

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: North Carolina Psychology Board

RULE CITATION: 21 NCAC 54 .2006 and .2008

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection to the above referenced Rules for lack of statutory authority.

G.S. 90-270.5(e) requires that when a psychological associate is engaging in certain health services he or she must be supervised by a "qualified licensed psychologist holding health services provider certification or by other qualified professionals under the overall direction of a qualified licensed psychologist holding health services provider certification." The pertinent statute is as follows:

(e) A licensed psychological associate shall be supervised by a qualified licensed psychologist, or other qualified professionals, in accordance with Board rules specifying the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. A licensed psychological associate who provides health services shall be supervised, for those activities requiring supervision, by a qualified licensed psychologist holding health services provider certification or by other qualified professionals under the overall direction of a qualified licensed psychologist holding health services provider certification, in accordance with Board rules. Except as provided below, supervision, including the supervision of health services, is required only when a licensed psychological associate engages in: assessment of personality functioning; neuropsychological evaluation; psychotherapy, counseling, and

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other interventions with clinical populations for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior; and, the use of intrusive, punitive, or experimental procedures, techniques, or measures. The Board shall adopt rules implementing and defining this provision, and as the practice of psychology evolves, may identify additional activities requiring supervision in order to maintain acceptable standards of practice.

As written, these Rules appear to be carving out an exception for a “level 3” psychological associate” which would enable him or her to practice these activities without the supervision of a licensed psychologist holding a health services provider certification. Staff does not believe that the Board has the authority to do so for the activities specified in G.S. 90-270.5(e).

Rule .2006 states that “Supervision is required if practicing under a Level 1 or 2 supervision”, but does not set forth any supervision requirements for a level 3 psychological associate. This Rule goes onto address activities that are specifically set forth in G.S. 90-270.5(e) as statutorily requiring supervision. Staff reads this Rule to exempt a Level 3 psychological associate from those supervision requirements.

Further, .2008(h)(3) provides that “no further supervision shall be required” once a psychological associate obtains 3 years of 4500 hours of post-licensure supervised practice. Staff does not believe that the Board has the authority to entirely exempt any psychological associate from supervision requirements if they are engaging in the specified activities.

§ 90-270.5. Application; examination; supervision; provisional and temporary licenses.

(a) Except as otherwise exempted by G.S. 90-270.4, persons who are qualified by education to practice psychology in this State must make application for licensure to the Board within 30 days of offering to practice or undertaking the practice of psychology in North Carolina. Applications must then be completed for review by the Board within the time period stipulated in the duly adopted rules of the Board. Persons who practice or offer to practice psychology for more than 30 days without making application for licensure, who fail to complete the application process within the time period specified by the Board, or who are denied licensure pursuant to G.S. 90-270.11 or G.S. 90-270.15, may not subsequently practice or offer to practice psychology without first becoming licensed.

(b) After making application for licensure, applicants must take the first examination to which they are admitted by the Board. If applicants fail the examination, they may continue to practice psychology until they take the next examination to which they are admitted by the Board. If applicants fail the second examination, they shall cease the practice of psychology per G.S. 90-270.4(h), and may not subsequently practice or offer to practice psychology without first reapplying for and receiving a license from the Board. An applicant who does not take an examination on the date prescribed by the Board shall be deemed to have failed that examination.

(c) All individuals who have yet to apply and who are practicing or offering to practice psychology in North Carolina, and all applicants who are practicing or offering to practice psychology in North Carolina, shall at all times comply with supervision requirements established by the Board. The Board shall specify in its rules the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. Individuals shall be supervised for all activities comprising the practice of psychology until they have met the following conditions:

- (1) For licensed psychologist applicants, until they have passed the examination to which they have been admitted by the Board, have been notified of the results, have completed supervision requirements specified in subsection (d) of this section, and have been informed by the Board of permanent licensure as a licensed psychologist; or
- (2) For licensed psychological associate applicants, until they have passed the examination to which they have been admitted by the Board, have been notified of the results, and have been informed by the Board of permanent licensure as a licensed psychological associate, after which time supervision is required only for those activities specified in subsection (e) of this section.

(d) For permanent licensure as a licensed psychologist, an otherwise qualified psychologist must secure two years of acceptable and appropriate supervised experience germane to his or her training and intended area of practice as a psychologist. The Board shall permit such supervised experience to be acquired on a less than full-time basis, and shall additionally specify in its rules the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. Supervision of health services must be received from qualified licensed psychologists holding health services provider certificates, or from other psychologists recognized by the Board in accordance with Board rules.

- (1) One of these years of experience shall be postdoctoral, and for this year, the Board may require, as specified in its rules, that the supervised experience be

comparable to the knowledge and skills acquired during formal doctoral or postdoctoral education, in accordance with established professional standards.

- (2) One of these years may be predoctoral and the Board shall establish rules governing appropriate supervised predoctoral experience.
- (3) A psychologist who meets all other requirements of G.S. 90-270.11(a) as a licensed psychologist, except the two years of supervised experience, may be issued a provisional license as a psychologist or a license as a psychological associate, without having received a master's degree or specialist degree in psychology, by the Board for the practice of psychology.

(e) A licensed psychological associate shall be supervised by a qualified licensed psychologist, or other qualified professionals, in accordance with Board rules specifying the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. A licensed psychological associate who provides health services shall be supervised, for those activities requiring supervision, by a qualified licensed psychologist holding health services provider certification or by other qualified professionals under the overall direction of a qualified licensed psychologist holding health services provider certification, in accordance with Board rules. Except as provided below, supervision, including the supervision of health services, is required only when a licensed psychological associate engages in: assessment of personality functioning; neuropsychological evaluation; psychotherapy, counseling, and other interventions with clinical populations for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior; and, the use of intrusive, punitive, or experimental procedures, techniques, or measures. The Board shall adopt rules implementing and defining this provision, and as the practice of psychology evolves, may identify additional activities requiring supervision in order to maintain acceptable standards of practice.

(f) A nonresident psychologist who is either licensed or certified by a similar Board in another jurisdiction whose standards, in the opinion of the Board, are, at the date of his or her certification or licensure, substantially equivalent to or higher than the requirements of this Article, may be issued a temporary license by the Board for the practice of psychology in this State for a period not to exceed the aggregate of 30 days in any calendar year. The Board may issue temporary health services provider certification simultaneously if the nonresident psychologist can demonstrate two years of acceptable supervised health services experience. All temporarily licensed psychologists shall comply with supervision requirements established by the Board.

(g) An applicant for reinstatement of licensure, whose license was suspended under G.S. 90-270.15(f), may be issued a temporary license and temporary health services provider certification in accordance with the duly adopted rules of the Board. (1967, c. 910, s. 5; 1977, c. 670, s. 4; 1979, c. 670, s. 3; 1985, c. 734, s. 4; 1993, c. 375, s. 1; 2012-72, s. 1.)

21 NCAC 54 .2006 is proposed for readoption with substantive changes as follows:

21 NCAC 54 .2006 PSYCHOLOGICAL ASSOCIATE ACTIVITIES

(a) The assessment of overall personality functioning by a psychological associate requires supervision. ~~supervision, if practicing under Level 1 or Level 2 supervision, as set forth in Rules .2008(h)(1) or .2008 (h)(2).~~ The assessment of personality functioning involves any assessment or evaluative technique which leads to conclusions, inferences, and hypotheses regarding personality functioning. This includes:

- (1) all statements regarding personality attributes, features, traits, structure, dynamics, and pathology or assets;
- (2) the use of personality assessment techniques which include, but are not limited to, observation, interviewing ~~and, and~~ mental status examinations; ~~examinations word association tests, diagnostic play therapy, and autobiographical techniques; and~~
- (3) ~~the use of standardized personality techniques or tests. Examples of techniques or tests include, but are not limited to, the following: Rorschach, Thematic Apperception Test, sentence completion tests, the House Tree Person, Minnesota Multiphasic Personality Inventory, the California Personality Inventory, The Millon tests, the 16PF, and all other self report inventories and questionnaires, as well as scales and check lists completed by others. The tests identified in this Rule as requiring supervision do not constitute an exhaustive list, only the most commonly utilized measures.~~ the use of current assessment techniques that have adequate evidence of reliability and validity.

Not requiring supervision are screening techniques which lead to simple descriptors of persons which may be completed by a variety of professional and non-professional observers and are interpreted by other parties.

~~(b) The conduct administration of neuropsychological evaluations by psychological associates requires supervision. supervision, if practicing under Level 1 or Level 2 supervision, as set forth in .2008(h)(1) or .2008(h)(2). Not requiring supervision are neuropsychological screenings which lead to simple behavioral descriptions rather than clinical interpretations, or the administration of rating devices which may be completed by a variety of professional and non-professional observers and are subsequently interpreted by other parties.~~

~~(c)~~ (b) Psychotherapy, counseling, and any other interventions with a clinical population for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior provided by a psychological associate require ~~supervision.~~ supervision, if practicing under Level 1 or Level 2 supervision, as set forth in .2008(h)(1) or .2008(h)(2). Clinical populations include persons with discernible mental, behavioral, emotional, psychological, or psychiatric disorders as evidenced by an established ~~Axis I or Axis II diagnosis or V Code condition~~ diagnostic classification system in the then current ~~DSM~~ Diagnostic and Statistical Manual of Mental Disorders or International Classification of Diseases and all persons meeting the criteria for such diagnoses. Interventions other than psychotherapy and counseling that are encompassed by this definition include, but are not limited to, psychological assessment, psychoanalysis, behavior analysis/therapy, biofeedback, and hypnosis. Supervision is required if practicing under Level 1 or Level 2 supervision, as set forth in .2008(h)(1) or .2008(h)(2). when the psychological

1 associate is providing an intervention to persons within a clinical population, directly with the person(s) or in
2 consultation with a third party, for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired
3 behavior. Supervision is required if practicing under Level 1 or Level 2 supervision, as set forth in .2008(h)(1) or
4 .2008(h)(2), for the design or clinical oversight of interventions for persons within a clinical population, such as
5 biofeedback techniques and behavior intervention programs; however, supervision is not required for the actual
6 implementation of such interventions that were designed for others to implement, which may or may not constitute
7 ancillary services.

8 ~~(d)~~ (c) The use, including authorization, of intrusive, punitive, or experimental procedures, techniques, or measures
9 by a psychological associate requires ~~supervision~~ supervision, if practicing under Level 1 or Level 2 supervision, as
10 set forth in .2008(h)(1) or .2008 (h)(2). These procedures, techniques, or measures include, but are not limited to,
11 seclusion, physical restraint, the use of protective devices for behavioral control, isolation time-out, and any utilization
12 of punishment techniques involving aversive stimulation. Also included in this definition are any other techniques
13 which are physically intrusive, are restrictive of human rights or freedom of movement, place the client at risk for
14 injury, or are experimental in nature (i.e., in which the efficacy and degree of risk have not previously been clinically
15 established).

16 ~~(e) Supervision is required for a psychological associate who provides clinical supervision to other service providers~~
17 ~~who are engaged in activities which would require supervision if directly provided by the psychological associate.~~

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19 *History Note:* Authority G.S. 90-270.5(e); 90-270.9;
20 *Eff. October 1, 1991;*
21 *Amended Eff. October 1, 2006. 2006:*
22 *Readopted April 1, 2020.*
23

21 NCAC 54 .2008 is proposed for readoption with substantive changes as follows:

21 NCAC 54 .2008 PSYCHOLOGICAL ASSOCIATE

(a) Except as provided in this Rule, a Psychological Associate practicing psychology in North Carolina shall receive supervision for activities specified in G.S. 90-270.5(e) and ~~21 NCAC 54 .2006. Rule .2006 of this Section.~~

(b) A Psychological Associate whose professional practice is limited to those activities other than those specified in G.S. 90-270.5(e) and ~~21 NCAC 54 .2006. Rule .2006 of this Section~~ as requiring supervision shall not be required to receive supervision.

(c) A Psychological Associate who is a regular salaried employee of the State Department of Public Instruction or a local board of education, and whose professional activities are limited only to those for which he or she is employed by that agency, shall not be required to receive supervision. This exemption shall not apply to individuals who contract with the Department of Public Instruction or local boards of education for the delivery of psychological services which otherwise require supervision in the schools.

(d) A Psychological Associate who engages in the practice of psychology in a jurisdiction other than North Carolina shall not be required to receive supervision as set forth in this Rule for those services rendered in another jurisdiction so long as said services in another jurisdiction are rendered in a manner consistent with ~~the~~ that jurisdiction's legal requirements.

(e) A written, notarized supervision contract form shall be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board and within 30 days after receiving written notification from the Board that the filing of a new form is necessary to provide for the protection of the public or the regulation of the practice of psychology. A supervision contract form shall document either that supervision is required and shall be received, or that supervision is not required. A separate supervision contract form shall be filed for each separate work setting. A work setting is considered as self-employment, employment under an umbrella agency, or employment at a stand-alone business entity. If receiving supervision from more than one supervisor to meet the minimum requirements, a separate supervision contract form shall be filed with each individual supervisor.

(f) A supervisor shall report to the Board that agreed upon supervision has occurred and shall file a final report upon termination of supervision. ~~If not receiving supervision, it shall be the responsibility of the Psychological Associate to report such to the Board.~~ A report shall be submitted to the Board by the following time periods: (1) within 30 days after receiving written notification from the Board that such is due, due; (2) within 2 weeks of termination of supervision, supervision; and and, (3) within 2 weeks of a change in the conditions specified in the supervision contract form on file with the Board. If not receiving supervision, it shall be the responsibility of the Psychological Associate to report such to the Board.

(g) Additional supervision and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggests possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview with the Board or its designated representative(s) may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(h) Supervision shall be provided in individual, ~~face-to-face~~, face-to-face supervision, as defined by Rule 2003 of this Section, sessions which shall last no longer than 2 hours or less than 30 minutes by an individual who shall be recognized as an appropriate supervisor as defined in Rule .2001 of this Section. ~~A Psychological Associate shall receive a minimum of one hour per month of individual supervision in any month during which he or she engages in activities requiring supervision.~~ The rates of supervision specified in this Paragraph shall be provided for each separate work setting in which the Psychological Associate engages in the activities requiring supervision. A work setting is considered as self-employment, employment under an umbrella agency, or employment at a stand-alone business entity. Minimum hours of supervision required for each work setting shall not be split between more than two supervisors. The term "post-licensure" in this Paragraph shall refer to the period following issuance of a Psychological Associate license by the North Carolina Psychology Board. The term "supervised practice" in this Paragraph shall refer to activities requiring supervision as specified in G.S. 90-270.5(e) and ~~21 NCAC 54 .2006~~, Rule 2006 of this Section. Except as provided in Paragraph (g) of this Rule, minimum supervision requirements shall be as follows:

- (1) Level 1. For a Psychological Associate with less than 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice, minimum supervision shall be provided as follows:

| No. of hours per month engaging in activities that require supervision | No. of hours of required individual supervision per month |
|--|---|
| 1 - 10 | 1 |
| 11 - 20 | 2 |
| 21 - 30 | 3 |
| 31 plus | 4 |

- (2) Level 2. If a Psychological Associate does not meet the pass point set in Rule .1901(a)(1) of this Subchapter, of a scaled score of 500, then after a minimum of 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice a minimum of one hour per month individual supervision may be provided to a Psychological Associate who engages in activities requiring supervision. After a minimum of 3 calendar years consisting of at least 4500 hours of post licensure supervised practice, minimum supervision may be provided as follows:

| No. of hours per month engaging in activities that require supervision | No. of hours of required individual supervision per month |
|--|---|
| 1 - 20 | 1 |
| 21 plus | 2 |

To be approved by the Board for this level of supervision, a Psychological Associate shall:

- (A) make application on an application form provided by the Board;
- (B) document that all performance ratings for the preceding 3 years and 4500 hours of post-licensure supervised practice have been average or above average;
- (C) have received at least one calendar year of supervision from the most recent supervisor; and
- (D) have the recommendation of the most recent supervisor for this level of supervision.
- ~~(3) Level 3. After a minimum of 5 calendar years consisting of at least 7500 hours of post-licensure supervised practice, a minimum of 1 hour per month individual supervision may be provided to a Psychological Associate who engages in activities requiring supervision. To be approved by the Board for this level of supervision, a Psychological Associate shall:~~
- (3) Level 3. After a minimum of 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice, as set forth above in Paragraph (h)(1) of this Rule, or 5 calendar years of post-licensure supervised experience, as set forth in Paragraph (h)(2) of this Rule if a psychological associate does not meet the scale score of 500, no further supervision shall be required, provided that a Psychological Associate shall:
- (A) make application on an application form provided by the Board;
- (B) document that all performance ratings for the preceding 3 years and 4500 hours of post-licensure supervised practice have been average or above average for those applying under Paragraph (h)(1) of this Rule; or 5 years of post-licensure supervised practice for those required to apply under Paragraph (h)(2) of this Rule;
- (C) have received at least one calendar year of supervision from the most recent supervisor; and
- (D) have the recommendation of the most recent supervisor for independent practice.
- ~~(A) make application on an application form provided by the Board~~
- ~~(B) document that all performance ratings for the preceding 5 years and 7500 hours of post-licensure supervised practice have been average or above average;~~
- ~~(C) have received at least one calendar year of supervision from the most recent supervisor; and~~
- ~~(D) have the recommendation of the most recent supervisor for this level of supervision.~~
- (i) The frequency and scope of supervision may, at the discretion of the supervising psychologist, be modified provided that the minimum rate of supervision as defined in Paragraph ~~(h)~~ (h)(1) or (h)(2) of this Rule is provided. The supervising psychologist of record may review, approve, and monitor additional individual or group supervision to be provided to the supervisee by a ~~Licensed Psychological Associate, licensed psychological associate, Licensed Psychologist~~ licensed psychologist holding a permanent or provisional license, or a professional from a related discipline. Such supervision shall not substitute for the minimum requirements specified in Paragraph ~~(h)~~ (h)(1) or (h)(2) of this Rule.

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(j) Contract and report forms shall be provided by the Board.

History Note: Authority G.S. 90-270.4(c); 90-270.5(e); 90-270.9;
Eff. July 1, ~~1997~~ 1997;
Readopted April 1, 2020.