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: NC SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

RULE CITATION: 21 NCAC 68 .0101

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*I am asking for a lot of technical changes in this rule, which defines terms used in the general statutes or these rules. While I believe that most, if not all of them, do not represent a change in the meanings of the definitions, it may be that in toto they add up to enough issues that one could argue the rule is unclear.*

*I do have some issues concerning the definitions in (33) and (34) on page 3. The definitions as written and applied later in their ethical principles rules are clear. However they do not seem to make or present a logical and coherent structure.*

*On page 3 in (33)(c), lines 15 – 17, the penis is not included as something that can be used as an instrument of “penetration [along with] a hand, finger, or any object.” I understand that “penetration, however slight ... of [the] genital opening,” as set out in (33)(c) by a penis would meet the (34)(a) definition of intercourse and so it might be perceived as unnecessary or duplicative to include it as “sexual activity” as well as “sexual contact.” But one area where this might become important is in the enforcement of the various prohibitions in rule .0509(c). It may not have been intended, but the prohibitions in (c)(1) – (4) all extend to both “sexual activity” and “sexual contact” while the prohibition in (c)(5) pertains to “sexual activity” only which would exclude intercourse based on the current definition. [I would argue that since vaginal or anal intercourse in (34) by definition would include the penis, and the body parts hand and finger are singled out as additional to “any object” in (33), the word’s omission from (33) is purposeful and does indeed exclude it from the definition of “sexual activity.”] In the context of that rule it seems strange that intercourse would not be an excluded sexual activity.*

21 NCAC 68 .0509 CLIENT RELATIONSHIPS

(a) The substance abuse professional shall not enter into a client/professional relationship with members of one's immediate family. For the purpose of this Rule "immediate family" means spouse, parent, sibling, child, grandparent, grandchild, stepchild, stepparent, parent-in-law, and child-in-law.

(b) The professional shall avoid dual relationships that could impair professional judgment or increase the risk of exploitation of a client.

(c) Sexual activity or sexual contact of a substance abuse professional with a client shall be restricted as follows:

(1) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with a current client.

(2) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with a former client for five years after the termination of the counseling or consulting relationship.

(3) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with any client the professional knows to be currently in treatment at his or her own agency or place of professional employment.

(4) The substance abuse professional shall not knowingly engage in or solicit sexual activity or sexual contact with any identified former client of his or her own agency or place of professional employment for five years after the termination of the counseling or consulting relationship if both the professional was employed at the agency and the former client was a client of the agency during the same time period.

(5) Because sexual activity with a client is harmful to the client, a substance abuse professional shall not engage in sexual activities with a former client even after a five-year interval unless the substance abuse professional who engages in such activity after the five years following cessation or termination of treatment bears the burden of demonstrating that there has been no harm to the client in light of all relevant factors, including the following:

(A) The amount of time that has passed since treatment services were terminated;

(B) The nature and duration of the treatment services;

(C) The circumstances of termination;

(D) The client's personal history;

(E) The client's current mental status;

(F) The likelihood of adverse impact on the client and others; and

(G) Any statement made or action taken by the substance abuse professional during the course of treatment suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

(d) The substance abuse professional shall not misuse his or her professional relationship for sexual, financial, or any other personal advantage.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.44;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. February 1, 2010; April 1, 2001; August 1, 2000.

*This does introduce another issue: it seems to me that the “activities” sound more like “contacts” and the “contacts” sound more like “activities.” This is especially irritating in that the first two “activities” that are defined are two different types of “contact.”*

RRC STAFF OPINION

*There is no authority for this board to make a decision whether to grant deemed status to a credentialing body under G.S. 90-113.41A based on any aspect of whether or not it administers 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: NC SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

RULE CITATION: 21 NCAC 68 .0303

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*There is no authority for the provision in (b)(3) for the agency to require any documentation concerning an examination.*

*G.S. 90-113.41A(a) states that the credentialing body must “substantially meet[s] the following” and then sets out three separate requirements none of which concern an examination. The next requirement concerning granting deemed status to a credentialing body is in (b) and states that the body must also “require its members to adhere to a code of ethical conduct.” Finally in (c) the statute states that the Board may grant deemed status “to any professional discipline that substantially meets the standards in this section.”*

*There are no standards concerning an examination in that statute. There is also nothing in that statute authorizing the board to add an examination requirement or use an examination process as a factor in whether or not to grant deemed status.*

*If the board has no authority to require a body to administer an examination, then it has no authority to require any sort of documentation “describing the exam process” whether or not one is administered. If it has no authority to make a decision based on any aspect of giving or not giving an examination, it has no authority to require information concerning a facet over which it has no basis to use as a judgment factor.*

§ 90-113.41A.  Deemed status.

(a)        To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse credentialing program substantially meets the following:

(1)       Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2)       The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a.         Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b.         Screening, assessment, and intake of clients.

c.         Individual, group, and family counseling.

d.         Treatment, planning, reporting, and record keeping.

e.         Crisis intervention.

f.          Case management and treatment resources.

g.         Ethics, legal issues, and confidentiality.

h.         Psychological, emotional, personality, and developmental issues.

i.          Co-occurring physical and mental disabilities.

j.          Special population issues, including age, gender, race, ethnicity, and health status.

k.         Traditions and philosophies of recovery treatment models and support groups.

(3)        The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b)        The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c)        The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for the credential of licensed clinical addictions specialist.

(d)       The Standards Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a professional discipline's credential may be discontinued by a two-thirds vote of the Board. (1997-492, s. 11; 2005-431, s. 1.)