

Psychology-Board-Response



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Amber May
North Carolina Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609

*Re: NC Psychology Board proposed revisions to 21 NCAC 54 .2006 and 21
NCAC 54 .2008*

Dear Ms. May:

I am the Assistant Attorney General that represents the North Carolina Psychology Board and I write on its behalf regarding the Board's proposed changes to 21 NCAC 54 .2006 and 21 NCAC 54 .2008 (hereinafter Rules .2006 and .2008). The Board respectfully asserts that it has the requisite statutory authority pursuant to N.C. Gen. Stat. § 90-270.5(e) to amend these rules in the manner that it has proposed.

Specifically, Rule .2008, regarding supervision of Master's level psychologists, requires licensed psychological associates to receive supervision, the exact amount of which is dependent on the number of hours that the licensed psychological associate practices psychology per month. This provision has not been revised.

The revisions to Rule .2008 allow for the following. After the passage of three years and at least 4,500 hours of post licensure supervised practice, if a licensed psychological associate received a scaled score of 500 on the national licensing examination, after meeting certain conditions, including the receipt of average or above ratings from supervisors, the licensed psychological associate is no longer required to receive supervision. If the licensed psychological associate received lower than a scaled score of 500 on the national licensing exam, then the licensed psychological associate shall remain under supervision for 5 years of post-licensure supervised practice, after meeting certain conditions, including the receipt of average or above ratings from supervisors. Prior to meeting either of these requirements, all psychological associates are required to be supervised under Rule .2008.

The current Rule .2008 reduces supervision of licensed psychological associates to a minimum of one hour per month after the passage of 5 years and 7500 hours of post licensure supervised practice.

N.C. Gen. Stat. § 90-270.5(e), as set forth below, authorizes the Board to revise its rules in the manner that it has proposed.

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.

As set forth in N.C. Gen. Stat. § 90-270.5(e), supervision, when required, is implemented in accordance with Board rules, which specify 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. This precise language is the statutory authority for the Board's rule making authority with regard to the supervision of licensed psychological associates. It is consistent with this statutory authority that the Board may promulgate rules that create a framework under which supervision is phased out after a number of years of supervised practice.

The Board has determined that after the passage of either 3 or 5 years, contingent upon the score on the national licensing exam, ratings from supervisors, and other conditions, supervision may be eliminated for licensed psychological associates.

Under N.C. Gen. Stat. § 90-270.1, the NC Psychology Practice Act states that the practice of psychology in North Carolina is declared to affect the public health, safety and welfare and is

subject to regulation to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by person licensed to practice psychology.

There has been no evidence provided to the Board or uncovered by the Board that perpetual supervision of experienced and seasoned licensed psychological associates protects the public. In fact, there has been evidence presented to the Board and to this Commission that the converse is the case. Lifetime supervision is a substantial financial and time burden on licensed psychological associates that makes it more difficult for them to continue to practice psychology and may result in them seeking licensure in a different profession that allows for independent practice without supervision or ceasing the practice of psychology, thus reducing the availability of vital mental health services to the citizens of North Carolina. It is burdensome for licensed psychological associates to find a supervisor in rural areas of the state where their psychological services are needed the most as there tend to be few providers of mental health services in those areas. No evidence has been provided to the Board that one hour of supervision per month, which is the minimum under the existing rule after 5 years of practice, will serve to protect the public at all. Further, the elimination of supervision after a period of three or five years, is consistent with other mental health professions in North Carolina where master's level practitioners may practice independently after a period of time practicing under supervision - Licensed Clinical Social Workers (LCSW), Licensed Marriage and Family Therapists (LMFT), Licensed Clinical Addiction Specialists (LCAS), and Licensed Professional Counselors (LPC).

North Carolina Courts have treated the interpretation of a statute by those who administer the statute as "strongly persuasive" and "prima facie correct." MacPherson v. City of Asheville, 283 N.C. 299, 307, 196 S.E.2d 200, 206 (1973). At a minimum, an agency's statutory construction is entitled to "great consideration." Id., 283 at 307, 196 S.E.2d at 206. Further, an agency's interpretation of its enabling statute is "persuasive authority" that receives "great weight." Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 207, 593 S.E.2d 764, 774 (2004); High Rock Lake Partners, LLC v. N.C. Dep't of Transp., 366 N.C. 315, 319, 735 S.E.2d 300, 303 (2012).

As a result, the clear intent of the legislature was to grant the Psychology Board the authority to promulgate rules detailing the supervision provided to licensed psychological associates, including time frames and amounts of supervision to be provided.

As stated in N.C. Acupuncture Licensing Bd. v. N.C. Bd. of Physical Therapy Examiners, 2017 NCBC LEXIS 67, *20, 2017 NCBC 66, "rules fill the interstices of statutes. They go beyond mere interpretation of statutory language or application of such language and within statutory limits set down additional substantive requirements." This is precisely what the Board has done in defining the time frames and amounts of supervision to be provided to licensed psychological associates. The Board has simply filled in the interstices of N.C. Gen. Stat. § 90-270.5(e), as it is statutorily authorized to do.

With these above principles in mind, the Board respectfully asks that the Commission determine that the Board has acted appropriately and within its statutory authority in its revisions in .2006 and .2008.

Thank you for your consideration of this request.



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Assistant Attorney General