supervision of unlicensed persons who participate in the provision of psychological services must adhere to the following requirements:

1. The supervisory process addresses legal, ethical, social and cultural dimensions that impact not only the professional practice of psychology but also the supervisory relationship. Issues of confidentiality, professional practice and protection of the public are central.

2. An acceptable employment setting must provide ongoing psychological services in a well-defined and established work setting. Physical components such as office space, support staff and equipment necessary for successful practice of the supervisee must be available. The setting must meet the broad and specialized needs of the supervisee that are congruent with the supervisee's job function.

3. The work setting must provide the employee with a written document specifying the administrative policies as well as the objectives of the position. At the onset of employment the supervisor shall develop, along with the supervisee, a written individualized job description that is consistent with the qualifications of the supervisee and the purpose of the work setting.

4. Written and oral evaluation is necessary to ensure that supervisees achieve the identified employment objectives. Evaluations provide objective assessment and direct feedback about the supervisee's competence in meeting the needs of the employment setting. Direct feedback should be ongoing. Written evaluations must be provided at least annually.

5. The work setting must have a licensed psychologist who is legally and ethically responsible for oversight of the integrity and quality of the services as well as other resources necessary to meet the employment needs of the supervisee.

6. The status of the supervisee must be identified by an appropriate title such as testing assistant, psychometrician, etc., such that the supervised status is clearly identifiable to clients, third-party payors and other entities.

7. The supervisor shall determine the adequacy of the supervisee's preparation for the tasks to be performed. Work assignments must be commensurate with the skills of the supervisee. All procedures must be planned in consultation with the supervisor.

8. Public announcement of services and fees as well as contact with the lay or professional community must be offered only by or in the name of the supervising psychologist.

9. The supervisor may not be the employee of the supervisee. Supervisors shall pay careful attention to the impact of financial arrangements on the supervisory relationship.

10. Supervisors shall avoid entering into dual relationships with their supervisees. Supervisors may not exploit or engage in sexual relationships with supervisees. Supervisors shall attempt to resolve any unforeseen interference which may be potentially harmful to the supervisory relationship with due regard for the best interests of both the client and the supervisee, and after appropriate consultation.

11. The supervisor may not permit a supervisee to engage in any psychological practice which the supervisor cannot perform competently him- or herself.

12. The supervisor shall interrupt or terminate the supervisee's activities whenever necessary to ensure adequate development of skills and protection of the public.

13. The supervisor is ethically and legally responsible for all of the professional activities of the supervisee.

2. Qualifications of Supervising Psychologist

A supervisor of unlicensed persons who participate in the provision of psychological services shall meet the following qualifications:

1. The supervising psychologist shall be licensed in Maine for the practice of psychology.

2. The supervising psychologist shall have adequate training, knowledge and skill to competently render any psychological services that his or her supervisees may undertake.

3. The supervising psychologist shall be aware of and shall abide by the ethical principles and the laws and rules governing the practice of psychology in general and supervision in particular.

4. The supervising psychologist must be competent to supervise by virtue of training or experience in supervising processes.

5. A psychologist practicing under a conditional or temporary license may not serve as a supervisor.

STATUTORY AUTHORITY: 32 MRSA §§3812-A(1), 3824(2)

EFFECTIVE DATE: