

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED CREATION OF
N.D. ADMIN. CODE CHAPTERS:
97-02-01 LICENSING REQUIREMENTS,
97-02-01.1 LICENSED PROFESSIONAL CLINICAL COUNSELOR, AND
97-02-02 DISCIPLINARY PROCEDURES**

The North Dakota Board of Counselor Examiners held a public hearing on January 16th, 2024 in Bismarck, ND, concerning the proposed creation and amendment of N.D. Administrative Code chapters 97-02-01, Licensing Requirements; 97-02-01.1 Licensed Professional Clinical Counselor; and 97-02-02 Disciplinary Procedures.

Written comments on the rules could be offered through 5:00pm on Friday, January 26th, 2024.

There were six attendees, three of which provided testimony at this meeting orally and in written format. An additional seven individuals provided written comments during the comment period. Comments were received from:

1. Emily Yanish, LPCC, LPC, Certified Counselor Supervisor, Youthworks
2. Angie Olson, LAPC, Sanford Health
3. Dr. Tami DeCoteau, Licensed Psychologist
4. Ashley Thompson, LPCC, LPC, Certified Counselor Supervisor, Birchwood Therapeutic Services
5. Amy Tichy, LAPC
6. Brandi Schmidt, LPCC
7. JoDee Knipfer, LPCC, LPC, The Village Family Services
8. Luke Klefstad, LPCC, LPC, The Village Family Services
9. Gabby Hagen, LPCC, LPC, The Village Family Services
10. Christine Bushy, LPCC, LPC, The Village Family Services

The NDBCE received an additional two comments after the comment period had closed. The board reviewed the requests and voted unanimously to allow the commentors to provide their feedback.

1. Marni Walth, Sanford Health
2. Dr. Alan Fehr, Licensed Psychologist, Sanford Health

SUMMARY OF COMMENTS

The NDBCE has summarized the comments that are the same or closely related into the groups, noting each individual comment received for that group.

Comment:

97-02-01-01.2(1); 97-02-01-03.3; 97-02-01-08.1(a); 97-02-01-08.1.1; 97-02-01.1-01.3(b)

The inclusion of psychologists as supervisors for licensees.

1. Angie Olson summarized comments: In support of expanding certified supervisors to include psychologists due to having degrees of equal or greater than that of a counselor. The change will increase access to supervisors across the state for LAPCs as the behavioral health needs in the state are desperately needed. Angie continues to comment that licensed psychologists are not listed as an option to provide supervision. Her own experience with obtaining a supervisor was “burdensome” as she was not allowed to have a licensed psychologist. This created barriers for her as she was hired by Sanford and found the list of available supervisors from the board to be limited and put her

employment at risk as she was unable to start her new role until she obtained a supervisor. She did obtain a supervisor in the area which she resides.

Response:

1. This was approved in the 2023 legislative session as the counseling compact bill (SB2187) was amended to include this. The proposed changes update administrative rules to include licensed psychologists. Additionally, it is noted that Angie Olson

Comment:

97-02-01-08.2.2

Responsibilities of the counselor supervisor: The certified supervisor shall be able to provide counseling services in the event the supervisee is unable, for any reason, including lack of competence, to do so.

1. Emily Yanish summarized comments: Emily expressed concern that this proposed revision would eliminate the ability to provide supervision remotely. She noted that her agency would not allow for abandonment of a client due to lack of ability of the supervisee. She also noted concern that if the supervisor must be onsite that it would result in increased costs to an organization or supervisee. She recommended rewording the language to allow flexibility, such as another licensed professional located onsite, in how client needs would be met if the supervisee is unable.
2. Amy Tichy summarized comments: Amy noted the language is ambiguous. Amy recommended amending the language to, "The certified supervisor shall be able to provide counseling services to a supervisee's client in the event the supervisee is unable, for any reason, including lack of competence to do so."
3. Brandi Schmidt summarized comments: Brandi noted concerns of the practicality of being able to meet this requirement if the supervisor and supervisee are not employed at the same agency nor located in the same town.
4. JoDee Knipfer summarized comments: JoDee questioned how this would be feasible if the supervisor and supervisee were not at the same agency. She noted that her agency would not allow an outside supervisor to come in and provide therapy to their agency's clients. She is not in agreement with the proposed change.
5. Luke Klefstad summarized comments: This is not feasible for those of us who provide licensure supervision to counselors outside of our agency. We also would not allow a licensure supervisor from outside our agency to come in a practice therapy with our clients. This rule would eliminate our ability to provide or receive outside/external licensure supervision.
6. Christine Bushy summarized comments: This is not feasible for certified supervisors within my agency who provide licensure supervision to counselors outside of the agency that I work for. I would not be allowed nor would I feel comfortable doing this for a supervisee working for another agency. The agency that I work for also would not allow a certified supervisor from outside of my agency to come in and practice therapy with our clients. This rule would eliminate my and other certified supervisors within my agency the ability to provide external supervision and for our counselors to receive outside/external licensure supervision.
7. Gabby Hagen summarized comments: Gabby asked for clarification as to what the proposed language means and noted that she felt the language was vague.

Response:

1. The board was in agreement to better clarify this.
2. **Board recommendations to amend language:**
"A certified supervisor, if on-site, shall be able to provide counseling services in the event the supervisee is unable to provide services. If the certified supervisor is not on-site, then an administrative on-site supervisor shall be identified that shall provide counseling services in the event the supervisee is unable to provide services."

Comment:

97-02-01-08.2.3

Responsibilities of the counselor supervisor: The certified supervisor shall review and cosign all reports of any supervisee. If the supervisor is unable to cosign the reports of the supervisee, it shall be acceptable to provide a brief memorandum or note to the file, signed by the certified supervisor documenting the supervisor has reviewed the information.

1. Amy Tichy summarized comments: Amy noted confusion by this proposed change as Amy's perception is that often the supervisor is not located on-site. She noted concerns that in order for this change to be met each supervisor would have to find ethical and legal means to complete this. She recommended that if no supervisor of any kind is signing off on notes then it is the licensure supervisor's job.
2. JoDee Knipfer summarized comments: JoDee noted that her agency would never grant outside licensure supervisors access to their electronic health record. She noted that if the supervisee has a billing supervisor that is reviewing all documentation and signing, why would the licensure supervisor need to do the same.
3. Luke Klefstad summarized comments: This also effects our ability to provide licensure supervision to counselors outside of our agency as those other agencies will likely not give us access to review/read/sign client file documents. We would not grant outside licensure supervisors access out our electronic health records systems.
4. Christine Bushy summarized comments: Christine notes that this impacts her ability to provide supervision to individuals outside of her agency as those agencies will not likely give her access to review their client's charting. She notes the agency that The Village would not allow outside supervisors access to clients' charting for supervision. She also states that when billing insurance under supervisory, clinicians documents are reviewed and signed by their direct supervisor, which may or may not be their licensure supervisor.
5. Gabby Hagen summarized comments: Gabby asked for clarification as to what the proposed language means and what it would look like.

Response:

1. The current wording could be accomplished as many agencies utilize electronic health records that can allow an additional user to have restricted access to review the documentation. Additionally, the electronic health record allows for faster assimilation of documentation that could securely be transmitted by encrypted e-mail to the certified supervisor for review. However, signing of the documents and uploading to the chart could become cumbersome.
2. Part of clinical supervision of a licensee does require the supervisor to assess and provide skill development specific to counseling documentation.
3. One board member suggested, "The certified supervisor shall, at minimum, review a subset of the supervisee's clinical documentation to assess and facilitate the development of clinical documentation skills. The exchange of documentation to be reviewed shall comply with HIPAA requirements." Other members expressed concern regarding this.
4. The board was divided on whether to strike this, revise this, or not make any changes to this item. The intention to ensure adequate supervision and development of counseling skills in all areas, however, the board is also aware of potential and whether agencies would allow or prevent documentation to be reviewed if the supervisor is not employed at the same agency as the supervisee.
5. **Board recommendations:**
The board would recommend that this item be struck.

Comment:

97-02-01.1-06(4)

Definitions of "face to face" supervision.

1. Ashley Thompson summarized comments: In support of allowing virtual supervision.

Response:

1. The proposed change is expanding and more clearly identifying what constitutes "face-to-face" supervision.

Comment:

97-02-01-08.2.4

Regarding: The certified supervisor shall provide certification to the board that the supervisee has complied with the supervised practice requirements contained within section 97-02-01-01.1.

1. JoDee Knipfer summarized comments: JoDee asked if type of certification is required and whether there is a form to fill out.
2. Luke Klefstad summarized comments: Luke asked if a template/form would be provided to the certified supervisor by the NDBCE.
3. Christine Bushy summarized comments: Christine asked if a template/form will be provided to the certified supervisor by the NDBCE.

Response:

1. The board currently requires that the supervisee complete a form to indicate that the supervisee has completed the requirements. The board will update this form.

Comment:

97-02-01-08.2.5

Regarding: Responsibilities of the counselor supervisor: A certified supervisor shall not supervise more than three supervisees at one time. Certified supervisors who desire to provide supervision to more than three supervisees at one time shall submit a written request to the board which explains the reason for providing supervision to more than three supervisees at one time.

1. Ashley Thompson summarized comments: Ashley notes concerns that the proposed language will have a negative impact on North Dakota. She notes that each supervisee will require differing frequency and duration of supervision based on where the supervisee is at developmentally. Furthermore, she notes concerns that the board can extend trust to the certified supervisor to effectively utilize clinical judgment and time management. She also expresses concerns regarding multiple agencies in the state experiencing a supervisor shortage.
2. Amy Tichy summarized comments: Amy questioned if this proposed item is intended to prevent supervisor burnout. She noted that some supervisors are primarily responsible for only providing supervision and seeing minimal clients. She noted anticipation that it would create unnecessary paperwork to obtain approval for more than 3 supervisees. She asked for clarification on why this is being proposed and reconsideration of the subsection.
3. JoDee Knipfer summarized comments: JoDee asked how this would help rural areas with a limited number of certified supervisors and noted concern that this would place an unnecessary barrier. She asked how the board determined three supervisees. She shared personal experiences in three other states in which the agencies hired one person to supervise all the supervisees. She also asked if this would apply to group supervision and noted no previous experience of any group supervision being forced to adhere to such a strict policy.
4. Luke Klefstad summarized comments: Limiting the number of supervisees is not practical especially in a rural state with a limited number of certified supervisors. This would force many agencies to seek outside-of-the agency licensure supervisors which then would run into the problems outlined in

subsections 2. and 3. of this section. How was it determined that the max would be three - wouldn't this also be dependent on the type and quality of work the supervisee is doing? Why is this not at the discretion of the certified supervisor to know their own limits? Does this also apply to group supervision? In some instances, there are multiple supervisors - one doing individual and another doing group, how does this impact that scenario?

5. Christine Bushy summarized comments: Christine noted that the proposed language is not practical for North Dakota. It would force her agency to seek outside of the agency certified supervisors which would then cause concerns for additional requirements of certified supervisors. She asked if the proposed language also applies to group supervision. She shared that she presently supervises 10 supervisees and that she also provides group supervision for one of The Village's programs that exceeds three supervisees. The current proposed language would significantly impact her ability to provide licensure supervision within her agency, would eliminate her ability to provide licensure supervision to clinicians outside of her agency, would eliminate her agency's ability to have outside certified supervisors to provide licensure supervision, and would reduce the number of clinicians they can hire that need licensure supervision.
6. Gabby Hagen summarized comments: She noted that Christine Bushy provides all the supervision for her program, and she is wondering how rigid the board would be on only allowing three supervisees. She asked how difficult it would be to get approval for more than three?

Response:

1. CACREP, which is the accrediting body for graduate level counseling programs, recommends that for each individual supervisee, the supervisor will need to provide a minimum of three hours of time each week to provide the minimum adequate supervision needed.
2. The concerns noted do not indicate that some of the commentors saw the provision that allows supervisors to submit a written request to the board to allow more than 3 supervisees at one time. This would allow certified supervisors whose primary employment is to provide supervision to be granted permission to provide supervision to more than three licensees.
3. For any request to allow more than the maximum number of supervisees allowed, the board should furnish a form specifying who is making the request, which supervisees the request would apply to, the current average caseload/hours utilized for non-supervision activities, and what the plan is for providing individual and/or group supervision.
4. The board agrees that the present language would benefit from clarifying individual and group supervision.

5. Board recommendations to amend language:

*"A certified supervisor shall not supervise more than five **individual supervisees** at one time and shall **not supervise more than eight licensees for group supervision**. Certified supervisors who desire to provide supervision to more than the specified number shall submit a written request, **on a form furnished by the board**, which explains the reason for providing supervision to more than the specified number.*

Comment:

97-02-01-08.2.6

Regarding: A certified supervisor shall avoid conditions and multiple relationships with a supervisee which may impair professional objectivity or increase the risk of exploitation. (a) A certified supervisor shall not engage in any sexual relationship with a supervisee during the time of the supervisee's supervision.

1. Amy Tichy summarized comments: Amy expressed concern about the practicality of this proposed change. She noted small practices, oftentimes the clinical supervisor is also the administrative supervisor, and that the relationship could be considered a risk of exploitation.

Response:

1. This is a requirement of the ACA ethical code.
2. It is the supervisor's responsibility to identify clearly which capacity they are acting from if they fulfill both roles of a clinical supervisor and administrative supervisor.

Comment:

97-02-01.1-02(3b, c, & f)

Regarding Renewal of a licensed professional clinical counselor license. (b) The licensed professional clinical counselor shall pay the renewal fee for the licensed professional clinical counselor license and the renewal fee for the licensed professional counselor license. (c) The renewal fee for the licensed professional counselor is one hundred seventy-five dollars. (f) To renew a license as a licensed professional clinical counselor, renewal fees for a licensed professional clinical counselor and a licensed professional counselor must be paid simultaneously.

1. Amy Tichy summarized comments: Amy expressed confusion as to why a counselor would need to maintain two licenses at the same time within the state, especially because one licensee affords more benefits than the other. She questioned if it is to generate more revenue would it be more practical to just raise the fee for the LPCC?

Response:

1. The LPCC is a specialty license that can only be issued to those that hold an LPC license as per the century code and administrative code.
2. Industries in ND have viewed the LPCC as allowing more opportunities to be credentialed with insurance panels and may not allow LPCs to be credentialed. However, because the LPCC is a specialty license, the only way the board can issue it and charges application/renewal fees is as how it is currently structured.

Comment

97-02-08.1(f)

Regarding: Certification of supervisors: Any first-time supervisor applicant shall successfully complete a jurisprudence examination administered by the board. The jurisprudence examination shall contain information regarding the American Counseling Association Code of Ethics as approved by the board, applicable provisions of the North Dakota Century Code, and these rules.

1. Brandi Schmidt summarized comments: Brandi asked if the exam would be free of charge? She noted that the board currently requests specific CE requirements that are already at the supervisor's expense in addition to five years of clinical experience. She noted that it seems to be another barrier for the profession to grow by adding yet another testing requirement at the expense of the supervisor.
2. Marni Walth and Dr. Fehr, Sanford summarized comments: **These comments were received after the commenting period had closed.* They requested the jurisprudence examination for certification of supervisors be eliminated. They noted concerns that it would be cumbersome, excessive, and unnecessary. They noted that other licensing boards do not require such examinations.
3. Christine Bushy summarized comments: With ACA code of ethics being included on licensure examinations, being required for CEs as part of licensure renewal, and being included in the 30 hours of CEs required to become a certified supervisor and for renewal, I am wondering why this would be necessary to become an approved supervisor.

Response:

1. The primary goal of the jurisprudence exam is to ensure that any licensee of this board can demonstrate minimum competency in the laws governing the practice of counseling that their license allows them to.

2. For certified supervisors that are not professionally licensed by this board (e.g. Psychologists) or for the privilege to practice with the Counseling Compact this will ensure that they are familiar with the laws and limits of the scope of practice specifically for counseling.
3. Research studies indicate one of the most frequently occurring ethical violations and legal violations occurs when the supervisor is a licensee of a board that is different than the board the supervisee is licensed with. Example given, a social worker or psychologist provides licensure supervision to a counselor.
4. The jurisprudence exam will increase awareness of the laws regulating counseling and reduce unnecessary violations of the counseling laws and/or counselor ethical codes if the professional is licensed by another jurisdiction in which the laws may differ from counselors.
5. The ND Board of Psychologists recently passed administrative rules incorporating a jurisprudence examination for all the licensees of that board.
6. There is no fee indicated for the jurisprudence exam at this time for licensees of the NDBCE. However, the century code does allow the board to potentially charge a fee for privilege to practice licensees for the jurisprudence exam, however, the board is still waiting to hear from the Compact what the recommended fees will be.
7. The board is currently researching cost-effective ways to administer the test and make it easily accessible. The NDBCE previously voted against utilizing the NBCC to provide the tests as it would cost the applicant between \$100.00-\$150.00; The board also discussed that options costing \$75.00 had the potential to be excessive. This has resulted in the board exploring options to develop its own test and cost-effective ways to host and administer the test.

Comment

97-02-01-02

Regarding: Academic Programs: The internship must include experiences commiserate with clinical mental health counseling, including diagnosis, treatment, assessment, treatment planning, and counseling.

1. Gabby Hagen summarized comments: Gabby is seeking clarification whether interns need to be completing diagnostic assessments or if observing/discussing diagnosis during staffing would meet the requirement.
2. Marni Walth and Dr. Fehr, Sanford summarized comments: **These comments were received after the commenting period had closed.* They requested the jurisprudence examination for certification of supervisors be eliminated. They noted concerns that it would be cumbersome, excessive, and unnecessary. They noted that other licensing boards do not require such examinations.

Response:

1. The history that has led to this recommendation has been due to individuals applying for LAPC or LPC that have completed internships in fields that are different from clinical counseling, such as school counseling and addiction counseling. The differences in the specific focus of clinical counseling vs school counseling or addiction counseling is significant as addiction counselors focus on developing skills only in diagnosing substance use disorders, school counselors do not incorporate or minimally incorporate diagnosis. As a result, individuals with these specific concentrations have at times did not meet the minimum requirements to be eligible for LAPC, LPC or LPCC. The goal of this addition minimizes the likelihood of applicants with a school counseling internship or addiction counseling internship from learning that they don't meet the minimum requirements to apply for a counseling license.
2. It is the site's responsibility to ensure that these core competencies are being met for the intern.

3. The board recommends a spelling correction:

*The internship must include experiences **commiserate** with clinical mental health counseling, including diagnosis, treatment, assessment, treatment planning, and counseling.*

Comment:

97-02-01-08.2(a)

Regarding: Certification of supervisors: The certified supervisor shall complete at least thirty hours of continuing education primarily focused on clinical supervision in the five years preceding the expiration date of the certification.

1. Brandi Schmidt summarized comments: The number of hours is excessive.
2. Marni Walth and Dr. Fehr, Sanford summarized comments: **These comments were received after the commenting period had closed.* They commented that psychologists only have to complete 3 CEs in Minnesota.

Response:

1. The comments to reduce the number of continuing education hours for psychologists licensed as a certified counselor is significantly less than the requirements of ND LPC's and ND LPCC's.
2. It appeared that Sanford had questions about what the process would be for a psychologist to apply to become a certified psychologist.
3. The NDBCE does not require a national certification as a supervisor.
4. Supervision training does have aspects that are universal across licensure/training type. However, the aspects that are different, such as ethical codes, counseling specific laws, etc. that are different from other professions.
 - a. Differing ethical codes amongst a supervisor and a supervisee are one of the most common violations that can occur if the supervisor is not licensed as a counselor. Such violations could result in a counseling licensee being reprimanded, having their license suspended or revoked.
5. Any continuing education specific to clinical supervision will be considered for application or renewal of the certified supervisor certificate. Clinical supervision can include: models of supervision (any mental health profession), supervision theory, supervision in counselor ethics, supervision in counseling state and federal law.
6. The board informed Dr. Fehr and Marni Walth that there was a training offered in 2023 from the University of MN - Mankato that provided 30 CEs in Supervision that was approved by the NDBCE that would qualify for the supervision that the board is requiring.

7. Board recommendations to amend language:

"The supervisor applicant shall have completed thirty hours of continuing education related to the supervision of counselors, clinical supervision models, supervision theory, ACA code of ethics, and/or clinical interventions. The continuing education cannot be entirely focused on clinical interventions."

Comment:

Regarding the list of certified supervisors in counseling.

1. The board received several comments that the list of certified supervisors is limited and individuals are unable to find supervisors.

Response:

1. Currently there are 148 certified supervisors with the NDBCE. Based on the number of LAPC applicants for the last two years, the number of available supervisors exceeds the number currently licensed LAPCs allowing for up to a 1:1.3 ratio of supervisors to supervisees.
 - a. In 2023, there were 59 LAPC applicants.

- b. In 2022, there were 53 LAPC applicants.
- 2. Each LAPC is licensed for two years and requires supervision to occur regularly over the two-year licensure period before being eligible to advance to LPC, which is at independent license.
- 3. The board has been notified by certified supervisors that no one has requested supervision from them over a five-year period (five years is the length of the certified supervisor license duration) and several of those certified supervisors have chosen to not renew their certified supervisor license as there was a lack of demand for it.
- 4. One factor that can influence whether a LAPC secures a certified supervisor is whether the LAPC is willing to pay for a certified supervisor and/or whether the employing agency is willing to pay for a certified supervisor if one is not available on staff.