

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

BUREAU OF PROFESSIONAL LICENSING

- - -

PUBLIC HEARING

MONDAY, APRIL 22, 2019

AT ABOUT 1:00 P.M.

- - -

G. MENNEN WILLIAMS BUILDING AUDITORIUM

525 W. OTTAWA STREET

LANSING, MICHIGAN

- - -

RE: Athletic Trainers - General Rules (ORR 2018-062 LR)

Barbers - General Rules (ORR 2018-065 LR)

Psychology - General Rules (ORR 2018-107 LR)

- - -

HEARING FACILITATOR:

WESTON MacINTOSH
Bureau of Professional Licensing
611 W. Ottawa Street
Lansing, Michigan 48909

ALSO PRESENT: Dena Marks
Kerry Przybylo
Rick Roselle
Stephanie Wysack

REPORTED BY: Lori Anne Penn, CSR-1315
33231 Grand River Avenue
Farmington, Michigan 48336

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Lansing, Michigan

Monday, April 22, 2019

At 1:00 p.m.

- - -

MR. MacINTOSH: My name is Weston MacIntosh and I'm an analyst for the Bureau of Professional Licensing in the Department of Licensing and Regulatory Affairs, and I will be facilitating the hearing today.

This is a public hearing on proposed administrative rules entitled "Athletic Trainers-General Rules", "Barbers-General Rules", and "Psychology-General Rules". The hearing is being conducted under the authority of the Administrative Procedures Act, Public Act 306 of 1969, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing.

The hearing is being called to order at 1:00 o'clock p.m. on April 22, 2019, at the G. Mennen Williams Building Auditorium located at 525 West Ottawa Street in Lansing, Michigan. The notice of public hearing was published in three newspapers of general circulation, as well as the Michigan Register, Issue No. 5, published on April 1, 2019.

We are here today to receive your comments on the proposed rules. If you wish to speak,
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1 please make sure you have signed in and indicated your
2 willingness to speak. You may use the cards provided in
3 the lobby for this purpose. I will organize the cards by
4 rule set so that the comments for that profession will be
5 grouped together in the transcript. If you would like to
6 testify and have not signed in, please do so now. For
7 those of you who do not wish to sign with a card, you may
8 speak at the microphone once we have exhausted the stack
9 of cards submitted to me.

10 If you have comments, please make sure
11 that they relate directly to the proposed rules. If you
12 have questions regarding the rules, please submit your
13 questions as part of your testimony for the Department's
14 review. If you have suggested changes to the proposed
15 rules, please include the specific reasons why the
16 changes would be in the public interest.

17 For the record, when you testify, please
18 identify yourself by spelling your name and organization,
19 if any, that you may be speaking for today. This will
20 help the Department preparing the hearing record that
21 will go before the Boards. Written statements can be
22 submitted directly to me at the table. The Department
23 will also accept written statements e-mailed or
24 postmarked until 5:00o'clock p.m. today.

25 The Department staff from the Bureau of
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1 Professional Licensing includes myself, Kerry Przybylo,
2 Dena Marks, Rick Roselle, and Stephanie Wysack.

3 So do we have cards? Okay. So the first
4 set we will take comments for is Athletic Trainers. The
5 first card I have is from Tracy Covassin. So if you'd
6 like to come down and speak.

7 TRACEY COVASSIN: I just got these, I
8 haven't really read it. Can I ask a question?

9 MR. MacINTOSH: Yeah, it will be part of
10 your -- the transcript, but I mean we can't clarify --

11 TRACEY COVASSIN: Okay. So where it says
12 Board here under Rule 1(a), it originally had said:
13 "Board" means Michigan board of athletic trainer, and now
14 it says Michigan trainer board. Do you mean athletic
15 trainer, because you crossed off athletic and you listed
16 us as a trainer, and we're not trainers, we're athletic
17 trainers?

18 MS. MARKS: I don't have that on my copy;
19 is it on that copy?

20 TRACEY COVASSIN: Yes.

21 MS. MARKS: I'll double check that.

22 TRACEY COVASSIN: So yeah, if you could
23 just double check that everything should say athletic
24 trainer, not trainer.

25 MS. MARKS: Correct. Trainers was marked
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1 off because the Board is called Athletic Trainer Board in
2 the statute, so it should still include the Athletic.

3 TRACEY COVASSIN: Okay. It was crossed
4 off on whatever I just picked up outside.

5 MS. MARKS: All right. I will double
6 check that. Thank you.

7 TRACEY COVASSIN: Thank you.

8 MR. MacINTOSH: Okay. Do we have any
9 other comments for Athletic Trainers? (No response.)

10 Any other comments for Barbers? (No
11 response.)

12 Okay. So we'll go next to Psychology,
13 and I'll just go alphabetically from what I have up here
14 so far. So I have Dr. Brown from the Michigan School of
15 Psychology.

16 FRANCES BROWN: Thank you, Wes. So I'm
17 Frances Brown, F-r-a-n-c-e-s, Brown, B-r-o-w-n, from the
18 Michigan School of Psychology. Okay. So I have a
19 statement to read, and this is about a differentiation in
20 training of psychologists for doctoral students and
21 post-doctoral graduates. And Wes, would you please,
22 there's multiple copies in there.

23 (Documents provided to Mr. MacIntosh.)

24 MR. MacINTOSH: Thank you.

25 FRANCES BROWN: You're welcome.

1 Okay. So respectfully submitted for
2 consideration: On behalf of the Michigan School of
3 Psychology, and in consideration of other institutions of
4 higher education, we request greater clarity in the
5 language pertaining to monthly hours of supervision as
6 outlined in Part 3, Limited Licensed Psychologists,
7 R 338.2561, Rule 61(1)(b)(iv). Training:

8 (ii) The practicum must require not less
9 than 500 clock hours of psychological work. The
10 applicant shall be supervised by a psychologist who is
11 licensed in this state, eligible for licensure in this
12 state, or licensed or certified at the independent
13 practice level in the state where the practicum takes
14 place. That's not of issue.

15 The second point, (iv) The applicant
16 shall meet in person with his or her supervisor for a
17 minimum of eight hours a month during the practicum. So
18 we have had difficulty enacting this practice and this is
19 why.

20 The beginning and end of an academic
21 semester does not coincide with the beginning and end of
22 a month. For your consideration, a student in a graduate
23 program will fulfill the 500-hour practicum requirement
24 over multiple semesters of enrollment, which may also
25 span multiple years. A semester, and consequently,

1 practicum work, often will begin and/or end mid-month or
2 with partial months of active practicum work due to
3 semester breaks or training site schedules.

4 Clarification is sought as to the intent
5 of the language of eight hours per month. During this
6 important time in a student's training, supervision is
7 provided weekly, with at least two hours per week spent
8 in supervision. In certain months, December for example,
9 students are typically enrolled for only a two-week
10 period at the beginning of the month with a winter break
11 after that. Additionally, in months that contain more
12 than four weeks, in a five-week month, the student may
13 have more than eight hours of supervision that month if
14 they're getting their two hours every week.

15 Below is proposed language for your
16 consideration, intended to provide clarity and maintain
17 the required hours and function of supervision. The
18 proposed language is: .

19 Eight hours of supervision per month, to
20 be pro-rated during the training experience to no less
21 than two hours per week while in practicum.

22 In contrast to the language pertaining to
23 limited licensed psychologists, the following is the
24 language for those with a doctoral degree. So what I was
25 just speaking about was for the masters level clinicians.

1 For doctoral students, it says:

2 Training: The applicant shall have
3 successfully completed an internship that was an
4 integrated part of a doctoral degree that satisfies the
5 requirements in subdivision (a)(i) and (a)(ii) of this
6 rule, or an equivalent postdoctoral internship as
7 determined by the Board.

8 This section does not specify hours per
9 month or week, nor is it specified in the Psychology
10 Supervision Evaluation form for doctoral applicants.

11 We thank you for your consideration.

12 MR. MacINTOSH: Thank you. So next I
13 have Dennis Kayes.

14 DENNIS KAYES: I have only one copy. My
15 name is Dennis Kayes, K-a-y-e-s. Do you need my address?

16 MR. MacINTOSH: No.

17 DENNIS KAYES: Good afternoon. My name
18 is Dennis Kayes, and I live in Huntington Woods. I'm a
19 retired attorney, but more importantly, for eight years
20 (ending this past December), I was a public member of the
21 Michigan Board of Psychology. While serving on the
22 Board, I was a member of the Disciplinary Subcommittee,
23 and twice I was on an ad hoc subcommittee working on
24 revisions to the rules. The amendments to the rules
25 being discussed today are amendments I worked on. One of

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1 the amendments, the deletion of Rule 27 (formerly known
2 as R 338.2527), is one of the rules -- is one that the
3 Rules Subcommittee opposed and which the whole Board, by
4 a large majority, voted to oppose. At both levels I was
5 one of the principal opponents of the deletion, and I am
6 here today to continue that opposition and to urge you
7 not to delete the rule.

8 Here is why:

9 To begin, the push to delete the rule did
10 not come from any member of the Board; it came solely
11 from the Department of Licensing and Regulatory Affairs.
12 When I asked the Department's representative, Weston
13 MacIntosh, why the Department wanted the rule deleted, he
14 responded that the Department believed the rule was not
15 authorized under the Public Health Code. I then asked
16 him whether there was any case in which the court had
17 opined that the rule was not authorized. He did not
18 respond then or numerous times thereafter when I repeated
19 the question. It's obvious that the answer is no, there
20 is no such opinion. This despite the fact that during my
21 eight years on the disciplinary subcommittee there were
22 numerous times when the Department filed complaints
23 against psychologists alleging violations of the rule.
24 In fact, I went further and asked Mr. Weston whether
25 there was any time when a psychologist, in defending

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1 against a complaint, even alleged that the rule was not
2 authorized. Again, he never answered me. I am sure that
3 the answer again is no, there are no opinions; in fact,
4 no one ever objected.

5 But just as importantly, the rule is in
6 fact authorized under the Code. First, MCL 333.16145(2)
7 provides that, "A Board or task force may promulgate
8 rules necessary or appropriate to fulfill its functions
9 as prescribed in this article." Second, MCL 333.16221
10 provides that a Board, through its Disciplinary
11 Subcommittee, shall punish certain behavior, including,
12 as set forth in Clause (a), "A violation of general duty,
13 consisting of negligence or failure to exercise due
14 care,... or any conduct...that impairs or may impair the
15 ability to...skillfully practice the health profession."
16 It seems to me (and must have seemed to every
17 psychologist who was ever charged with a violation of
18 Rule 27) that Rule 27 is appropriate for the Board in
19 fulfilling its functions under Section 16221. I simply
20 cannot understand why the Department not only feels
21 otherwise, but feels otherwise so strongly that it is
22 pushing to delete a rule to which nobody has ever
23 objected and which has helped make the psychology
24 profession a very respected one.

25 One further point I'd like to make.

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1 Because the rule is not -- because deleting the rule is
2 not being proposed by the Board, I tried to find in the
3 statutes and regulations some authority for this to be
4 forced upon the Board, and I could find none. The Public
5 Health Code provides that rules governing psychologists
6 are adopted by the Board, not by some other entity.

7 Thank you for allowing me to speak to
8 you.

9 MR. MacINTOSH: Next we have Jason Moser.

10 JASON MOSER: Good afternoon. My name is
11 Jason Moser, J-a-s-o-n M-o-s-e-r, I'm Associate Professor
12 and Associate Director of Clinical Training at the
13 Michigan State University. I'm here representing my
14 clinical psychology doctoral program, as well as the
15 clinical psychology doctoral program at the University of
16 Michigan headed by the Director of Clinical Training
17 there, Patricia Deldin.

18 I'm here today to provide additional
19 support and thanks for the addition under Rule 41
20 pertaining to the standards for doctoral-level psychology
21 programs that are adopted by reference in the rules, the
22 approved programs that now appear as -- under 41(1)(d),
23 the accreditation standards of the Psychological Clinical
24 Science Accreditation System, or (PCSAS). Our two
25 Universities, our two programs are very supportive of

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1 this addition to the rules that the PCSAS is a program
2 that's recognized by the Board for licensure in Michigan,
3 and we continue that support and are very happy to see
4 that addition on there, and that we wanted to just add a
5 couple of things since we first submitted our white paper
6 in support of PCSAS to being an option for clinical
7 licensure in Michigan in 2016, we also appeared before
8 the Board in 2018, and we appreciate the time that the
9 Board took to read over those materials and to have us
10 comment.

11 Since those meetings and since those
12 times, PCSAS, as an alternative accrediting body, has
13 also been approved by APPIC, the major internship system
14 for students in clinical psychology. It has also been
15 recognized by the Department of Veterans Affairs, and has
16 also been recognized by a number of other states so far,
17 including Delaware, Missouri, Illinois, New Mexico,
18 Arizona, as well as other states that don't require any
19 changes but are recognizing obviously PCSAS, California
20 and New York, two states that don't require any
21 additional changes to their rules, but many states are
22 already allowing PCSAS graduates to be licensed in their
23 state, and we fully support Michigan adopting that
24 alternative as well so that graduates from our program,
25 Michigan State, as well as University of Michigan and

1 others, can seek licensure here in the State of Michigan.

2 Thank you for your time.

3 MR. MacINTOSH: Next I have Eric Ozkan.

4 ERIC OZKAN: My name is Eric Ozkan, it's
5 E-r-i-c, last name is O-z-k-a-n. My name is Dr. Eric
6 Ozkan, and I am appearing today as both a concerned
7 citizen and as a professional psychologist who has
8 practiced in Michigan for the past 16 years. While I
9 feel it is relevant to mention that I currently serve as
10 Chair of the Michigan Board of Psychology and have had
11 significant responsibility in drafting today's proposed
12 rule set, I must emphasize that the following statement
13 is my personal view and should not be seen as reflecting
14 the view of the Board of Psychology as whole. I am
15 speaking only for myself on this matter.

16 I believe the overall revision to our
17 rule set is an outstanding piece of collaboration between
18 Licensing and Regulatory Affairs (LARA) and the Michigan
19 Board of Psychology. It significantly improves upon our
20 last update in 2015, but does contain one change that I
21 strongly disagree with.

22 The change is the removal of an entire
23 section of the rules entitled R 338.2527, Prohibited
24 Conduct, or simply, Rule 27. This section clearly and
25 specifically enumerates seven groups of unacceptable

1 conduct that all competent psychologists view as
2 potentially damaging to their clients. Examples of such
3 prohibited conduct include: Engaging in unfair
4 discrimination against clients; engaging in sexual
5 relationships with clients, their family members,
6 supervisees, or students; engaging in other multiple
7 relationships, such as business relationships, with
8 clients or their family members; exploiting clients in
9 other ways that use the therapeutic relationship to
10 directly benefit the licensee, and; neglecting to provide
11 continuity of care to clients.

12 While I'm confident that nobody disagrees
13 with the necessity of having these prohibitions applied
14 to psychologists, the entire section comprising Rule 27
15 was rescinded from the current proposed revision. The
16 reasoning, as I understand it, falls along two lines:

17 (1) It is suggested that Michigan's Public Health Code
18 does not actually provide any statutory authority to the
19 Board of Psychology allowing them to promulgate rules
20 regarding prohibited conduct, even though these rules
21 have existed for decades, and (2) It is suggested that
22 even if the Board of Psychology had such authority,
23 explicitly stating specific examples of prohibited
24 conduct in the rules is unnecessary as it merely
25 duplicates more general language already present in the

1 Public Health Code. It is feared that such duplication
2 may lead to confusion about precisely what conduct is and
3 is not prohibited.

4 Although I feel I understand LARA's
5 reasoning on this matter, I disagree with it based on the
6 following seven points:

7 (1) I have found it difficult to
8 understand precisely why the language of the Public
9 Health Code does not allow the Board of Psychology to
10 promulgate rules for the conduct of its own licensees.
11 Not being an attorney myself, I have deferred to
12 individuals who are attorneys and have observed some
13 disagreement among them on this matter. Given that, I'm
14 not sure that the primary rationale put forth rescinding
15 Rule 27 is uncontestable.

16 (2) Whether or not the new -- whether or
17 not the Public Health Code provides language allowing the
18 Board of Psychology to promulgate new rules or not, no
19 new rules are being proposed or added with this revision.
20 I would merely request that rules already present and
21 having a long history be maintained without modification.
22 Even if the authority to promulgate rules by the Board is
23 legitimately open to question, it seems there would be
24 little danger in maintaining the current rules while the
25 matter is resolved.

1 (3) The existence of Rule 27 is not mere
2 window-dressing. The rules on prohibited conduct,
3 particularly those related to sexual misconduct and other
4 forms of boundary crossing, are routinely cited by
5 attorneys from the Office of the Attorney General as a
6 basis for misconduct charges brought against licensees.
7 As it stands, Rule 27 is relied upon by attorneys as an
8 effective and convenient tool for dealing with
9 professional misconduct.

10 (4) The presence of similar sections
11 entitled "Prohibited Conduct" are found in the
12 administrative rules for other professions, including
13 Massage Therapy, Physical Therapy, and Acupuncture. The
14 long-standing presence of such a section in the
15 psychology rule set and its continuing presence in these
16 newer professions suggests that there is no inherent
17 problem having such a section in addition to the more
18 general language present in the Public Health Code.

19 (5) The practice of psychology presents
20 unique challenges regarding client safety as compared
21 with other professions. For us, the rules regarding
22 boundary crossing are particularly important because of
23 the private, one-on-one, and often emotionally intimate
24 nature of our work with clients. Our training and ethics
25 rigorously and explicitly address these challenges and we

1 have no problem ensuring that our public rules do so as
2 well. Rule 27 provides bright lines for misconduct that
3 are not subject to interpretation. Psychologists welcome
4 such transparency as good for both our profession and for
5 the public.

6 (6) All competent psychologists are
7 acutely aware of the rules and ethics surrounding the
8 complex relationships we engage in as a matter of course.
9 While we are clear-thinkers in this regard, we are not
10 lawyers. Delving into the minutiae of the carefully
11 crafted language present in the Public Health Code is
12 akin to deciphering hieroglyphics for many of us. Given
13 that, every psychologist I know relies on the
14 Administrative Rules for Psychology as their source for
15 guidelines regulating our profession. Until I became a
16 member of the licensing board in 2012, I had never even
17 thought of consulting the Public Health Code for
18 professional guidance, and I never needed to. I think
19 this is likely true of most practicing psychologists. As
20 with most professions, I believe, we rely on what is
21 present in the rules as a more accessible and
22 understandable distillation of the Public Health Code.

23 (7) A final consideration regards the
24 optics of removing Rule 27; how it would appear to our
25 colleagues and the public at large. With the release of

1 any new rule set, the most natural first question to ask
2 is, "What's changed?" In the current cultural and
3 political climate, matters of sexual impropriety by
4 professionals are rightly being taken more seriously by
5 all of us. Why would we chose to remove rules clearly
6 forbidding such misconduct? The fact that the Public
7 Health Code may contain duplicate protections may be lost
8 on many as those protections are relatively hidden from
9 view. I am proud to be a member of a profession that has
10 clearly written rules specifically identifying sexual and
11 other misconduct as unacceptable. I can see no danger in
12 keeping those rules specific and stating them clearly in
13 an easily accessible document like this rule set.

14 Overall, the current set of proposed
15 rules represents a clearer, leaner set of guidelines for
16 the psychologists of Michigan to follow. Additions have
17 been made which clarify the requirements for licensure,
18 and inconsistencies in many areas have been disposed of.
19 Expanded opportunities for obtaining continuing education
20 credits are especially important to push forward at this
21 time. I strongly support the content of this proposed
22 revision of the rules, except for one controversial but
23 consequential issue regarding the recision of Rule 27.

24 Please consider reinstating R 338.2527,
25 Prohibited Conduct, Rule 27. The rationale for
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1 rescinding it is simply inadequate in the face of
2 numerous and varied reasons for keeping it. In informal
3 discussions among colleagues, I have not found a single
4 instance where its removal from the rules was considered
5 anything but a mistake.

6 Thank you very much.

7 MR. MacINTOSH: Do I have anyone else who
8 wishes to speak at this time?

9 FRANCES BROWN: I'm sorry, I forgot to
10 mention that on this document that I gave you, on the
11 back --

12 MR. MacINTOSH: You might want to state
13 your name again.

14 FRANCES BROWN: Oh, I'm sorry. Frances
15 Brown, President, Michigan School of Psychology.

16 On the back of this document, for your
17 information, we've provided the semester information
18 where the breaks are for the major psychology programs in
19 the State of Michigan. Thank you.

20 MR. MacINTOSH: Okay. If there's no one
21 else who wishes to speak at this time, we'll take a short
22 recess.

23 (Recess held from 1:26 p.m. to 1:44 p.m.)

24 MR. MacINTOSH: Okay. If there are no
25 further comments at this time, I hereby declare the
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1 hearing closed. The record will remain open until 5:00
2 p.m. today for any additional comments you may wish to
3 share regarding the proposed rules. Thank you for
4 coming.

5 (Hearing concluded at 1:45 p.m.)

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1 STATE OF MICHIGAN)
2)
3 COUNTY OF MACOMB)
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5 I, Lori Anne Penn, certify that this
6 transcript, consisting of 22 pages, is a complete, true,
7 and correct record of the public hearing held on Monday,
8 April 22, 2019.

9 I further certify that I am not
10 responsible for any copies of this transcript not made
11 under my direction or control.
12
13
14
15

16 April 26, 2019
17 Date

Lori Anne Penn, CSR-1315
Notary Public, Macomb County, Michigan
My Commission Expires June 15, 2019