

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 24, 2001

Manual J. Manolias, LSW, Chairman
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors
116 Pine Street
Harrisburg, PA 17105

Re: Regulation #16A-694 (IRRC #2178)
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors
Licensure

Dear Chairman Manolias:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection & Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection & Professional Licensure Committee
Honorable Kim Pizzigrilli, Secretary of the Commonwealth

Comments of the Independent Regulatory Review Commission
on
State Board of Social Workers, Marriage and Family Therapists, and
Professional Counselors Regulation No. 16A-694
Licensure
May 24, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The State Board of Social Workers, Marriage and Family Therapists, and Professional Counselors (Board) must respond to these comments when it submits the final-form regulation. If the final-form regulation is not delivered by April 23, 2003, the regulation will be deemed withdrawn.

1. House Professional Licensure Committee Comments. - Legislative intent; Reasonableness; Implementation procedures; Feasibility; Clarity.

During our review of this regulation, we identified a number of sections that did not meet the criteria of the Regulatory Review Act. These same issues were also raised in the comments submitted by the House Professional Licensure Committee (House Committee). At its meeting on May 8, 2001, the House Committee voted to submit comments on this regulation. The House Committee submitted its comments to the Commission by letter dated May 10, 2001.

The following paragraphs identify the comments of the House Committee with which we concur. The pertinent sections of the proposed regulation are listed below. Because the three chapters of this regulation contain provisions with similar language, the comments of the House Committee relating to two or more of the three chapters have been combined.

Sections 48.1 and 49.1. Definitions. – Reasonableness; Clarity.

The definition of “field closely related to the practice of” marriage and family therapists (MFTs) or professional counseling may unduly restrict licensure of qualified and experienced professionals. The definition should be less restrictive and recognize the variety of academic backgrounds.

Section 48.13. Licensed marriage and family therapist. – Legislative intent; Reasonableness; Need; Clarity.

Subsection 48.13(b) sets forth the “supervised clinical experience” requirements and standards that applicants must meet to be licensed as MFTs. There are three concerns.

First, the list of areas that qualify as experience in services provided by MFTs in Subsection 48.13(b)(1) should include “individual” and “group” therapies.

Second, why does Subsection 48.13(b)(2) refer to the definition of “supervisor” in Section 47.1 relating to licensed social workers and licensed clinical social workers? In addition, the definition of “supervisor” in Section 48.1 relating to MFTs contains no transition period for supervision by unlicensed but otherwise qualified MFTs. To ensure an adequate supply of supervisors, the regulation should establish qualifications for unlicensed supervisors.

Third, Subsection 48.13(b)(5) should be amended to provide for flexibility and to ensure availability of supervisors. The subsection should allow for “group supervision.”

Section 48.15. Exemption from licensure examination. – Reasonableness; Clarity.

In the continuing education requirements for applicants for licensure without examination, Subsection 48.15(5)(v) includes “any course approved by AAMFT [American Association for Marriage and Family Therapists].” However, this organization does not formally approve courses. The Board should expand the list of programs that qualify as credit for continuing education.

Section 49.2. Educational requirements. – Reasonableness; Clarity.

Many counselor preparation programs are currently unable to meet the clinical instruction requirement for 600 hours of supervised internship experience in Subsection (9). The regulation should include a transition period to allow programs to develop internships that match this standard.

Section 49.11. Licensure examination. - Economic impact; Reasonableness.

Subsection (a) lists acceptable licensure examinations. Extensive public comment was submitted advocating the addition of the Advanced Alcohol and Drug Counselor examination given by the International Certification and Reciprocity Consortium. Why wasn’t this examination included in the list?

Section 49.15. Exemption from licensure examination. – Reasonableness; Clarity.

The list of approved continuing education programs in Subsection 49.15(5)(iv)(C) should be expanded to include courses offered by professional organizations and accredited institutions. For example, the list should include courses approved by the Pennsylvania Certification Board for Certified Addiction Counselors.

Section 47.12c. Licensed clinical social worker.

Section 48.13. Licensed marriage and family therapist.

Section 49.13. Licensed professional counselor. – Fiscal impact; Reasonableness; Need; Clarity.

Group and individual supervision

Unlike the requirements for MFTs, Sections 47.12c(b)(5) and 49.13(b)(5) do not allow for group supervision. These sections require that a supervisor “meet individually and in person with the supervisee for a minimum of 1 [one] hour for every 20 hours of supervised clinical experience” [emphasis added]. In Section 48.13(b)(5), MFTs are only required to meet for one hour of individual supervision for every 40 hours. There are three concerns.

First, commentators indicate that group supervision is a key process in the development of professional counselors and clinical social workers. They also indicate that the individual supervision requirement may reduce supervisor availability and place unnecessary burdens on facilities with limited financial resources. For these reasons, Sections 47.12c(b)(5) and 49.13(b)(5) should be amended to allow for group supervision.

Second, why are the hourly requirements for individual supervision for clinical social workers and professional counselors different from those for MFTs?

Third, why should a supervisor be required to meet with each supervisee individually and in person for at least one hour for every 20 or 40 hours? The Board should explain the need for this requirement and the fiscal impact this will have on smaller facilities.

First 1,800 hours of supervised experience

Sections 49.13(b)(2) and (b)(4) restrict who can supervise for the first 1,800 hours of supervised clinical experience. Sections 47.12c(b) and 48.13(b) contain the same restriction.

Commentators stated that supervision by professionals in related fields is the norm in rural areas and the Board allows supervision by persons in related fields in the definitions of “supervisor.” Are sufficient numbers of supervisors available in rural areas to meet these requirements for the three-licensure categories? Why is the Board restricting supervision for the first 1,800 hours?

60 days written notice

Sections 47.12c(b)(7), 48.13(b)(7) and 49.13(b)(7) require a supervisor who wishes to terminate supervision to give 60 days written notice. Won’t this requirement be impossible to meet in many circumstances? The Board should explain why a 60-day notice is necessary and reasonable.

Sections 47.13b, 48.15 and 49.15. Exemption from licensure examination. - Consistency with statute; Reasonableness; Implementation procedures.

Sections 47.13b(3), 48.15(3) and 49.15(3) require applications to be submitted by March 25, 2002. Subsections (a)(1), (b)(1) and (c)(1) of 63 P.S. § 1909 require applications to be filed no later than three years from the effective date of the respective paragraphs, which is no later than

February 19, 2002. The regulation should be consistent with the statute and require applications to be filed no later than February 19, 2002.

Sections 48.15 and 49.15. Exemption from licensure examination. - Reasonableness; Economic impact; Implementation procedures.

The exemption from licensure examination provisions in Sections 48.15(4) and 49.15(4) require at least 10 hours per week of direct client contact. This may exclude professionals who practice in supervisory, administrative, academic or other capacities with minimal client contact, or whose contact hours are irregular. The Board should adopt a standard that does not exclude qualified individuals.

COMMENTS ON SIMILAR PROVISIONS IN CHAPTERS 47, 48 AND 49.

2. Supervision and supervised experience. - Reasonableness; Clarity.

The requirements for supervised experience in Sections 47.1, 47.12c, 47.12d, 48.1, 48.13, 48.14, 49.1, 49.13 and 49.14 are extensive and substantial, involving as much as three years or 3,600 hours. Each supervisee needs this amount of supervised experience to qualify for licensure. What recourse or safeguard is there for a supervisee if the Board determines a supervisor is not qualified? Would this invalidate the supervisee's hours accrued prior to the supervisor's disqualification?

3. Referral. - Protection of the public health and safety.

The statutory provision in 63 P.S. § 1920.2 (relating to referral) is an important safeguard to make sure licensees only practice in their area of expertise. Why didn't the Board include this statutory provision in the amendments to Chapters 47, 48 and 49?

4. Sections 47.1, 48.1 and 49.1. Definitions. - Feasibility; Protection of the public health; Clarity.

Institution of higher education

Chapters 48 and 49 define "institution of higher education." A similar definition of this term also exists in statute (24 P.S. § 2502-2). Under this statutory definition, the institution must also be approved by the Department of Education. Is this definition intended to be the same as the statutory definition in 24 P.S. § 2502-2? If so, the Board should add a cross reference to the statutory definition. If not, the Board should explain how the definition in the regulation will be interpreted by the Board.

Supervisor

There are two issues.

First, these definitions contain substantive provisions. These substantive provisions should be moved to the body of the respective chapters.

Second, the substantive provisions for supervisors are unclear. These specific requirements are important because they form the basis of a licensure qualification for the supervisee. Specifically, the Board should respond to the following:

- What qualifies as “5 years experience” in these definitions?
- In Chapters 47 and 49, experienced persons can serve as supervisors until January 1, 2006 without the required new licenses established by this regulation. However, Chapter 48 uses the date of January 1, 2010, but still requires licensure. What is the reason for the difference?
- If a supervisor no longer qualifies as a supervisor after January 1, 2006, as provided in Chapters 47 and 49, and January 1, 2010 as provided in Chapter 48, will the Board accept the hours earned by the supervisee under that supervisor prior to the deadline?
- Why is the optional phrase “may also include” used in the last sentence regarding related fields? The regulation should provide either a definitive standard or a process to determine whether a person has the qualifications to supervise.
- What is “a related field”? We are unable to determine whether specific fields, such as psychiatry, would qualify or not.
- The definition of “supervisor” in Section 47.1 includes clinical social work licensees “of another state, if, in the opinion of the Board, the requirements for licensure are substantially equivalent to the requirements of the act, and who has 5 years experience....” There are two questions. First, why is similar language not included in the definitions of “supervisor” in Sections 48.1 and 49.1? Second, what standards or process will the Board use to determine the equivalency of out-of-state licensed supervisors?

5. Sections 47.11, 48.11 and 49.11. Licensure examination. - Clarity.

Sections 47.11(f), 48.11(c) and 49.11(c) state “the applicant is responsible for directing that the testing organization send examination results and other information requested to the Board.” There are four questions.

First, 63 P.S. § 1909.1 directs the Board to contract with a professional testing organization. Does each contract require the testing organization to provide a mechanism for the applicant to direct where examination results are sent? If not, why isn’t it part of the contract? How can the applicant comply with this provision if there is no reporting mechanism in place?

Second, if the Board contracts with testing organizations, why isn’t this in the contract, rather than placing this responsibility on the applicant?

Third, what “other information” is the applicant responsible for? Any additional information required should be listed in the regulation.

Fourth, what passing grade will the Board require on the respective examinations?

6. Section 47.12c. Licensed clinical social worker, Section 48.13. Licensed marriage and family therapist and Section 49.13. Licensed professional counselor. - Need; Clarity.

Written permission

Subsection (b)(3) requires written permission to discuss the patient's case with the supervisor. Commentators indicated that this provision is both unnecessary and inconsistent with current practice for facilities that employ both supervisors and supervisees. The Board should explain the need for this provision when the supervisee and supervisor both work for the same agency or facility.

Qualified substitute

Sections 47.12c(b)(4)(i), 48.13(b)(4)(i) and 49.13(b)(4)(i) allow "a supervisor who is temporarily unable to provide supervision to designate a *qualified substitute*." What is meant by "qualified"? Must the substitute meet the same experience, education and licensure requirements as a supervisor? Who determines if the substitute is qualified?

Delegate, order and control

Sections 47.12c(b)(4), 48.13(b)(4) and 49.13(b)(4) state the supervisor "shall delegate, order and control" the professional activities of the supervisee. It is our understanding that many of these professionals currently work independently and do not have supervisors. To meet the new requirements for licensure, they will need to find experienced professionals willing to be their supervisors. In these situations, supervisors will have little control over which clients meet with supervisees. Hence, the language concerning "delegate, order and control" should be deleted or amended to indicate that it applies only when the supervisee is an employee under the direction of the supervisor.

Delegation

Sections 47.12c(b)(4)(ii), 47.12c(b)(5), 48.13(b)(4)(ii), 48.13(b)(5), 49.13(b)(4)(ii) and 49.13(b)(5) allow delegation of supervisor responsibilities. Must the delegate have the same qualifications as a supervisor? What limits are there on how much of the supervisory responsibility can be delegated?

Supervised work activity

Sections 47.12c(b)(8), 48.13(b)(8) and 49.13(b)(8) describe supervised work activity that may be counted toward fulfilling licensure requirements. The regulation limits experience to "at least 30 hours per week but not more than 40 hours per week for a period of at least 3 months" or "at least 15 hours per week for a period of at least 6 months." There are three issues.

First, the statute (63 P.S. § 1907(d), (e) and (f)) requires either a certain number of years of experience or a certain number of hours of experience. The statute does not limit hours per week or mention three or six month intervals. For example, 63 P.S. § 1907(d)(3) requires an applicant for licensure as a clinical social worker to have "completed at least three years or 3,600 hours of supervised clinical experience acceptable to the board as determined by regulation after completion of the master's degree in social work."

If an applicant has 3,600 hours of experience in an acceptable environment, the applicant would meet the statutory requirement for licensure. However, the same applicant could be denied under the regulation if the applicant worked more than 40 hours per week, or was only able to work for two months during a certain period. The Board should explain why these limits in the regulation are needed and the basis for them.

Second, it is not clear how the limits on hours per week relate to the respective experience requirements in Sections 47.12c(a)(5), 48.13(a)(4) and 49.13(a)(4). The regulation should clearly set a minimum limit of hours per year to count toward the three years experience. Likewise, regarding the alternative for 3,600 hours of supervised experience, the regulation should more clearly set forth how this criterion must be met.

Finally, why must experience be in a single setting? Would this limit a prospective licensee who holds two part-time positions?

7. Sections 47.12d, 48.14 and 49.14. Standards for supervisors. – Reasonableness; Clarity.

Subsection (3) provides for disqualification of a supervisor subject to any disciplinary action. We have four concerns.

First, does “subject to” disciplinary action mean the supervisor is found guilty or merely charged with a violation?

Second, what if the disciplinary action is not relevant to the area of supervised practice (i.e., a psychiatrist is disciplined for a minor infraction)?

Third, does disqualification negate hours of experience gained by the supervisee prior to the disciplinary action?

Fourth, to protect the interests of the supervisee, the supervisor should be required to disclose to the supervisee if the supervisor is disciplined by a licensing Board.

In Subsection (7), the supervisor must ensure that each patient knows the supervisee’s status as supervisee and has given permission for the supervisee to discuss her or his case. As discussed in **Issue 6**, a supervisor may be someone who does not control who is seen as a client or patient by the supervisee. In addition, the supervisor may be located in another building or another part of the state. In these situations, how will the supervisor “ensure” that the supervisee’s status is made known to each patient or client of the supervisee?

Will the objectives established by the supervisor in Subsection (8) be reviewed by the Board? Are these objectives expected to be in writing? When are the objectives given to the supervisee?

In Subsection (9), where can the “issues of practice and ethics” be found? Has the Board established these standards for the respective licensees? Are there national codes of conduct that the Board can adopt?

In Subsection (11), why is the supervisor required to “observe client/patient sessions of the supervisee”? When the supervisor and supervisee are in separate organizations or locations, this may be difficult to accomplish. Also, the requirement to do this “on a regular basis” is vague.

Subsection (13) requires a supervisor to provide recommendations to the supervisee. Must these recommendations be in writing?

Subsection (14) requires a supervisor and supervisee to discuss a supervisee's evaluations at least quarterly. Why is it necessary to discuss evaluations on a quarterly basis?

8. Sections 47.13b, 48.15 and 49.15. Exemption from licensure examination. – Reasonableness; Clarity.

To qualify for exemption from examination, the regulation requires that MFTs and professional counselors have at least 10 hours of direct client contact per week for the previous five years. However, there is no similar requirement in the exemption provision for clinical social workers. What is the reason for this difference?

In addition, Sections 47.13b(2), 48.15(2) and 49.15(2) require applicants to submit "an application provided by the Board." Are these applications available? How will potential applicants know to apply before the February 19, 2002 deadline?

9. Sections 47.13b, 48.15 and 49.15. Exemption from licensure examination, Sections 48.12 and 49.12. General qualifications for licensure. - Clarity.

The exemption from licensure sections, in Subsection (2) and the general qualifications for licensure sections, in Subsection (4), all require the applicant to submit "the required fee" or the "required application fee." However, there is no fee for these categories in existing Section 47.4 or proposed Chapters 48 and 49. The Board needs to establish these fees and include them in the final-form regulation.

Why does Section 47.13b(4) require 20 hours per week to qualify for exemption, whereas Sections 48.15(4) and 49.15(4) only require 15 hours per week?

In Subsections 48.15(5)(v)(A), 48.15(vi)(A) and 49.15(5)(iv)(A), what is a continuing education course that is "masters level difficulty"? Is this type of course equivalent to a course in a master's degree program? Are courses designated and advertised in this manner? Why is other continuing education excluded?

COMMENTS ON SPECIFIC PROVISIONS OF CHAPTERS 47, 48 AND 49

CHAPTER 47. LICENSURE OF SOCIAL WORKERS

10. Section 47.1. Definitions. - Feasibility; Protection of the public health; Clarity.

In addition to our comments on the definition of "supervisor" in Issues 2 and 7, the language in Section 47.1 also lacks clarity for two reasons.

First, the four conjunctions used in the opening sentence make it unclear what specific qualification, or combination of qualifications a supervisor must have.

Second, how and when can the opinion of the Board be acquired on equivalent qualifications?

11. Section 47.12c. Licensed clinical social worker. – Statutory authority; Clarity.

Subparagraph (b)(1)(i) allows experience in “diagnosis.” Diagnosis does not fall within the scope of practice for clinical social workers and would violate 63 P.S. § 1920.2 (relating to referral). Would this be considered “practice” by any other professional licensing board? The Board should delete this provision or identify the statute that supports this position.

12. Section 47.13b. Exemption from licensure examination. - Clarity.

Subsection (4) requires the applicant’s practice to consist of at least 20 hours per week. Does supervision count toward the 20 hours?

13. Section 47.14. Application for licensure by reciprocity. - Clarity.

This existing section in the regulation establishes the Board’s reciprocity process for social workers licensed in other states. Commentators cited the need for similar reciprocity provisions for licensed clinical social workers. Section 10 of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (Act) (63 P.S. § 1910) gives the Board “the power to grant a reciprocal license to an applicant who is licensed or certified” as a social worker, clinical social worker, MFT or professional counselor in another state. The Board should develop regulatory provisions to implement this portion of the Act.

CHAPTER 48. LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

14. Section 48.2. Educational requirements. - Implementation procedures; Clarity.

The requirements in Subsections (1) to (5) state the courses “should” include certain topics. We note that the parallel requirements for Professional Counselors in Section 49.2 are written in more direct language. If these are requirements, the word “should” must be replaced with “shall.”

Subsection (4)(i) is vague for two reasons. First, the phrase “intended to” is indirect. Second, clarity is lost because plural words are mismatched with singular words. The Board should rewrite this provision for clarity.

15. Section 48.3. Qualifications for supervisor until January 1, 2010. – Reasonableness; Implementation procedures; Clarity.

As written, Subsection (1) is unreasonable. It requires a supervisor to be licensed either in Pennsylvania or in another state that the Board finds to be substantially equivalent to Pennsylvania. However, since licensing has not yet occurred in Pennsylvania, the only way to gain supervised experience would be to work for a person licensed in another state. All other experience gained by therapists in Pennsylvania would be excluded under the Section 48.1 relating to the definition of “supervisor” and Section 48.13(b)(4)(i) relating to supervised clinical experience. The Board should amend this provision to allow a transition into the new licensure requirements.

For clarity, the acronym “MFT” as used in Subsections (2) and (3) should be defined in Section 48.1.

Regarding Subsection (2), are courses in “MFT supervision” readily available?

16. Section 48.13. Licensed marriage and family therapist. – Clarity.

Sections 48.13(a)(3)(i) and (ii) require “graduate course work which is closely related to marriage and family therapy.” Is the intent to require “graduate course work in marriage and family therapy or a field closely related to marriage and family therapy”?

In Section 48.13(a)(3)(ii)(B), how much “graduate coursework in marriage and family therapy” does the Board require?

17. Section 48.15. Exemption from licensure examination. – Clarity.

Subsection (6) requires “*clinical membership status* from AAMFT.” The Act (63 P.S. §1909(b)(5)) requires “current professional certification.” Are these the same?

In Subsection (6), the Board will accept “an examination given by another state.” Are all of the examinations given by other states acceptable to the Board? Must other states’ examinations be equivalent to Pennsylvania’s before they are acceptable?

CHAPTER 49. LICENSURE OF PROFESSIONAL COUNSELORS

18. Section 49.15. Exemption from licensure examination. – Reasonableness; Clarity.

Do NBCC, CRC, CBMT and ATCB “approve” courses as required by Subsection (5)(iv)(C)?

19. Miscellaneous clarity issues.

- The formats of the Purdon’s citations are inconsistent in Section 47.1 in the definitions of *Licensed clinical social worker*, *Licensed social worker* and *Provisional licensed social worker*. The citation in *Licensed social worker*, as printed in the *Pennsylvania Bulletin*, would not cite any section of 63 Purdon’s. For clarity, these citations should be used consistently in the final-form regulation.
- Subsection 48.2(3)(i) uses the phrase “*family systems theory*,” whereas Subsection 48.2(2) uses the phrase “*systems theory*.” Should the word “family” be added to Subsection (2)?
- Section 48.13(a)(3)(ii)(B) uses the phrase “a national accrediting agency as defined in Section 48.1.” However, there is no definition of this phrase in Section 48.1 (relating to definitions).
- Subsections 48.15(5)(iii) (v) and (vi) use the phrase “in marriage and family therapy as defined in § 48.1.” However, there is no definition of this phrase in Section 48.1 (relating to definitions).
- The word “calendar” close to the end of Section 47.12c(b)(8) is not spelled correctly.
- The plural word “individuals” should be used in Subsection 49.2(1).

- Section 49.13(a)(1) requires an applicant to satisfy “the general requirements for licensure *of this subsection*” Did the Board intend for the applicant to meet the requirements of Section 49.12?
- As printed in the *Pennsylvania Bulletin*, Section 49.14 was incorrectly designated as 47.14.

These errors should be corrected prior to final publication of this regulation.