EVERETT GASKINS H Attorneys and Counselors at Law

**NCOCK**<sub>LLP</sub>

TO: Rules Review Commission

RE: Statement to the Rules Review Commission in Support of Rule Changes Permitting the Independent Practice of Licensed Psychological Associates

DATE: February 13, 2020

#### TO: Members of the Commission

The Psychology Practice Act ("the Act") is codified in Article 18A of the General Statutes, § 90-270.1 *et seq.* The predicate for the Act is that the practice of psychology "affects the public health, safety, and welfare" and thus is subject to regulation "to protect the public." N.C. Gen. Stat. § 90-270.1(b). The primary responsibility of ensuring that protection is through the Psychology Board created by the General Assembly in the Act. N.C. Gen. Stat. § 90-270.6. The primary tool given to the Psychology Board to protect the public is the power to license practitioners of psychology and to make rules and regulations applicable to licensees. N.C. Gen. Stat. § 90-270.9.

Specifically included in the Psychology Board's powers and responsibilities is the obligation to make rules dealing with licensed psychological associates, including the statutory requirement that psychological associates "shall be supervised" by a licensed psychologist or other qualified professionals. However, decisions regarding the nature, extent, and duration of that supervision are delegated entirely to the Psychology Board by the General Assembly through its rule-making authority to determine "the format, setting, content, time frame, and amounts of supervision, qualification of supervisors, disclosure of supervisory relationship, the <u>organization of the supervised experience</u>, and the nature of the responsibility assumed by the supervisor." N.C. Gen. Stat. § 90-270.5(e). (Emphasis supplied).

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The General Assembly specifically authorized the Psychology Board to adopt rules "implementing and defining this provision" and to anticipate changing its rules to maintain "acceptable standards of practice" over time "as the practice of psychology evolves." *Id.* 

From the inception of the Act in 1967 until now, the Psychology Board has adopted rules requiring career-long monthly supervision of psychological associates (licensees holding a master's degree), usually by licensed psychologists (holding a doctoral degree). The impact of that requirement, as the practice of psychology has developed over the last 53 years, has resulted in a decrease in the availability of psychologists (particularly in rural North Carolina); a financial burden on psychological associates; and the inability of LPAs/therapists to obtain payment from government and the vast majority of private insurers for clinical services rendered to NC citizens; without enhancing the quality of psychological associates does not provide increased safety to the public.

We represent two licensed psychologists and four licensed psychological associates who petitioned the Psychology Board to address this issue ("the Petitioners"). The factual basis upon which the Board drew for this rule change was presented to the Board in August 2018, by a carefully documented petition.

We attach hereto our letter to the Psychology Board on behalf of the Petitioners dated August 15, 2018, requesting the rule change, as well as a portion of the Appendix to the Petition. We call your attention in particular to Sections III, IV, V and VI (pp. 3-7, 8-11) of the Appendix.

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Section III established that there is no increased risk to the public from the independent practice of qualified LPA's after three (3) years of supervision and no benefits to clients from continued supervision.

Section IV reflects that of the five licensed mental health professions in North Carolina which can be practiced by individuals holding a master's degree (psychology, professional counseling, marriage and family therapy, clinical social work counseling and clinical addiction counseling), only psychology requires career-long close supervision.

Sections VI reflects the shortage of psychologists in North Carolina, particularly in rural counties. It also reflects that licensed psychological associates are eight times more likely to practice in rural counties than doctoral psychologists. Thus the inability to qualify for insurance and government payments for services (as documented in Section V) negatively impacts the availability of needed psychologists, particularly in rural areas.

After careful study, public hearings, and advice of Board counsel, the Board developed rules designed to address these issues, which rules are now before the Rules Review Commission as 21 NCAC 54 .2006 and .2008. In effect, these rule changes will eliminate the requirement for career-long monthly supervision of <u>qualified</u> psychological associates: those who have: (1) made a high score on the written psychologist examination (EPPP); (2) been closely supervised for at least three (3) years (a minimum of 4,500 hours); (3) been recommended for independent practice by their supervisor; and (4) been approved by the Board for independent practice. Similar provisions eliminating career-long close supervision have been adopted by at least eight states.

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In making these proposed changes, the Psychology Board exercised its broad authority to promulgate rules for the supervision of psychological associates to accommodate changing standards of practice over the last 53 years, and specifically exercising its statutory authority to determine the time frame and nature of supervision for qualified psychological associates after a minimum of three (3) years of close supervision. For the duration of their licensure, psychological associates will continue to be "supervised" by members of the Psychology Board through the myriad of rules and regulations applicable to them.

As recently as December 2018, the Supreme Court of North Carolina approved similar action taken by the North Carolina Board of Physical Therapy Examiners in North Carolina Acupuncture Licensing Board v. North Carolina Board of Physical Therapy Examiners, \_\_\_\_\_ N.C. , 821 S.E.2d 376 (2018).

In that case, the Acupuncture Board challenged a change by the Physical Therapy Board in its policy which for decades had prohibited licensed physical therapists from performing "dry needling," a process involving the insertion of needles into muscle tissue to relieve pain. Prior to 2015, the Physical Therapy Board had determined that "dry-needling" was a form of acupuncture and could not be performed by licensed physical therapists. *Id.* at 378.

In upholding the policy change made by the Physical Therapy Board to allow "dry needling," the Supreme Court articulated that the key in determining the limits of statutory authority granted to a board is to "apply the enabling legislation practically so that the agency's powers include all those the General Assembly intended the agency to exercise." *Id.* at 379. Although the agency's interpretation of its authority is not absolute, one should "give great weight

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to an agency's interpretation of a statute it is charged with administering." *Id.* (Citation omitted). One factor in that weight is "the thoroughness evident in the consideration." *Id.* Further, the Court held that the best indication of legislative intent is determined by "the language of the statute, the spirit of the Act and what the Act seeks to accomplish." *Id.* at 380. (Citation omitted).

Here, the Act gives the Psychology Board broad authority to promulgate rules concerning the supervision of psychological associates, including the "time frame" (duration), nature and extent of supervision. The Act seeks to accomplish the protection of the public. After careful study and deliberation, based on factors relevant to the current practice of psychology, the Psychology Board has determined that requiring continued close, monthly supervision after three years for qualified psychological associates does not promote the public interest but rather is contrary to the public interest. That determination is within the Psychology Board's statutory authority and should be respected by the Rules Review Commission.

Respectfully submitted this the 13<sup>th</sup> day of February, 2020.

EVERETT GASKINS HANCQCK LLP tasking

E.D. Gaskins, Jr. Katherine A. King P.O. Box 911 Raleigh, NC 27602 (919) 755-0025 Counsel for Petitioners

# EVERETT GASKINS HANCOCKILP

Attorneys and Counselors at Law

August 15, 2018

North Carolina Psychology Board 895 State Farm Road, Suite 101 Boone, NC 28607

Attn: Dr. Robert W. Hill, Chair

RE: Request for Rulemaking

Dear Dr. Hill:

We represent the Petitioners identified below. Two of them are licensed psychologists (LPs) and four are licensed psychological associates (LPAs). Affidavits of each of the Petitioners are included in the attached Appendix as Exhibits 1-6. Pursuant to N.C. Gen. Stat. § 150B-20 and 21 N.C.A.C. 54.2401 and .2402, the Petitioners through counsel hereby petition for rulemaking and show to the North Carolina Psychology Board ("the Board") the following in support thereof:

1. This is a petition to conduct rulemaking to amend Section 21 N.C.A.C. 54 .2008(h) to eliminate career-long supervision of master's-level psychologists ("LPAs") so that LPAs can hold an independent and unrestricted license after three (3) years.

2. A draft of the proposed rule as changed is attached hereto and as Exhibit 10 of the Attachment. In substance, supervision would be required for a minimum of three (3) calendar years consisting of a minimum of 4,500 hours of post-licensure supervision.

- 3. The reasons for the proposed rule change are that:
  - There are no reliable empirical data indicating an increased risk of harm to patients by allowing independent LPA practice after three years of supervision;
  - There are no reliable empirical data indicating improvement in patient outcomes from career-long supervision;
  - Career-long supervision imposes an unjustifiable and inequitable economic burden on LPAs;
  - Career-long supervision unfairly disqualifies LPAs from receiving payment for services from many insurers and governmental entities;
  - Career-long supervision negatively impacts LPA employability in contrast to other licensed master's-level providers of mental health services;

The Historic Briggs Hardware Building • 220 Fayettville Street, Ste. 300 • Raleigh, North Carolina 27601 P.O. Box 911 • Raleigh, North Carolina 27602 Telephone: 919-755-0025 • Facsimile: 919-755-0009 • Website: www.eghlaw.com

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- Career-long supervision decreases the availability of LPAs to serve the public (particularly in non-urban areas); and
- The current supervision requirement has contributed to the decline of the psychology discipline in North Carolina relative to other licensed mental health care disciplines.

4. The effect on existing rules would be to reduce supervision from career-long to three (3) calendar years.

5. Data supporting the proposed rule change are contained in the Appendix ("App.") attached hereto and made a part hereof.

6. The effect on existing practices would be to make psychological services more readily available to the public (particularly in non-urban areas), less expensive, more readily covered by insurance and governmental programs; and would reduce operational costs to LPAs; all without sacrificing patient outcomes.

7. Those most likely to be affected by the proposed rule change are:

- LPAs with three (3) or more calendar years of practice who will be relieved of the unjustifiable, inequitable and costly supervision requirement;
- The people of North Carolina who will benefit from increased access to care and improved affordability;
- Those considering a career of service as an LPA; and
- The supervisors who benefit financially from the current supervision requirement.

Specific names and addresses are not known by the Petitioners, except as set forth below.

8. The names and addresses of the Petitioners are:

Les Brinson, PhD, LP 4617 Limerick Drive Raleigh, NC 28704

Vinston J. Goldman, PhD, LP 723 Jerome Road Durham, NC 27713

Flora Dunbar, MA, LPA 1814-205 Nantuckett Lane Charlotte, NC 28270

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> Janet Heuring, MA, LPA 6700 Rollingwood Drive Raleigh, NC 27613

Tara Luellen, MA, LPA 823 Shackleton Road Apex, NC 27502

Carol Williams, MA, LPA 2026 Quail Circle Creedmoor, NC 27522

Respectfully submitted,

EVERE(T)GASKINS HANCOCK LLP

E.D. Gaskins, Jr.

Katherine A. King

Attachments

CC: Dr. Les Brinson (w/ attachments) Dr. Vinston J. Goldman (w/ attachments) Ms. Flora Dunbar (w/ attachments) Ms. Janet Heuring (w/ attachments) Ms. Tara Luellen (w/ attachments) Ms. Carol Williams (w/ attachments) Executive Director Daniel Collins (w/ attachments)

#### Proposed Amended Rule 21 NCAC 54.2008(h)

(h) Supervision shall be provided in individual, face-to-face, 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. 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. Except as provided in Paragraph (g) of this Rule, minimum supervision requirements shall be as follows:

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

After a minimum of 3 calendar years consisting of at least 4500 hours of post-licensure supervised practice, no further supervision is 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;

(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 that no further supervision be required.

#### Appendix to the Petition for a Rule Change to End Career Long Supervision of LPA's in North Carolina August 15, 2018

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#### I. Introduction

N.C. Gen. Stat. § 90-270.5(e) (Exhibit 7, App. p. 19) sets forth the requirement that licensed psychological associates ("LPAs") must be supervised by qualified licensed psychologists ("LPs") or other professionals "in accordance with Board rules specifying the format, setting, content, <u>time frame</u>, amounts of supervision, qualification of supervisors ..." (Emphasis supplied).

The Board rules implementing the statute are 21 NCAC 54 .2006 and .2008 (Exhibit 8, App, pp. 21-22). Rule .2008(h) sets forth the "time frame" element of the requirement. It provides time frames for three levels of supervision, with the times frame for level 3 supervision continuing for the duration of the LPAs career.

There has long been ongoing discussion and debate concerning the clinical skills of master's-level compared to doctoral-level psychologists and thus the need for career-long supervision. (See e.g., Terminal Master's-Level Training in Counseling Psychology: Skills Competencies, and Student Interests, Professional Psychology: Research and Practice, American Psychological Association, 1990) (Exhibit 9, App. p. 24). That debate has contributed to nine states (Alaska, Arkansas, Kansas, Kentucky, Oklahoma, Oregon, Tennessee, Vermont, and West Virginia) eliminating career-long supervision of master's-level psychologists. (Affidavit of Williams, Ex. 6, App. p. 18).

Other master's-level mental health care licensees are already permitted to practice independently in North Carolina, as reflected in Section II. The affidavits of the six Petitioners (App. Ex. 1-6, pp. 1-18) speak directly to the negative impact of the current career-long supervision rule on LPAs, the practice of psychology in North Carolina, and the public.

Your Petitioners now request a change to Rule .2008(h) to eliminate supervision of LPAs after three years and thus permit independent and unrestricted practice. The proposed amended Rule .2008(h) is included as Exhibit 10 of the Appendix, p. 27.

#### II. Information Concerning Licensed Mental Health Care Professionals in N.C.

There are at least five allied licensed mental health care professional disciplines in North Carolina which provide assessment of personality functioning leading to hypotheses, inferences and conclusions regarding personality functioning and/or counseling or other interventions with a clinical population for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior. Psychology has both doctoral-level and master's-level practitioners. Professional counselors, clinical addiction specialists, clinical social workers and marriage and family therapists require only a master's degree. Only one – master's-level psychologist – currently requires career-long supervision. Psychology and the other four disciplines are depicted in the table and graph on the following pages which reflect the number of licensees in effect per year for each discipline for 2013 through 2017/2018, inclusive, and the growth or decline of licensees in each discipline in percentage and numbers. The table and chart indicate a 4% decline in LPAs, an 8% increase in LPs while the other four disciplines have grown from 24% to 165%.<sup>1</sup> (See Table and Chart attached, pp. 2A and 2B).

<sup>&</sup>lt;sup>1</sup> The data reflected in the table and chart for psychologists was published in the Annual Reports of the Psychology Board posted on the N.C. Psychology Board website and includes all LP and LPA licensees. The data in Section VI reflects only <u>actively practicing</u> psychologists and psychological associates as reported by the UNC Cecil G. Sheps Center for Health Service Research & Data.

	LICENSED PSYCHOLOGISTS (LP)	LICENSED PSYCHOLOGICAL ASSOCIATES (LPA)	LICENSED PROFESSIONAL COUNSELORS (LPC)	LICENSED CLINICAL ADDICTION SPECIALISTS (LCAS)	LICENSED CLINICAL SOCIAL WORKERS (LCSW/LCSWA)	LICENSED MARRIAGE & FAMILY THERAPISTS (LMFT)
2013	2,662	1,234	Not available	1648	8046	1088
2024	2,783	1,254	Not available	2012	8351	1106
2015	2,756	1,215	7153	2483	8831	1158
2016	2,926	1,261	7837	3058	9398	1194
2017	2,876	1,186	8858	3735	9952	1244
2018	Not available	Not available	Not available	4374	10343	1451
Growth Since 2013	214	-48	1705	2726	2297	363
olo Growth Stree 2013	8%	-4%	24%	165%	29%	33%
,	Data obtained from North Carolina Psychology Board	Data obtained from North Carolina Psychology Board	Data obtained from Board Administrator of the North	Data obtained from Executive Director of North Carolina Substance Abuse Professional Practice Board	Data obtained from Executive Director of NC Social Work Certification and	Data obtained from Executive Director of

#### North Carolina Allied Licensed Healthcare Professionals

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Psychology Board Psychology Board Annual Reports Annual Reports

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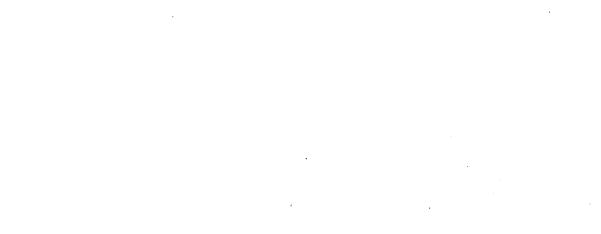
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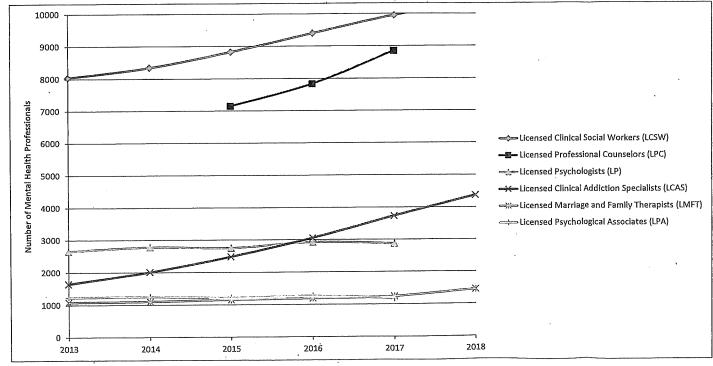
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#### III. <u>There Is No Increased Risk to the Public from Independent Practice by LPAs After Three</u> <u>Years of Supervision</u>.

In 2012 the Board of Directors of the North Carolina Psychological Association ("NCPA") and the Executive Committee of the North Carolina Association of Professional Psychologists ("NCAPP") formed a joint workgroup ("the Workgroup") to address concerns arising in the practice of psychology in North Carolina. Among the four major issues addressed was the requirement of career-long supervision of LPAs.

After reviewing the data provided by the Workgroup, the chairperson of the Board on February 26, 2013, wrote a letter to the Workgroup (Exhibit 11, App. p. 29) which addressed the supervision issue in pertinent part as follows:

First, whether LPAs may practice independently after three years of supervision of all practice. The Workgroup provided the Board with data which indicated that there is no increased risk of harm to the public when independent practice is obtained by master's-level practitioners after three years of supervised practice. As a result, the Board supports the proposal.

The information relied on by the Workgroup is consistent with that contained in an article appearing in the Counseling and Psychotherapy Research journal, March 2007, entitled, <u>The Impact of Clinical Supervision on Counsellors and Therapists</u>, <u>Their Practice and Their Clients</u>. <u>A Systematic Review of the Literature</u>. (Exhibit 12, App. p. 31). ("... [N]o studies in this review offer substantial evidence to support improvement in client outcome as a [result of long-term supervision].") Id. at App. p. 40. <u>See also The Competency of Masters Psychologists as Mental Health Professionals</u>: <u>A Literature Review</u>, Journal of Psychological Practice, 2007 (Ex. 13, App. p. 43). ("In summary, masters psychologists appear to have established professional competency in service delivery and are widely held in high regard by mental health employers.") Id. at App. p. 53.

In summary, although supervision appeared to some "to offer opportunities for supervisees to improve practices and gain in confidence, ... the link to improved outcome for

clients is tentative and no studies in this review offer substantial evidence to support improvement in client outcomes." (Ex. 12 at App. p. 40).

As attested by former Board Member Les Brinson in his affidavit:

18. In fact, to date, there has been no evidence provided by doctoral-level psychologists, psychological advocacy of representative groups, or any other body, to show that LPA independence would result in increased incidents of patient harm or neglect or decreased quality of patient care.

19. The research on such matters, with which I am familiar, is unequivocal in rebutting these notions. Master's-level psychologists have demonstrated a track record of practicing safely and ethically as independent practitioners in a number of states and other countries, including Canada.

20. My own observations in training, evaluating, monitoring, supervising, and receiving accolades from employers in mental health who provide internships and subsequent employment for our master's-level psychologists' result in my support of the efforts for LPAs to gain independence as professional psychological service providers in North Carolina.

(Brinson Affidavit, Ex. 1, App. p. 3).

There is no empirical data known to the Petitioners supporting the perspective that continued supervision after three years of practice improves client outcome in the practice of clinical psychology or is otherwise necessary to protect the health or safety of the public.

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#### IV. <u>Other Master's-Level Mental Health Professionals Do Not Require Career-Long</u> <u>Supervision</u>.

All five licensing boards discussed below were created by the North Carolina General Assembly for the same purpose as stated in their respective statutory mandates: to protect the public.

The North Carolina Marriage and Family Therapy Board ("M&F Board") was established in 1979. Marriage and family counseling is defined in pertinent part as "the diagnosis and treatment of psychological aspects of mental and emotional disorders." N.C. Gen. Stat. § 90-270.47(3b).

The M&F Board is authorized to grant to qualified applicants who hold a master's degree licenses as "licensed marriage and family therapists associates." N.C. Gen. Stat. § 90-270.54A. After three years of supervision pursuant to M&F Board rules, associates can obtain independent licensure as "licensed marriage and family therapists" with no further supervision. Id.

The North Carolina Board of Licensed Professional Counselors ("Counseling Board") was established in 1983. Counseling is defined in pertinent part as "evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans and other psychotherapeutic techniques ..." N.C. Gen. Stat. § 90-330(3)a.

The Counseling Board is authorized to issue licenses as "licensed professional counselor associates" to qualified applicants who hold a master's degree. N.C. G.S. § 90-336(c). After 3,000 hours of supervised practice, associates can obtain independent licensure as "licensed professional counselors." <u>Id</u>. Counseling Board rules establish that the required supervision is not permitted at a rate greater than 40 hours per week. 21 N.C.A.C. 53 .0205. That can result in two years or less of supervision.

The North Carolina Social Work Certification and Licensure Board ("Social Work Board") was also established in 1983. Social work is defined in pertinent part as, "the professional application of social work theory and methods to the biopsychological diagnosis, treatment or prevention of emotional and mental disorders." N.C. Gen. Stat. § 90B-3(6).

The Social Work Board is authorized to issue licenses as "licensed clinical social worker associate" to qualified applicants who hold a master's degree. N.C. Gen. Stat. § 90B-7. After two years of specified supervision pursuant to Social Work Board rules, associates can obtain independent licensure as "licensed clinical social workers." <u>Id</u>.

The North Carolina Substance Abuse Professional Practice Board ("Substance Abuse Board') was established in 1993. Substance abuse practice is defined in pertinent part as, "The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or addiction." N.C. Gen. Stat. § 90-113.31A(24).

The Substance Abuse Board is authorized to issue licenses as "licensed clinical addiction specialist associates" to qualified applicants who hold a master's degree. N.C. Gen. Stat. § 90-113.40(c). After two years of supervision pursuant to Substance Abuse Board rules, associates can obtain independent licensure as "licensed clinical addiction specialists." Id.

The North Carolina Psychology Board ("Psychology Board") was established in 1967. Psychology is thus the oldest of the five allied health care disciplines licensed at the master'slevel in North Carolina. The practice of psychology is defined in pertinent part as, "The observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior or of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, or mental health." N.C. Gen. Stat. § 90-270.2(8).

The Psychology Board is authorized to issue licenses as "licensed psychological associate" to qualified candidates who hold a master's degree. N.C. Gen. Stat. § 90-270.2(7). The Psychology Board is also authorized to issue licenses as "licensed psychologist" to qualified candidates who hold a doctoral degree. N.C. Gen. Stat. § 90-270.2(6). Both licensed psychologists and licensed psychological associates are authorized to engage in the practice of psychology and to represent themselves to the public as "psychologists." N.C. Gen. Stat. § 90-270.2(9). Licensed psychological associates cannot become a "licensed psychologist" without obtaining a doctoral degree. N.C. Gen. Stat. § 90-270.11(a). However, there is no requirement that a licensed psychological associate obtain a doctoral degree to remain in practice, but rather can obtain a "permanent" license as a psychological associate. N.C. Gen. Stat. § 90-270.11(b).

The Psychology Board is authorized to establish the nature, extent and duration of supervision required by a licensed psychological associate for "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." N.C. Gen. Stat. § 90-270.5(e). (Ex. 7, App. p. 19).

Unlike any of the other boards described above, the rules of the Psychology Board provide for three levels of supervision, and the "time frame" for the final level of supervision is for the duration of licensure of a psychological associate. Thus under current Board rules a master's-level psychologist can never obtain an independent and unrestricted license to practice psychology in North Carolina. This circumstance is particularly concerning in view of survey results, cited by Vinston J. Goldman in his affidavit, that North Carolina employers found master's-level psychologists were "among the better trained master's-level clinicians." (Goldman Affidavit, Ex. 2, App. p. 6).

## V. <u>Career-long Supervision Unfairly Disqualifies LPAs from Insurance and Governmental</u> Payment for Services and Other Benefits Enjoyed by Independent Practitioners.

Mental health care services are frequently covered by private insurance as well as government insurance such as Medicare and Medicaid. Thus a significant factor for those seeking mental health care is the availability of coverage for the treatment they receive. Further, the services provided by the five allied mental health care disciplines frequently overlap, as evidenced by the statutory definitions as set forth in Section IV.

Although Medicaid provides reimbursement for LPA professional services, Medicare does not because LPAs cannot achieve "independent" licensure as required by Medicare regulations. (Heuring Affidavit, Ex. 4, App. p. 12).

Similarly, although Blue Cross-Blue Shield provides coverage in North Carolina, most other private insurers do not, including United Behavioral Health, Tricare, Aetna, Humana, etc. Id. (See Eligibility Chart, p. 8A).

Further, Blue Cross Blue Shield provides only limited coverage because LPAs do not hold "independent" licenses. Specifically, telehealth reimbursement is not available for LPA telehealth psychological services, but is available to other mental health practitioners who hold "independent" licenses making those professionals more convenient and accessible than LPAs. Id. This distinction is enforced by Blue Cross Blue Shield even though this Board has confirmed that LPAs may provide psychological services via telehealth, as is sometimes preferable as a result of transportation issues, child care, etc. or when dealing with acute situations.

LPAs in North Carolina are also disqualified from providing services to veterans through the Department of Veteran Affairs, although other mental health providers may do so because they hold "independent" licenses. (Heuring Affidavit, Ex. 4, App. p. 13).

Similarly, the American Red Cross does not permit LPAs in North Carolina to qualify as a Disaster Mental Health Volunteer. (Brinson Affidavit, Ex. 1, App. p. 2). However, other

# Major Panel/Agency - Eligibility for Provider Participation

Panel/Agency	Open to LPAs?	Open to <u>other</u> MA providers <u>without</u> Career-Long Supervision?	Which Ones?
Medicaid	Yes	, Yes	LCSW, LCAS, LMFT, LPC, LPA
BCBS State Health Plan	Yes	Yes	LCSW, LCAS, LMFT, LPC, LPA
Tricare	No	Yes	LCSW, LMFT, LPC
Medicare	No	Yes	LCSW, LMFT, LPC
Optum	No	Yes	LCSW, LMFT, LPC
Cigna	No	Yes	LCSW, LMFT, LPC, LCAS
United Behavioral Health (UBH)	No	Yes	LCSW, LMFT, LPC
Humana	No	Yes	LCSW, LMFT, LPC
Aetna	No	Yes	LCSW, LMFT, LPC
Coventry	No	Yes	LCSW, LMFT, LPC
Magellan Behavioral Health	No	Yes	LCSW, LMFT, LPC
Volunteering for the American Red Cross as MH provider	No	Yes	LCSW, LMFT, LPC
US Department of Veterans Affairs	No	Yes	LCSW, LMFT, LPC
Health Resources and Services Administration Student Loan Repayment Assistance Program (serving high- needs populations)	No	Yes	LCSW, LMFT, LPC

Data collected by Athena Psychological Services staff from November of 2016 to July 2018

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master's-level mental health professionals may do so because they hold an "independent" license.

In addition LPAs are not eligible for the National Health Service Corps Loan Repayment Program for the same reason. That program provides loan repayment assistance to mental health providers who provide services to underserved populations in selected areas, but only if they hold an "independent" license. (Heuring Affidavit, Ex. 4, App. p. 13).

Though LPA clinical services are approximately 25% less costly than those of LPs, as reflected in both Blue Cross and Medicaid schedules, clients seeking the services of psychologists are not likely to choose LPAs to provide those services because many insurers will not reimburse for LPA services. <u>Id</u>. Similarly, in choosing among the several licensed mental health care providers in North Carolina who hold master's degrees, clients are more likely to choose those providers whose services are more widely covered by insurance and providers who can render reimbursable telehealth services.

Further, clients receiving therapeutic services from LPAs through employment-related Blue Cross Blue Shield insurance are constantly at risk of having their treatment coverage lost should their employer decide to change insurance carriers to one which does not pay for LPA services. If the client changes therapists, such change disrupts the therapeutic relationship between therapist and client which can negatively impact the change/healing process. This is detrimental to both the client (therapeutically) and the therapist (financially).

All of these competitive disadvantages for LPAs can be eliminated by deleting the requirement for career-long supervision and thus allowing LPAs to become "independent" practitioners.

## VI. <u>Eliminating Career-Long Supervision Would Help Meet the Need for Mental Health Care</u> Professionals in N.C., Particularly in Rural and Underserved Areas.

In October 2014 the President of the North Carolina Psychological Association wrote an op-ed column for the Raleigh <u>News & Observer</u>. (Ex. 14, App. p. 57). In it she noted that there are not enough health care professionals in North Carolina to meet the needs of our state.

This observation remains true. The United States Census Bureau reported that the population of North Carolina was 10,273,419 in 2017 with 3,591,151 residing in the six most populous urban counties and 6,682,268 people residing in the remaining 94 suburban and rural counties. (See General Population Statistics, p. 10A). The number of psychologists per capita in the State of North Carolina in 2017 was 1 psychologist per 2,912 individuals. The disparity in per capita availability of psychological services is stark. The six most populous counties had 1 psychologist per 1,976 individuals, while the remaining suburban and rural counties had 1 psychologist per 3,908 individuals. (See Psychologists in North Carolina, p. 10B)

If the suburban counties are taken out of the equation, the picture looks even bleaker for rural counties. In 2017, eleven rural counties in North Carolina did not have a single provider of psychological services. In 2017, twelve rural counties in North Carolina had only one provider of psychological services. Twenty counties had only LPA psychologists. (See Psychologists in 48 Rural NC Counties, p. 10C). In the forty-eight rural counties, 71% (72 out of 101) of the practicing psychologists are LPAs. (See Psychologists in 48 Rural NC Counties: LPAs and LPs in 2017, p. 10D).

These data reflect that rural counties are underserved by psychologists and that LPAs are substantially more prevalent in the forty-eight rural counties examined than are LPs. Looking at the number of licensed psychologists as reflected in the chart on page 2A, only about 1% of LPs (29 out of 2,258) practice in the forty-eight rural counties while over 8% (72 out of 852) of LPAs practice there. That means LPAs are eight times more likely to practice in underserved rural counties than LPs. Thus the limitations on LPAs as described in Section V

# **General Population Statistics**

Population of North Carolina as of July 1, 2017:	10,273,419*
Population of Urban Counties as of July 1, 2017:	3,591,151
Durham County	311,640
Forsyth County	376,320
Guilford County	526,953
Mecklenburg County	1,076,837
New Hanover County	227,198
Wake County	1,072,203
Population of Rural / Suburban Counties as of July 1, 2017:	6,682,268

\*All data received from the U.S. Census Bureau located at <u>https://www.census.gov/quickfacts/</u>.

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# Psychologists in North Carolina\*

Psychologists Licensed in North Carolina as of July 1, 2017:	3,527**
Psychologists Licensed in Urban Counties as of July 1, 2017:	1,817
Psychologists Licensed in Rural / Suburban Counties as of July 1, 2017:	1,710

\*The term "psychologists" includes licensed psychologists and licensed psychological associates.

\*\*All data received from UNC Cecil G. Sheps Center for Health Services Research. This data includes only actively practicing licensees.

# Psychologists Per Capita in North Carolina\*

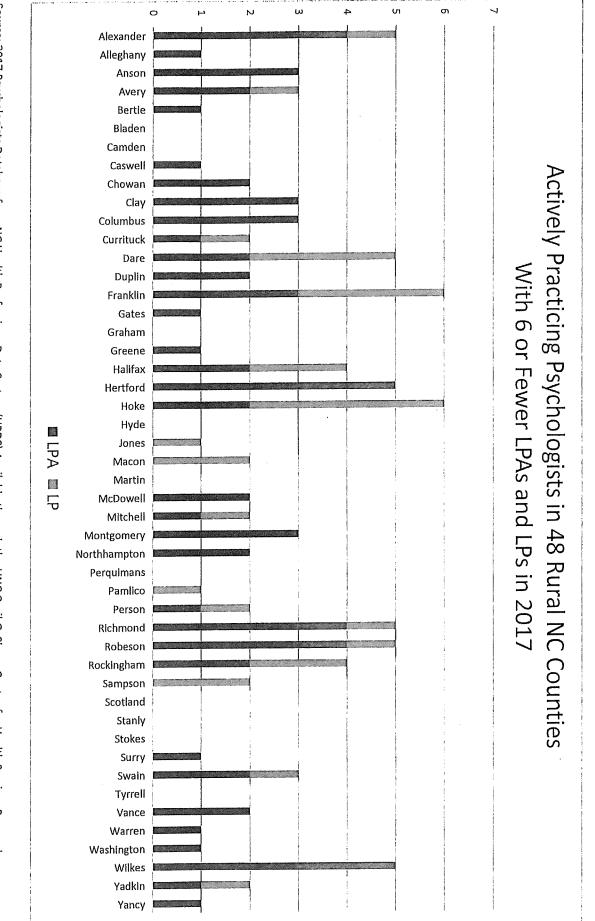
Psychologists Per Capita as of July 1, 2017:

1: 2,912

Psychologists Per Capita in Urban Counties as of July 1, 2017: 1: 1,976

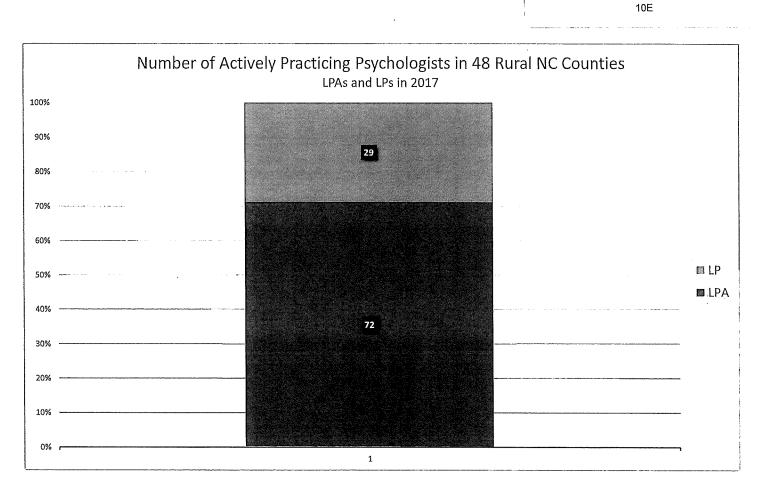
Psychologists Per Capita in Rural / Suburban Counties as of July 1, 2017: 1: 3,908

\*Per capita ratio calculated by dividing population by psychologists licensed in given geographical area.



Source: 2017 Psychologists Database from NC Health Professions Data System (HPDS) Available through the UNC Cecil G. Sheps Center for Health Services Research

10D



Source: 2017 Psychologists Database from NC Health Professions Data System (HPDS) Available through the UNC Cecil G. Sheps Center for Health Services Research

disproportionately limit access to psychological services by the public in rural counties. Making an LPA license more attractive and competitive with other mental health licenses will likely increase the availability of LPAs in North Carolina, particularly in rural areas.

#### VII. <u>Career-Long Supervision Has Contributed to a Decline in the Number of Psychology</u> Licensees in N.C. Relative to Other Licensed Mental Health Professionals.

North Carolina has had licensed master's-level clinical addiction specialists, clinical social workers, licensed professional counselors, and marriage and family therapists as well as LPAs since 1993. Currently, all but master's-level psychologists are permitted to practice independently after no more than three years of supervised practice.

As explained previously in Section V, that results in limitations on LPAs concerning insurance payments and telehealth services, services to veterans, loan forgiveness, and volunteer opportunities. In additional LPAs bear the financial burden of LP supervision at the rate of \$75-\$150 per hour each month for the duration of their careers. (Heuring Affidavit, Ex. 4, App. p. 13).

To become a doctoral-level psychologist usually requires at least five years of study. None of the master's-level mental health licensees in North Carolina discussed herein require more than three years, and some of them require less than three years of education. All the disciplines but master's-level psychology result in an unrestricted license after no more than three years of supervision.

If one wants to pursue a career in clinical mental health services in North Carolina, why would one choose to pursue a doctorate degree in psychology usually requiring at least five years of study or a three year master's degree in psychology resulting in a restricted LPA license when one can obtain any of the other master's degrees and an "independent" license to provide mental health services in three years or less? The apparent answer is that fewer and fewer are doing so, as Section II illustrates. Between 2013 and 2017/2018 the number of LP psychologists has increased by 214 (8%); LPA psychologists have <u>decreased</u> by 48 (-4%); and the other four master's-level health mental care providers have increased as follows: licensed professional counselors by 1.705 (24%); licensed clinical addiction specialists by 2,726 (165%);

licensed clinical social workers 2,297 (29%); and licensed marriage and family counselors by 363 (33%). (See Chart and Graph, pp. 2A-2B).

These data reflect that psychology as a discipline is declining in North Carolina, relative to other mental health care disciplines. (Dunbar Affidavit, Ex. 3, App. p. 9). The Board has contributed to that decline by its rule requiring career-long supervision with all its competitive disadvantages compared to other master's-level mental health care disciplines despite the Board's conclusion in 2013 that no public need is met by that rule.

#### VIII. Conclusion

There are no empirical data which support the need for continued supervision of qualified master's-level psychologists after three years in order to protect the public. Continuing career-long supervision restricts the availability of LPAs to meet the need for psychological services (particularly in rural areas where they are most needed), represents a cost burden to the LPA, disqualifies the LPA from many insurance reimbursements and other benefits enjoyed by other master's-level mental health care professionals in North Carolina, and has contributed to the continued decline in North Carolina in practicing psychology licensees relative to other mental health care disciplines.

The Psychology Board can and should address these issues by making the rule change as requested so as to provide LPAs in North Carolina with independent and unrestricted licenses.