

2010-101

Rule-Making Cover Sheet

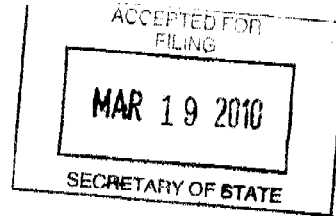
MAPA-1

TO: Secretary of State
ATTN: Administrative Procedure Officer,
State House Station 101, Augusta, Maine 04333.

RECEIVED

APR - 2 2010

1. **Agency:** Department of Professional and Financial Regulation, Office of Licensing and Registration, Maine State Board of Examiners of Psychologists
2. **Agency umbrella and unit number:** 02-415
(2 digit umbrella # and 3 digit unit #)
3. **Title of rule:** Supervision of Unlicensed Personnel
4. **Chapter number assigned to the rule:** 6
(must be 3 digits or less)
5. **Date(s)/method(s) of notice:** 9/16/09 & 12/9/09, consolidated newspaper notice by Secretary of State; 8/24-25/09 & 12/2/09, interested parties mailing; 8/21/09 & 12/1/09, posting on OLR's web site
6. **Date(s)/place(s) of hearing(s):** 10/6/09



- 7-A. **Type:** new rule partial amendment(s) of existing rule
 suspension of existing rule repeal of rule emergency rule
 repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.

8. **Name/phone of agency contact person:** Geraldine Betts, Board Administrator, (207) 624-8625

9. **If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following**

- Provisional adoption (prior to Legislative review) Final adoption
 Emergency adoption of major-substantive rule

10. **Certification Statement:** I, Glen Davis, hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by the Maine State Board of Examiners of Psychologists on March 2, 2010.

Signature: Glen Davis
(original signature, personally signed by the head of agency)

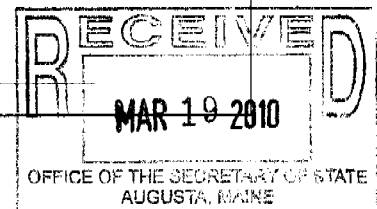
Printed Name & Title: Glen Davis, Ph.D

11. **Approved as to form and legality by the Attorney General on** 3-17-10 (date)

Signature: Carrie L. Garney
(original signature, personally signed by an Assistant Attorney General)

Printed Name: Carrie L. Garney

EFFECTIVE DATE:



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:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

415 STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

BASIS STATEMENT AND RESPONSE TO COMMENTS

CHAPTER 6 SUPERVISION OF UNLICENSED PERSONNEL ADOPTED MARCH 2, 2010

Basis Statement

Chapter 6 is 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, Chapter 6 does not require any specific amount of supervision, but rather constructs a framework in which supervision will be provided in an employment context.

This is not the first time that the board considered adoption of Chapter 6. On August 5, 2008 the board adopted Chapter 6 as part of the recodification of the board's rules that went into effect on September 13, 2008. However, the Attorney General's office refused to approve Chapter 6 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.)

The Legislature remedied this deficiency the following year. 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."

Chapter 112 provided the legal authorization that was formerly lacking for adoption of Chapter 6. This chapter implements Chapter 112 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 summarized in the preceding paragraph. A commenter on the proposed rule asked if supervision of unlicensed personnel was a type of supervision that obligates 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—

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 revising Chapter 6, the board 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.

To recap, following consideration of comments the board intended to adopt Chapter 6 with two changes from the proposed rule. These were: (a) the addition of Section 2, "Qualifications of Supervising Psychologist," and (b) the substitution of "work setting" for "program" in Section 1(2). Because these changes would render the adopted rule substantially different from the proposed rule, the board sought additional written comment pursuant to 5 MRSA §8052(5)(B). No further comment was received, and Chapter 6¹ was finally adopted with the changes described above.

Response to Comments

John O'Brien on behalf of
Maine Psychological Association

- ◆ "Chapter 6 Section (1) Supervision of Unlicensed Persons Who Participate in the Provision of Psychological Services: Chapter 8 Section 1 2c clearly states that if a psychologist performs any of the supervisory functions described in Chapter 7 Section 1, s/he must earn a minimum of 3 hours of supervision continuing education. New language in Chapter Section 1 on supervision of unlicensed persons has created some uneasiness among psychologists who use testing assistants, as to whether they should be seeking continuing education in supervision. The use of the term supervision in Chapter 6 Section 1 seems to be the sticking point. In two sections of the rules Chapter 8 (1) 1 (2) c and Chapter 7 Qualifications of Supervisors the word supervision is tied to additional CE requirements. In Chapter 6 Section 1 while the same terminology is used, the supervision of unlicensed personnel does not require CE. Perhaps to provide greater clarity for licensees in this area, another term besides supervision could be used in Chapter 6 Section 1 when referencing the oversight of unlicensed personnel."
- Board Response: This is the comment referred to in the Basis Statement that led the board to re-examine Chapter 6 as originally proposed in this rulemaking proceeding.

The board declines to use a term other than "supervision" when referring to the oversight of unlicensed personnel. For the reasons discussed in the Basis Statement, Chapters 6-8 of the board's rules do not require supervisors of unlicensed personnel to complete continuing education in supervision. There is thus no need for the board to use any term other than "supervision" when referring to the supervision of unlicensed personnel.

¹ Re-advertised Proposed Rule, dated December 1, 2009

Rule-Making Fact Sheet

(re-advertised proposed rule)

(5 MRSA §8057-A)

AGENCY: Department of Professional and Financial Regulation, Office of Licensing and Registration, Maine State Board of Examiners of Psychologists

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON: Geraldine Betts, Board Administrator, Office of Licensing and Registration, 35 State House Station, Augusta, ME 04333, (207) 624-8625

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

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

DATE AND PLACE OF PUBLIC HEARING: None scheduled - written comment only on re-advertised proposed rule pursuant to 5 MRSA §8052(5)(B)

COMMENT DEADLINE: January 8, 2010

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: As originally proposed, this chapter contained supervision requirements for unlicensed personnel. In the re-advertised proposed rule, the board added qualifications for the supervisors of unlicensed personnel and also clarified that the supervision requirements apply to psychologists who supervise unlicensed personnel in a private practice setting.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE: Comment of Maine Psychological Association dated October 6, 2009; a version of Chapter 7 of the board's rules that was adopted on August 5, 2008 but was later changed due to refusal of the Attorney General's office to approve Chapter 6 of the board's rules as to form and legality at that time.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: Section 1 of this chapter contains supervision standards for unlicensed personnel who assist in the provision of psychological services. Section 2 of this chapter contains minimum qualifications for supervisors of unlicensed personnel.

FISCAL IMPACT OF THE RULE: None

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE: