

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 1  
DEFINITIONS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

On May 23, 2005, the board revamped the portions of its rules dealing with qualifications for licensure, supervised experience and the application process. The impetus for these rule changes, effective July 2, 2005, was enactment of PL 2003, c. 542. Chapter 542 clarified the board's authority to determine the number of academic credit hours necessary for licensure as a licensed professional counselor, licensed clinical professional counselor ("LCPC") and licensed marriage and family therapist ("LMFT"). Revision of the academic qualifications for licensure – which also extended to licensed pastoral counselors – occupied center stage in the 2005 rules revision.

The board realized at the time that it would need to re-visit the parts of its rules that were not included in the 2005 revisions. These included the board's code of ethics, disclosure statements, continuing education, and inactive status licensure. These areas became the focus of the rules adopted today. In addition, the board also revised the 2005 academic standards for licensure in this rulemaking proceeding.

Turning to the new and amended definitions in Chapter 1: The definition of "client" in Section 1(5) of this chapter includes a person who currently receives counseling from a licensee or did so in the past. Many of the ethical obligations in the amended code of ethics (Chapter 8-A) are couched in terms of the counselor's duty to a client. The definition clarifies that many of those duties may persist indefinitely beyond the termination of the counselor-client relationship.<sup>1</sup>

Bracketed notes have been added to the definitions of "clinical counseling experience" and "counseling experience" in Section 1(6) and (11), respectively, to clarify that "clinical counseling experience" applies to LCPCs, LMFTs and pastoral counselors and that "counseling experience" applies to licensed professional counselors. The purpose of the notes is to emphasize the distinction between clinical vs. nonclinical license categories discussed at length in *Cobb v. Board of Counseling Professionals Licensure*, 2006 ME 48.

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<sup>1</sup> As the board complaint officer testified in one adjudicatory proceeding, "Once a client, always a client."

The definition of “continuing education” in Section 1(9) is re-worded to emphasize that continuing education activities must be directly related to the theory and practice of professional counseling in order to be accepted by the board.

The definition of “direct counseling” in Section 1(12-A) of this chapter relates to the requirement in Chapter 2, Section 4, that the supervised experience of conditional LPCs include a minimum of 1,000 hours of direct counseling with individuals, couples, families or groups.

An earlier version of the board’s rules included “good moral character” as a criterion for licensure as a registered counselor. Chapter 5-A does not include “good moral character” as a requirement for licensure. The definition, former Section 1(15) of this chapter, has accordingly been deleted. The defined term “AAPC” (American Association of Pastoral Counselors) is not used in the rules and has also been deleted.

The definition of “peer consultation” in Section 1(15-A) relates to the peer consultation component of continuing education in Chapter 7-A, Section 2(1). The predecessor definition of “peer supervision” was inadvertently not carried forward from the 2005 rule amendments and is reinstated here.

The expanded definition of “sexual activity” in Section 1(19) of this chapter is based on the joint sexual misconduct rule of the Board of Licensure in Medicine and the Board of Osteopathic Licensure.<sup>2</sup> The expanded definition contains a greater number of specific examples than the predecessor definition. These especially include examples of sexual speech that are inappropriate in a counseling relationship. The definition has also been re-formulated into “Level 1” and “Level 2” sexual activity. In the context of the sexual relationships prohibited by the amended code of ethics (Chapter 8-A, Section 4), Level 1 conduct is more objectionable than Level 2 conduct, and may be expected to lead to more severe disciplinary action depending on the facts and circumstances of the particular case.

The definition of “supervision” in Section 1(20) is amended by striking the word “conditional” as shown:

“Supervision” means a continuous process performed by a supervisor who monitors the professional practices of a ~~conditional~~ licensee through regular, documented, face-to-face consultation and instruction for the purpose of evaluating and enhancing the function of the supervisee and monitoring the quality of professional services offered to clients.

This change acknowledges that any licensee may be subject to disciplinary supervision.

Section 1(23) of the board’s predecessor rules contained a lengthy definition of “supervisor” that set forth the necessary qualifications for this role. The Attorney General’s office advised the board that this definition was substantive in nature, and recommended that the qualifications for serving as supervisor be re-located to the

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<sup>2</sup> Chapter 10 of the rules of the Board of Licensure in Medicine and the Board of Osteopathic Licensure.

separate chapters dealing with licensure of licensed professional counselors, LCPCs, LMFTs and pastoral counselors. The board accepted this recommendation. The definition of “supervisor” in the adopted rules has been shortened to read:

“Supervisor” is a person who provides supervision and meets the qualifications set forth in the board’s rules.

Qualifications for supervisor now appear in Chapter 2, Section 4 (licensed professional counselors), Chapter 3, Section 4(3) (LCPCs), Chapter 4, Section 4(3) (LMFTs) and Chapter 5, Section 5 (pastoral counselors).

In these relocated sections, licensed master social workers-conditional (clinical) are removed from the list of professionals in former Section 1(23) who can supervise conditional licensees of the board. Only fully-licensed clinicians (including licensed clinical social workers and certified social workers-independent practice) are qualified to supervise conditionally-licensed counselors. The additional criterion for supervisor status in former Section 1(23)(A)(3) is also amended in Chapters 2-5 of the current rules to read:

~~30~~Thirty contact ~~ele~~hours of training in supervision and a minimum of one year of licensed practice at a licensure level higher than entry-level conditional; or

This change ensures that a supervisor qualifying by way of training in supervision has actual practice experience.

### **Response to Comments**

Jeri Stevens

- ◆ The definition of “sexual activity” in Section 19 is offensive. The commenter hasn’t seen anything so explicit in other codes. Counselors who commit any of the defined acts in a counseling relationship won’t follow a code of ethics to begin with. The definition is demeaning to the majority of licensees who do the best that we can to follow the code of ethics. The commenter inquired as to the source and purpose of the language.

Jennifer Waterman, Peter Comstock, Jeri Stevens,  
Susan Bakaley Marshall, Anita Letendre, Tori Kugel  
on behalf of Maine Clinical Counselors Association

- ◆ All counselors know that they cannot have any type of sexual relationship with a client. The descriptive language in the proposed definition of “sexual activity” in Section 19 will not deter counselors who are inclined to violate their client’s rights and the rules. The detail of the definition will lead offenders to commit abuses not specifically outlined in the rules. The board should remove the extensive list of descriptors of sexual violation but retain the Level 1 and Level 2 designations.

- Board Response to the preceding two comments: Comments not accepted. The intent of the definition is to eliminate any uncertainty as to what constitutes the type of sexual act, sexual contact, sexual behavior or sexual speech that can result in discipline by the board. The board agrees with the commenters that for the vast majority of counselors, these provisions are unnecessary. However, one could make the same argument with respect to the criminal laws: that because the vast majority of citizens are law-abiding, criminal laws are unnecessary.

The relative lack of detail in the current definition has led to skewed perceptions where in the absence of a black-and-white prohibition, some counselors charged with sexual misconduct have been unable to appreciate the wrongfulness of the conduct involved. One example is a counselor who was charged with engaging a child in a full frontal hug. The new definition, in Section 1(19)(A)(5), addresses this conduct by prohibiting “any touching of a body part for any purpose other than appropriate comfort.”

The new definition cannot, of course, specifically address every possible instance of objectionable behavior. But overall, the greater specificity in the new definition may make the board’s fact finding in this type of complaint less subjective.

Nor will this specificity lead to a search for loopholes. The detailed descriptions of prohibited conduct are only examples and do not define the totality of the prohibited conduct. See the phrase “including but not limited to” in the first paragraphs of Section 19(A) and (B), respectively.

As noted in the Basis Statement, the definition is based on the joint sexual misconduct rule of the Board of Licensure in Medicine and the Board of Osteopathic Licensure. Within the Office of Licensing and Registration, the State Board of Alcohol and Drug Counselors and the State Board of Social Work Licensure have adopted similar rulemaking language, although the State Board of Examiners of Psychologists declined to do so.

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## **BASIS STATEMENT AND RESPONSE TO COMMENTS**

### **CHAPTER 1-A ADVISORY RULINGS ADOPTED OCTOBER 26, 2009**

#### **Basis Statement**

The Maine Administrative Procedure Act requires each board or agency with rulemaking authority to adopt rules for the submission, consideration and disposition of requests for advisory rulings.

#### **Response to Comments**

No comments were received on the proposed rule.

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**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 2  
LICENSED PROFESSIONAL COUNSELORS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

One of the most frequent questions asked of board staff is, “What can a licensed professional counselor/LCPC/ LMFT/pastoral counselor do?” To provide a base line level of guidance, the four chapters dealing with the four license categories all lead off with a scope of practice summary such as that found in Section 1 of this chapter.

The description of alternative experience following Section 2(1)(C)(10) of this chapter has been amended by the qualifier of “lawfully obtained” supervised counseling experience. The new language responds to the board’s experience in license denial situations where an applicant attempted to claim credit for counseling experiences for which the applicant was not properly credentialed.

The amendments to this chapter significantly affect applicants who apply for licensure on the basis of a nonconforming graduate degree (i.e., 36 hours instead of 48 hours). In Section 2(2)(B) of this chapter and the unnumbered paragraph immediately following, these amendments shift focus from the supplemental coursework completed by the applicant to an overall consideration of the applicant’s entire graduate education. The board also dropped the requirement that a person applying on the basis of a nonconforming degree obtain a certification from the educational institution that the supplemental coursework completed by the applicant satisfies the core curriculum requirements of this chapter. Applicants were frequently unable to obtain this certification from the educational institution, and the board is able to evaluate applicants’ academic qualifications without it.

The most important amendment to this chapter is elimination of the January 1, 2009 end date for applying for licensure on the basis of a 36 semester hour nonconforming degree. The 2005 rulemaking proceeding upgraded the educational requirement for licensure from a 36 semester hour masters degree to a 48 semester hour masters degree. The board allowed a 3½ year window for applicants with a 36 hour degree to complete supplemental coursework to the 48 hour equivalent. After January 1, 2009, applicants with a 48 hour nonconforming degree would be permitted to cure deficiencies, but applicants with a nonconforming degree of less than 48 hours would be barred from licensure entirely on the basis of that degree.

The rationale for the January 1, 2009 end date was that an accredited 48 hour masters degree was the preferred path of education preparation for licensure; that the number of 36 hour graduate programs was shrinking; and that future clients of new licensed professional counselors would be better served by counselors who had completed an integrated 48 hour program as opposed to counselors who had completed a 36 hour program with an additional 12 hours bolted on afterwards. Three-and-a-half years seemed to be an appropriate interim period during which prospective applicants would be permitted to supplement 36 hour degrees. After this window closed on January 1, 2009, only applicants who had completed an integrated 48 hour degree would be eligible for licensure.

Very few persons have been licensed as licensed professional counselors since the 2005 change in educational requirements. And the board has no information specific to applicants that requires any further change to this chapter. However, the board in this rulemaking proceeding eliminated from Chapter 3 of its rules a sunset deadline for LCPC applicants who have not completed an integrated 60 semester hour masters degree by January 1, 2011. In the interest of consistency, the board likewise decided to eliminate from this chapter the January 1, 2009 end date for supplementing a 36 semester hour masters degree in order to qualify for licensure as a licensed professional counselor.

To sum up this part of the discussion: The requirement that applicants with a 36 hour masters degree supplement their degree to the 48 hour level remains in effect. As a result of this rulemaking proceeding, this pathway to licensure will remain in effect indefinitely.

The board deleted from Section 3 the sentence, “An applicant who fails to achieve a passing score may retake the examination at subsequent sittings without limitation.” Retake policies are usually set by the examination vendor.

The board also amended provisions of this chapter relating to the 2000 hours of supervised experience that applicants must complete in order to qualify for full licensure. Section 4 of this chapter requires that supervision be shall occur with substantial regularity throughout the supervised experience. This change prevents a supervisor from providing little supervision during the bulk of the traineeship and loading up supervision hours at the tail end. Section 4 also seeks to expand the availability of supervisors for individual supervision by permitting up to half the amount of mandatory individual supervision to take place via live audio conference or live videoconference.

Ordinarily, supervised experience is completed during the period of conditional licensure. An amendment to Section 5 of this chapter permits the board to waive conditional licensure in whole or in part where an applicant has completed “supervised experience lawfully obtained following attainment of the qualifying degree that is substantially equivalent to the supervised experience required by Section 4 of this chapter.” This might occur when an applicant has completed a supervised counseling experience in another state or under another equivalent license. For example, an individual may have completed 1000 hours in another state, and then decided to apply

for licensure in Maine. This amendment permits the board to credit those hours towards the 2000 hours of supervised experience required for licensure.

Finally, consistent with the waiver provision noted above, the rule provisions dealing with supervised experience have been removed from the Conditional Licensure section of this chapter and now appear as a self-standing section entitled Supervised Experience.

### **Response to Comments**

Cindy Chapman on behalf of  
Commission on Rehabilitation Counselor Certification

- ◆ The examination requirements for licensure as a professional counselor (“LPC”) should be amended to include the Certified Rehabilitation Counselor Examination (“CRCE”) as an equivalent to the National Counselor Examination (“NCE”). “Several states (including Arizona, the District of Columbia, Illinois, Iowa, Michigan, North Carolina, Oregon, Pennsylvania, West Virginia, and Wisconsin) have already acknowledged the equivalency of the CRCE to the National Counselor Examination by rule or departmental policy.”

The board’s rules currently recognize approval of counselor education programs by the Council on Rehabilitation Education (“CORE”) as the equivalent of programs approved by the Council for Accreditation of Counseling and Related Educational Programs (“CACREP”). Recognizing a licensing examination oriented toward rehabilitation counseling would be consistent with this approach. Together the CRCE and CORE standards are the equivalent of the NCE and CACREP standards for rehabilitation counseling. “While the key content areas in the NCE are reflected in the CRCE, the CRCE contains additional content areas specific to rehabilitation counseling. Furthermore, the CRCE’s conjunctive scoring model requires a passing score on both the counseling components as well as those components focused on rehabilitation and disability to assure that those taking the examination demonstrate counseling skills.”

(The commenter included the text of proposed amendments to implement this recommendation.)

- Board Response: Comment not accepted. The proposed rules did not include recognition of the CRCE. If the board were to act on the commenter’s request, members of the public would have no opportunity to comment on such a rule change before it went into effect. For this reason, the board cannot act on this request, and is unwilling to delay adoption of the rules by putting this chapter out for additional written comment. The board notes that the Maine Administrative Procedure contains mechanisms for a person to petition a regulatory agency to adopt specific rules.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

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**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 3  
LICENSED CLINICAL PROFESSIONAL COUNSELORS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

One of the most frequent questions asked of board staff is, “What can a licensed professional counselor/LCPC/ LMFT/pastoral counselor do?” To provide a base line level of guidance, the four chapters dealing with the four license categories all lead off with a scope of practice summary such as that found in Section 1 of this chapter.

The description of alternative experience following Section 2(1)(B)(10) of this chapter has been amended by the qualifier of “lawfully obtained” supervised counseling experience. The new language responds to the board’s experience in license denial situations where an applicant attempted to claim credit for counseling experiences for which the applicant was not properly credentialed.

Older masters degree programs typically included a 600 hour internship instead of the 900 hour internship required by Section 2(1)(B)(10) of this chapter. It is not feasible for applicants to make up this deficiency through supplemental graduate level coursework as permitted by Section 2(3)(B) of this chapter. The board’s response is to recognize the qualifying degree of an applicant who has (a) completed a practicum and (b) completed a clinical internship of at least 600 hours, but to require this applicant to complete an additional 1,000 hours – 4,000 instead of 3,000 – of supervised experience. See Section 4(2) of this chapter.

The board cannot overstate the importance of a complete internship in the development of practice skills. The intensity of this training is reflected in the equivalency described above: 1,000 hours of additional supervised experience after licensure to compensate for a deficiency of 300 hours of clinical internship prior to licensure. In the opinion of the board, this trade-off will enable otherwise-qualified applicants to become licensed LCPCs without compromising standards of client care.

The amendments to this chapter significantly affect applicants who apply for licensure on the basis of a nonconforming graduate degree (i.e., at least 36 hours but less than 60 hours). In Section 2(3)(B) of this chapter and the unnumbered paragraph immediately following, these amendments shift focus from the supplemental coursework completed by the applicant to an overall consideration of the applicant’s entire graduate education. The board also dropped the requirement that a person applying on the basis

of a nonconforming degree obtain a certification from the educational institution that the supplemental coursework completed by the applicant satisfies the core curriculum requirements of this chapter. Applicants were frequently unable to obtain this certification from the educational institution, and the board is able to evaluate applicants' academic qualifications without it.

The most important amendment to this chapter is the elimination of the January 1, 2011 end date for applying for licensure on the basis of a 36 semester hour nonconforming degree.

The 2005 rulemaking proceeding upgraded, in three steps, the educational requirement for licensure as an LCPC. Until January 1, 2009, a person can be licensed on the basis of a 48 hour masters degree. An applicant with a minimum 36 hour masters degree can, until that date, be licensed on the basis of sufficient supplemental coursework to meet the 48 hour standard. On January 2, 2009, the educational requirement rises to a 60 hour masters degree. An applicant with a minimum 36 hour masters degree can, until January 1, 2011, be licensed on the basis of sufficient supplemental coursework to meet the 60 hour standard. But after January 1, 2011, a 60 hour masters degree will be required of all applicants, and no opportunity to supplement a minimum 36 hour masters degree will be provided. An applicant with a 60 hour nonconforming degree will be permitted to cure deficiencies, but applicants with a nonconforming degree of less than 60 hours will be barred from licensure entirely on the basis of that degree.

The board thus allowed a 5½ year window – from July 2005 to January 2011 – for applicants with a 36 hour degree to complete supplemental coursework to the 60 hour level. The rationale for the January 1, 2011 end date was that an accredited 60 hour masters degree was the preferred path of education preparation for licensure; that 36 hour programs had disappeared and the number of 48 hour graduate programs was shrinking; and that future clients of new LCPCs would be better served by counselors who had completed an integrated 60 hour program as opposed to counselors who had completed a 36 or 48 hour program with an additional 12 or 24 hours bolted on afterwards. Five-and-a-half years seemed to be an appropriate interim period during which prospective applicants would be permitted to supplement 36 hour degrees. After this window closed on January 1, 2011, only applicants who had completed an integrated 60 hour degree would be eligible for licensure.

As of this writing, the closing of this window is less than 1½ years away. What the board has seen so far suggests that some applicants will not meet the 60 hour standard once it goes into full effect on January 1, 2011.

Some applicants for the LCPC license have not graduated with 60 hour masters degrees. For example, applicants may have completed other programs with 52 or 57 graduate credits. Currently, such applicants are eligible for licensure under the 48 hour standard now in effect. From January 2, 2009 to January 1, 2011, such applicants have the opportunity to show supplemental course work sufficient to meet the 60 hour standard. But graduates with 52 or 57 credits will be ineligible for licensure after January

1, 2011 unless they complete a second masters degree program that does meet the 60 hour standard.

For these reasons, the board in this rulemaking proceeding amended Chapter 3 by eliminating the January 1, 2011 end date for supplementing a 36 semester hour masters degree in order to qualify for licensure as a LCPC. The requirement of 60 hours of graduate education will remain in effect. However, the January 1, 2011 deadline for supplementing to that level will no longer apply. As a result of this rulemaking proceeding, the option of supplementing a minimum 36 hour masters degree to 60 semester hours will remain in effect indefinitely.

The board deleted from Section 3(1) and (2) the sentence, “An applicant who fails to achieve a passing score may retake the examination at subsequent sittings without limitation.” Retake policies are usually set by the examination vendor.

The board also amended provisions of this chapter relating to the 3,000 hours of supervised experience that applicants must complete in order to qualify for full licensure. Section 4 of this chapter requires that supervision shall occur with substantial regularity throughout the supervised experience. This change prevents a supervisor from providing little supervision during the bulk of the traineeship and loading up supervision hours at the tail end. Section 4 also seeks to expand the availability of supervisors for individual supervision by permitting up to half the amount of mandatory individual supervision to take place via live audio conference or live videoconference.

Ordinarily, supervised experience is completed during the period of conditional licensure. An amendment to Section 5 of this chapter permits the board to waive conditional licensure in whole or in part where an applicant has completed “supervised clinical experience lawfully obtained following attainment of the qualifying degree that is substantially equivalent to the supervised experience required by Section 4 of this chapter.” This might occur when an applicant has completed a supervised clinical counseling experience in another state or under another equivalent license. For example, an individual may have completed 2000 hours in another state, and then decided to apply for licensure in Maine. This amendment permits the board to credit those hours towards the 3000 hours of supervised experience required for licensure.

Finally, consistent with the waiver provision noted above, the rule provisions dealing with supervised experience have been removed from the Conditional Licensure section of this chapter and now appear as a self-standing section entitled Supervised Experience.

### **Response to Comments**

Don Saastamoinen

- ◆ The board should not prohibit persons with a 30 hour master’s degree and additional graduate course work from becoming licensed as a clinical professional counselor (“LCPC”). The commenter cannot understand how a 60

hour master's degree is better than a 30 hour master's degree with additional coursework/degrees as long as all the course were completed. "In fact, if I am reading the rule correctly, a person with a thirty hour masters and a Ph.D. in Psychology would not qualify!"

- Board Response: Comment not accepted. The board adopted the requirement of a 60 hour master's degree in the 2005 revision of its rules to reflect the evolution of educational programs for counseling. The board's rules permit persons with a minimum 36 hour master's degree to supplement that degree with additional coursework necessary to meet the 60 hour level. As described in the Basis Statement and Response to Comments in the 2005 rulemaking proceeding, the 36 hour master's degree program, much less a 30 hour degree, is no longer a recognized standard.

It took many years for educational institutions to move to the new standard, and for the board to adopt it. Reversion by the board to a 30 hour master's degree would be a disservice to those who met the 60 hour minimum and would dilute the LCPC credential.

The board also notes that if a person who completed a 30 hour master's degree enrolls in a current graduate program, the student can request that credit be awarded for the prior coursework.

Under Section 2(C) of this chapter, a doctoral degree in clinical psychology or counseling psychology is a qualifying degree for licensure as a LCPC.

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**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 4  
LICENSED MARRIAGE AND FAMILY THERAPISTS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

One of the most frequent questions asked of board staff is, “What can a licensed professional counselor/LCPC/ LMFT/pastoral counselor do?” To provide a base line level of guidance, the four chapters dealing with the four license categories all lead off with a scope of practice summary such as that found in Section 1 of this chapter.

Older masters degree programs that typically included a 600 hour internship instead of a 900 hour internship required by Section 2(1)(C)(9) of this chapter. It is not feasible for applicants to make up this deficiency through supplemental graduate level coursework as permitted by Section 2(3)(B) of this chapter. The board’s response is to recognize the qualifying degree of an applicant who has (a) completed a practicum and (b) completed a clinical internship of at least 600 hours, but to require this applicant to complete an additional 1,000 hours – 4,000 instead of 3,000 – of supervised experience. See Section 4(2) of this chapter.

The board cannot overstate the importance of a complete internship in the development of practice skills. The intensity of this training is reflected in the equivalency described above: 1,000 hours of additional supervised experience after licensure to compensate for a deficiency of 300 hours of clinical internship prior to licensure. In the opinion of the board, this trade-off will enable otherwise-qualified applicants to become licensed LMFTs without compromising standards of client care.

The amendments to this chapter significantly affect applicants who apply for licensure on the basis of a nonconforming graduate degree (i.e., at least 36 hours but less than 60 hours) after January 1, 2009. In Section 2(3)(B) of this chapter and the unnumbered paragraph immediately following, these amendments shift focus from the supplemental coursework completed by the applicant to an overall consideration of the applicant’s entire graduate education. The board also dropped the requirement that a person applying on the basis of a nonconforming degree obtain a certification from the educational institution that the supplemental coursework completed by the applicant satisfies the core curriculum requirements of this chapter. Applicants were frequently unable to obtain this certification from the educational institution, and the board is able to evaluate applicants’ academic qualifications without it.

The most important amendment to this chapter is the elimination of the January 1, 2011 end date for applying for licensure on the basis of a 36 semester hour nonconforming degree.

The 2005 rulemaking proceeding upgraded, in three steps, the educational requirement for licensure as an LMFT. Until January 1, 2009, a person can be licensed on the basis of a 48 hour masters degree. An applicant with a minimum 36 hour masters degree can, until that date, be licensed on the basis of sufficient supplemental coursework to meet the 48 hour standard. On January 2, 2009, the educational requirement rises to a 60 hour masters degree. An applicant with a minimum 36 hour masters degree can, until January 1, 2011, be licensed on the basis of sufficient supplemental coursework to meet the 60 hour standard. But after January 1, 2011, a 60 hour masters degree will be required of all applicants, and no opportunity to supplement a minimum 36 hour masters degree will be provided. An applicant with a 60 hour nonconforming degree will be permitted to cure deficiencies, but applicants with a nonconforming degree of less than 60 hours will be barred from licensure entirely on the basis of that degree.

The board thus allowed a 5½ year window – from July 2005 to January 2011 – for applicants with a 36 hour degree to complete supplemental coursework to the 60 hour level. The rationale for the January 1, 2011 end date was that an accredited 60 hour masters degree was the preferred path of education preparation for licensure; that 36 hour programs had disappeared and the number of 48 hour graduate programs was shrinking; and that future clients of new LMFTs would be better served by counselors who had completed an integrated 60 hour program as opposed to counselors who had completed a 36 or 48 hour program with an additional 12 or 24 hours bolted on afterwards. Five-and-a-half years seemed to be an appropriate interim period during which prospective applicants would be permitted to supplement 36 hour degrees. After this window closed on January 1, 2011, only applicants who had completed an integrated 60 hour degree would be eligible for licensure.

As of this writing, the closing of this window is less than 1½ years away. What the board has seen so far suggests that some applicants for the *LCPC* license will not meet the 60 hour standard once it goes into full effect on January 1, 2011.

For the reason discussed in the Basis Statement for Chapter 3 of its rules, the board in this rulemaking proceeding amended Chapter 3 by eliminating the January 1, 2011 end date for supplementing a 36 semester hour masters degree in order to qualify for licensure as a *LCPC*. To maintain consistency between *LCPCs* and *LMFTs*, the board is removing the January 1, 2011 end date for *LMFT* applicants from Chapter 4 of its rules. The requirement of 60 hours of graduate education for licensure as a *LMFT* will remain in effect. However, the January 1, 2011 deadline for supplementing to that level will no longer apply. As a result of this rulemaking proceeding, the option of supplementing a minimum 36 hour masters degree to 60 semester hours will remain in effect indefinitely.

The board deleted from Section 3 the sentence, “An applicant who fails to achieve a passing score may retake the examination at subsequent sittings without limitation.” Retake policies are usually set by the examination vendor.

The board also amended provisions of this chapter relating to the 3,000 hours of supervised experience that applicants must complete in order to qualify for full licensure. Section 4 of this chapter requires that supervision shall occur with substantial regularity throughout the supervised experience. This change prevents a supervisor from providing little supervision during the bulk of the traineeship and loading up supervision hours at the tail end. Section 4 also seeks to expand the availability of supervisors for individual supervision by permitting up to half the amount of mandatory individual supervision to take place via live audio conference or live videoconference.

Ordinarily, supervised experience is completed during the period of conditional licensure. An amendment to Section 5 of this chapter permits the board to waive conditional licensure in whole or in part where an applicant has completed “supervised clinical experience lawfully obtained following attainment of the qualifying degree that is substantially equivalent to the supervised experience required by Section 4 of this chapter.” This might occur when an applicant has completed a supervised clinical counseling experience in another state or under another equivalent license. For example, an individual may have completed 2000 hours in another state, and then decided to apply for licensure in Maine. This amendment permits the board to credit those hours towards the 3000 hours of supervised experience required for licensure.

Consistent with the waiver provision noted above, the rule provisions dealing with supervised experience have been removed from the Conditional Licensure section of this chapter and now appear as a self-standing section entitled Supervised Experience.

Finally, Section 6 of this chapter incorporates the new temporary conditional LMFT license created by PL 2009, c. 172. By statute, the license is limited to a 6-month period during which the temporary licensee must apply for and pass the Marital and Family Therapy Examination. Section 6 requires the applicant to pay the ordinary conditional license fee. If the temporary licensee submits proof of a passing score obtained within this period, OLR will issue that person an ordinary conditional license without payment of an additional fee. Supervision is to continue under the conditional license without interruption.

### **Response to Comments**

No comments were received on the proposed rule.

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**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 5  
LICENSED PASTORAL COUNSELORS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

One of the most frequent questions asked of board staff is, “What can a licensed professional counselor/LCPC/ LMFT/pastoral counselor do?” To provide a base line level of guidance, the four chapters dealing with the four license categories all lead off with a scope of practice summary such as that found in Section 1 of this chapter.

The board deleted from Section 4(1) and (2) the sentence, “An applicant who fails to achieve a passing score may retake the examination at subsequent sittings without limitation.” Re-take policies are usually set by the examination vendor.

The board also amended provisions of this chapter relating to the 3,000 hours of supervised experience that applicants must complete in order to qualify for full licensure. Section 4 of this chapter requires that supervision shall occur with substantial regularity throughout the supervised experience. This change prevents a supervisor from providing little supervision during the bulk of the traineeship and loading up supervision hours at the tail end. Section 4 also seeks to expand the availability of supervisors for individual supervision by permitting up to half the amount of mandatory individual supervision to take place via live audio conference or live videoconference.

Finally, for consistency with Chapters 2, 3 and 4 of the board’s rules, the rule provisions dealing with supervised experience have been removed from the Conditional Licensure section of this chapter and now appear as a self-standing section entitled Supervised Experience.

Ordinarily, supervised experience is completed during the period of conditional licensure. An amendment to Section 6 of this chapter permits the board to waive conditional licensure in whole or in part where an applicant has completed “supervised experience lawfully obtained following attainment of the qualifying degree that is substantially equivalent to the supervised experience required by Section 5 of this chapter.” This might occur when an applicant has completed a supervised counseling experience in another state. For example, an individual may have completed 2000 hours in another state, and then decided to apply for licensure in Maine. This amendment permits the board to credit those hours towards the 3000 hours of supervised experience required for licensure.

For pastoral counselors, the 400 hours of clinical pastoral education required by 32 MRSA §13858(3-A) is the counterpart to the academic internship required by Sections 2, 3 and 4 of the board's rules for LPCs, LCPCs and LMFTs, respectively. Prior to amendment of the board's rules in 2005, Chapter 2, Section 4(A)(2) required that applicants for licensure as pastoral counselors demonstrate completion of "[o]ne (1) unit of four-hundred (400) contact hours in clinical pastoral education as part of a program accredited by the Association [for] Clinical Pastoral Education or its equivalent." In the 2005 amendments this requirement, relocated to Chapter 5, Section 2(2)(F), was altered to read, "One unit of 400 contact hours in clinical pastoral education in a program accredited by ACPE."

The unexplained omission of the phrase "or its equivalent" in the 2005 amendments later became significant when an applicant who trained as a Buddhist teacher and counselor applied for licensure as a pastoral counselor. ACPE has not accredited clinical counseling programs affiliated with Eastern religions. It was never the board's intent to bar members of any faith from licensure as a pastoral counselor. The board in this rulemaking proceeding amended Section 2(2)(F) to recognize accrediting organizations other than ACPE and to recognize unaccredited programs that reflect Eastern-style religious or spiritual training.<sup>1</sup>

### **Response to Comments**

Nancy Hathaway

Sally Bowden-Schaible [supporting]

- ◆ Section 3(1) requires an applicant for licensure as a pastoral counselor to have a master's degree or a doctoral degree from a regionally accredited institution. For two reasons, this section and all counterpart sections of the board's rules should be amended to include "reasonable equivalent education." First, applicants in the future may present to the board with education "that we may not even understand today that may be appropriate in the future." Secondly, the language of the proposed rule may discriminate against persons seeking licensure as pastoral counselors in the Buddhist tradition. The Buddhist tradition emphasizes both academic and experiential study. The commenter was unsuccessful in finding any doctoral program in pastoral counseling or pastoral counseling education that focused on Eastern religions or a Buddhist approach. Adding "reasonable equivalent education" to the rule would give the board more authority to look at an applicant's whole core curriculum.
- Board Response: Comment accepted in large part. Prior to amendment of the board's rules in 2005, Chapter 2, Section 4(A) provided in relevant part:

To be eligible for licensure as a Pastoral Counselor, an applicant shall have successfully completed a Master of Divinity degree, or

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<sup>1</sup> This rulemaking was also required by R. 2009, c. 13, Resolve, Directing the Department of Professional and Financial Regulation to Amend its Rules Governing Pastoral Counselors.

masters or doctoral degree in Pastoral Counseling, or the equivalent of either, from a regionally accredited institution.

In the 2005 amendments, this provision, relocated to Chapter 5, Section 3(1), was altered to read:

1. Qualifying Degree

The applicant shall provide documented proof of a master's degree or a doctoral degree from a regionally accredited institution that meets the core curriculum requirements of Section 2(2) of this chapter, and is a:

- Master of Divinity or Doctor of Divinity degree; or
- Master's or doctorate degree in pastoral counseling.

The omission of the phrase, "or the equivalent of either" in the 2005 revision was unexplained.

Title 32 MRSA §13858(3-A) sets forth the statutory requirements for licensure as a pastoral counselor. The academic component appears in §13858(3-A)(B):

Received a Master of Divinity degree or a Doctor of Divinity degree, *or an equivalent degree approved by the board*, from an accredited institution or a program approved by the board. Academic preparation includes a minimum graduate core curriculum to include 20 credit hours of counseling and human relations and 400 hours of clinical pastoral education.;

(emphasis in original)

Section 13858(3-A)(B) confers upon the board the authority to recognize educational degree programs equivalent to those specifically identified in the statute.<sup>2</sup> The commenter's testimony about the paucity of Eastern-oriented academic program in pastoral counseling provides good reason to restore acceptance of equivalent educational programs generally back into the rules.

As discussed in the Basis Statement, the board amended the formulation of clinical pastoral education in this rulemaking proceeding to recognize Eastern-style religious or spiritual training. Likewise, amending the degree requirements in the manner the commenter suggests will explicitly allow the board to evaluate Buddhist-oriented graduate training for equivalence with the western-oriented divinity education mentioned in the statute. For these reasons, Chapter 5, Section 3(1) is amended to read:

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<sup>2</sup> In accepting master's and doctoral degrees in pastoral counseling, neither of which is mentioned in §13858(3-A)(B), the board already exercise this authority.

1. Qualifying Degree

The applicant shall provide documented proof of a master's degree or a doctoral degree from a regionally accredited institution that meets the core curriculum requirements of Section 23(2) of this chapter, and is a:

- Master of Divinity or Doctor of Divinity degree; or
- Master's or doctorate degree in pastoral counseling.

Alternatively, the applicant may provide documented proof of an equivalent degree from a program approved by the board that meets the core curriculum requirements of Section 3(2) of this chapter.

The board declines the commenter's suggestion to apply the same change to the degree requirements for the other licenses issued by the board. The language of §13858(3-A) is unique. The issues of religious discrimination in counselor training raised by the commenter have no application to the other license categories.

Nancy Hathaway

- ◆ The commenter noted with approval that Section 3(2)(F), Clinical Pastoral Education, has been amended to recognize pastoral counseling in the Buddhist tradition.
  - Board Response: No response is necessary.

Nancy Hathaway

- ◆ Section 7(1) states that a passing score on the National Clinical Mental Health Counseling Examination is a prerequisite to full licensure as a pastoral counselor. The amendments to this section delete a prefatory note stating that this requirement is effective with respect to applications received after January 1, 2008. The commenter applied for full licensure in November 2007. The commenter requests that the note be restored so that she will not have to take the National Clinical Mental Health Counseling Examination to be licensed as a pastoral counselor.
  - Board Response: Comment not accepted. The proposed amendment of Section 7(1) to which the commenter refers reads as follows:

...The applicant shall submit:

1. ~~[EFFECTIVE WITH RESPECT TO APPLICATIONS FOR FULL LICENSURE RECEIVED AFTER JANUARY 1, 2008]~~ Proof of a passing score on the National Clinical Mental Health Counseling Examination, or a request to take the examination;

The same note, “effective with respect to applications for full licensure received after January 1, 2008,” also appears in Chapter 3, Section 3(2) and Section 61), and in Chapter 5, Section 4(2) of the current rules. The proposed rules delete the note from these sections also.

Prior to the 2005 rules revision, applicants for full licensure as a LCPC or pastoral counselor were required to take only one examination, the National Counselors Examination. This is a non-clinical examination, and is the same examination taken by applicants for licensure as a LPC, a non-clinical license. The LCPC and pastoral counselor license are clinical licenses. In the 2005 amendments, the board added the requirement that applicants for the LCPC and pastoral counselor licenses also demonstrate clinical proficiency by passing the National Clinical Mental Health Counseling Examination. “The clinical examination,” wrote the board, “is one more guarantor of practice readiness.”<sup>3</sup>

As originally proposed in 2005, the clinical examination requirement had a deferred effective date of January 2, 2007. In response to several comments from persons who were completing a masters degree or were conditionally licensed, the board further pushed back the effective date to January 2, 2008.

At this point in time, the notice of the effective date of the clinical examination requirement is obsolete. Because we are past January 1, 2008, *all* applications received by the board once these rule amendments go into effect will have been received on or after January 1, 2008. The notice no longer has any meaning.

It is common drafting practice to remove expired date references of this type when revising rules or statutes. For this reason, and no other, the board proposed to delete the effective date note regarding the clinical examination requirement everywhere it appeared in the board’s rules.

The commenter applied most recently for licensure as a pastoral counselor on November 9, 2007. Her application was finally denied in a Decision and Order dated October 1, 2008.<sup>4</sup> The basis for denial was that the commenter had not demonstrated completion of 400 hours of clinical pastoral education. As discussed in the Basis Statement, the new rules substantially expand the scope of clinical pastoral education that may be recognized by the board. The expectation is that the commenter will re-apply under the new standard. See R. 2009, c. 13, Sec. 2.

The thrust of the commenter’s remarks is that: (1) any application she now submits will be a continuation of the denied application, (2) the denied

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<sup>3</sup> Basis Statement and Response to Comments adopted May 23, 2005, p. 9.

<sup>4</sup> In re Nancy Hathaway, Board of Counseling Professionals Licensure, Decision and Order dated October 1, 2008.

application was submitted before January 2, 2008, (3) the commenter would accordingly not be required to take the clinical examination under the current rules, and (4) by removing the note about the effective date in the new rules, the board is imposing a requirement on her that other applicants who applied before January 2, 2008 did not have to meet.

The board's rules govern operation of the counselors licensure program for all applicants, licensees and members of the public. The application history of one person is insufficient reason for the board to abstain from making technical updates to its rules. There is currently no application from the commenter pending before the board. The extent to which the removal of the note about the effective date affects the commenter, if at all, can be addressed in the event that the applicant re-applies. The board declines to restore the note, and in this respect has adopted the rules as proposed.

Nancy Hathaway

- ◆ The commenter inquired as to the meaning of Section 7(1-B).
  - Board Response: Chapter 5, Section 7(1-B) is one of four related revisions made in this rulemaking proceeding, to wit:

Chapter 2 – Licensed Professional Counselor

6. Full Licensure

A conditional licensee or other qualified applicant may apply to the board for full licensure as a licensed professional counselor upon completion of the supervised experience required by Section 4 of this chapter or substantially similar supervised experience. The applicant shall submit:

1. Proof of the education required by Section 2 of this chapter, if not previously provided to the board;

Chapter 3 – Licensed Clinical Professional Counselors

6. Full Licensure

A conditional licensee or other qualified applicant may apply to the board for full licensure as a licensed clinical professional counselor upon completion of the supervised experience required by Section 4 of this chapter or substantially similar supervised experience. The applicant shall submit:

3. Proof of the education required by Section 2 of this chapter, if not previously provided to the board;

Chapter 4 – Licensed Marriage and Family Therapists

7. Full Licensure

A conditional licensee or other qualified applicant may apply to the board for full licensure as a licensed marriage and family therapist upon completion of the supervised experience required by Section 4 of this chapter or substantially similar supervised experience. The applicant shall submit:

1. Proof of the education required by Section 2 of this chapter, if not previously provided to the board;

Chapter 5 – Licensed Pastoral Counselors

7.Full Licensure

A conditional licensee or other qualified applicant may apply to the board for full licensure as a licensed pastoral counselor upon completion of the supervised experience required by Section 5 of this chapter or substantially similar supervised experience. The applicant shall submit:

- 1-B. Proof of the education required by Section 3 of this chapter, if not previously provided to the board;

Under the board's prior rules, only persons who held conditional licenses could apply for full licensure. These persons would have furnished their educational qualifications to the board when they applied for their conditional licenses. The new rules permit the board to waive conditional licensure for applicants who have completed supervised experience lawfully obtained following attainment of the qualifying degree that is substantially equivalent to the supervised experience that is ordinarily obtained under a conditional license.<sup>5</sup> Because persons requesting the waiver may not have previously submitted their educational requirements to the board, the new provisions set forth above are a reminder that this information must be provided upon application for full licensure at the latest.

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<sup>5</sup> See Chapter 2, Section 4(4); Chapter 3, Section 5(4); Chapter 4, Section 5(4); Chapter 5, Section 6(4).

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 5-A  
REGISTRATION REQUIREMENTS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

The 2005 rulemaking proceedings inadvertently repealed former Chapter 3 of the board's rules, dealing with Registered Counselors. This chapter reinstates limited provisions relating to the scope of practice and obligations of registered counselors. This chapter re-states statutory requirements relating to a registered counselor's obligation to: (i) adhere to the Code of Ethics contained in Chapter 8-A of the board's rules; (ii) distribute the disclosure statement described in Chapter 8-B of the board's rules; and (iii) display and observe the client bill of rights described in Chapter 8-B of the board's rules.

PL 2007, c. 621 prohibited the issuance of new registrations after August 1, 2008. This license is now issued on a renewal basis only. For this reason the board deleted the qualifications for registration from this chapter.

**Response to Comments**

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 6**

**APPLICATIONS / APPLICANTS LICENSED IN ANOTHER JURISDICTION**

**ADOPTED OCTOBER 26, 2009**

**Basis Statement**

The board removed the requirement that an applicant complete the application process for a full license within a period of one year from the date the applicant completes the supervised experience required by the board's rules. Very few applicants wait a year to apply for full licensure.

The board revised Section 2 of this chapter, Applicants Trained In A Foreign Country, to specifically mention several acceptable transcript evaluation services of proven reliability.

**Response to Comments**

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 7  
LICENSE RENEWAL; INACTIVE STATUS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

The repeal and replacement of this chapter conforms the board's renewal procedures to current practice of the Office of Licensing and Registration for all programs.

Section 1(E) of the predecessor chapter dealt with reinstatement of an expired license within 90 days of the date of expiration. This provision has not been carried forward into the new rules because 90-day late renewal is comprehensively addressed in Chapter 11 of the rules of the Office of Licensing and Registration, entitled Late Renewals.

The provisions in the predecessor chapter relating to inactive status licensure and reinstatement to active status have been re-written for consistency with 32 MRSA §13864 and 10 MRSA §8003(5-A)(D)(5).

The predecessor chapter barred a licensee from applying for inactive status within 6 months of license expiration. The new rule permits a licensee to apply for inactive status within 6 months of license expiration if the licensee has completed the continuing education required for the license biennium. This change opens the 6-month window for inactive status licensure that was closed under the predecessor chapter while emphasizing that inactive status cannot be used to circumvent the continuing education requirement.

**Response to Comments**

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 7-A  
CONTINUING EDUCATION  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

This chapter substantially revises the continuing education provisions formerly contained in Chapter 8, Section 4 of the board's predecessor rules. This chapter leaves the overall number of continuing education hours required for biennial renewal unchanged at 55 but, in general, affords licensees more flexibility in choosing continuing education activities.

Under the predecessor chapter, the only required components of the 55-hour total were 15 hours of peer supervision and 4 hours of ethics. This chapter permits additional options within the former peer supervision component under the broader umbrella of "peer consultation," but no longer requires counselors to participate in peer consultation as a requirement for renewal. Under this chapter, up to 15 hours of peer consultation is optional. The 4 hour ethics requirement remains in place.

The predecessor chapter recognized for continuing education purposes "a formal home study program which is sanctioned by an independent education agency." The predecessor chapter also permitted licensees to earn up to 5 hours in "informal study or home study programs carried out individually."

The current reality is that formal home study now means CD- or internet-based learning experiences. This chapter explicitly recognizes "formal home study courses and on line, internet and other distance learning programs" for continuing education credit with no maximum hours limitation. Informal home study or prerecorded programs, combined, remain subject to the 5 hour limit in the predecessor chapter.

For continuing education credit earned for books or journal articles, the license period for which credit can be claimed will henceforth be the biennium during which the work was accepted for publication instead of the biennium during which the work was published. This chapter also prohibits conditional licensees from earning continuing education credit for field supervision of interns and eliminates the repetition restriction for continuing education credit earned by teaching a course.

To be recognized for continuing education credit, continuing education activities must directly relate to the theory and practice of professional counseling. For the guidance of

licensees (and to hopefully reduce the frequency of audit disallowances), this chapter also lists examples of activities which do not meet this standard.

This chapter also reflects the OLR boards' move to an audit model for verifying licensees' compliance with the continuing education requirement. It is no longer necessary for licensees to submit proof of completion with renewal applications. However, licensees will be required to document completion if they are selected for audit.

Finally, this chapter removes the hardship deferment provision from the predecessor rule. The board will rely solely on 32 MRSA §8003(5-A)(D)(4) to issue continuing education deferments in cases of undue hardship.

### **Response to Comments**

Jennifer Waterman, Peter Comstock, Jeri Stevens,  
Susan Bakaley Marshall, Anita Letendre, Tori Kugel  
on behalf of Maine Clinical Counselors Association

Jeri Stevens

- ◆ The four hours of continuing education in ethics required by Section 2(2) should be for face-to-face educational activities.
  - Board Response: Comment not accepted. The proposed rules did not include a requirement of face-to-face delivery of ethics instruction. If the board were to act on the commenter's request, members of the public would have no opportunity to comment on such a rule change before it went into effect. Without this input and a chance to discuss it, the board is unable to accept the commenter's premise that live attendance at a continuing education activity is the most effective learning environment for ethics training.

Jeri Stevens

- ◆ Section 2(3) of the proposed rule states:

At least four hours of the 55 contact hours of continuing education required by this chapter shall relate to domestic violence, substance abuse, emotional trauma, or any combination thereof.

The commenter is concerned about additional board mandates for continuing education. The three areas identified are critical issues, but there are many other legitimate topics relevant to professional counseling, such as eating disorders, stress management and bipolar disorder, that are similarly relevant and could be similarly mandated. The commenter also questions whether any continuing education mandate affects outcomes. (The commenter does not question the requirement of four hours of ethics training that is currently in place.)

Sally Bowden-Schaible

- ◆ Domestic violence, substance abuse and emotional trauma are important, but other issues are equally important. The competence standard in the new Code of Ethics (Chapter 8-A, Section 3) offers a better approach to learning than continuing education mandates. The standard prohibits a counselor from practicing in an area in which the licensee has not obtained professional training. Licensees have the obligation to themselves recognize when additional study is necessary.

Jennifer Waterman, Peter Comstock, Jeri Stevens,  
Susan Bakaley Marshall, Anita Letendre, Tori Kugel  
on behalf of Maine Clinical Counselors Association

Ann Carr

- ◆ “Although trauma, domestic violence, and substance are critical social issues, the code of ethics clearly states that we all must be competent and work within our scope of practice. If a counselor errs due to the lack of knowledge in any of these three areas, it can be dealt with through other ethics code violations. It is the LCPC’s responsibility to gain the education and training they need to serve the populations they see. It is not the responsibility of the Board to determine for therapists the subject areas they need more training in. These three areas should not be deemed more important than others like eating disorders, understanding axis II, stress management, psychopharmacology, Autism, Aspergers, children’s mental health issues, etc....Ethics is a subject area that affects all therapists regardless of their area of specialization, thus it should remain a CEU requirement.” (MCCA commenters)

Polly Moutevelis-Burgess

- ◆ “I am responding to the rule-making proposal to require four hours of continuing education in domestic violence, substance abuse or emotional trauma. While all three areas are extremely important, if not essential to the knowledgeable counselor, I do not support identifying these specific areas as a strong case can be made for other subjects to be included, such as psychopharmacology. I recommend the Board of Counseling Professionals Licensure allow the professional counselor to decide the content areas most needed to advance his/her knowledge base.”
  - Board Response to all comments concerning the proposed requirement of four hours of continuing education in domestic violence, substance abuse or emotional trauma: Comments accepted for the reasons given. At the board’s September 28, 2009, meeting, a motion to include this requirement in the rules failed by a tie vote. Proponents believe that these are highly important areas that arise frequently in practice and are appropriately targeted for mandatory continuing education. Opponents agree with the commenters and believe that licensees should be free to

decide which continuing education topics are most relevant to their individual practices. At its October 26, 2009 meeting, the board adhered to its earlier vote to not adopt this requirement. The full board nonetheless encourages licensees to voluntarily include domestic violence, substance abuse and emotional trauma in their continuing education choices.

The board has accordingly revised Chapter 7-A, Section 2 of the proposed rule as follows:

2. Subject Matter Distribution

1. Peer Consultation Component (optional)

Up to 15 hours of the 55 contact hours of continuing education required by this chapter may consist of peer consultation provided by a licensed mental health professional. Peer consultation may be individual or group. Peer consultation may take the following forms:

- A. Supervised experience required for licensure;
- B. Peer consultation as defined in Chapter 1, Section 1(15-A) of the board's rules; and
- C. Supervision voluntarily solicited by the licensee. For purposes of this chapter, supervision does not include supervision or consultation received pursuant to a board order or consent agreement.

2. Ethics Component

At least four hours of the 55 contact hours of continuing education required by this chapter shall relate to subjects addressed in the Code of Ethics contained in Chapter 8-A of the board's rules.

3. Unallocated Hours

The remaining hours of the 55 contact hours of continuing education required by this chapter shall relate to any aspect of the theory or practice of professional counseling, including any additional hours in ethics in excess of the 4-hour minimum.

The chart in Section 1 was also revised to reflect the elimination of the 4 required hours in domestic violence, substance abuse and emotional trauma.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 8  
STANDARDS OF PRACTICE  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

This chapter is repealed in its entirety. The subject matter of this chapter has been relocated to the following replacement chapters:

Disclosure Statement (Section 1) .....Chapter 8-B, Section 1  
Client Bill of Rights (Section 2) .....Chapter 8-B, Section 2  
Code of Ethics (Section 3) .....Chapter 8-A  
Continuing Education (Section 4) .....Chapter 7-A

**Response to Comments**

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 8-A  
CODE OF ETHICS  
ADOPTED OCTOBER 26, 2009**

**Basis Statement**

The board substantially revised selected areas of the code of ethics that formerly appeared in Chapter 8, Section 3 of the board's predecessor rules. These areas are: dual relationships of a general nature; sexual activity; records; and confidentiality.

*Dual relationships of a general nature.* The prohibition against dual relationships of a general nature in the predecessor rule was limited to interactions between the counselor and the client. This is extended in Section 2(1) of this chapter to the counselor's interaction with the spouse or partner of a client. This extension is based on revisions to the prohibition on sexual activity discussed below, and protects the counseling relationship from disruption by the counselor's associations with the spouse or partner of the client. This extension is also generally consistent with corresponding provisions in the 2005 American Counseling Association Code of Ethics, §A.5.c (hereinafter, "ACA Code").<sup>1</sup>

The predecessor rule prohibited dual relationships which *may* impair the counselor's judgment or pose a risk of exploitation to the client. This chapter adopts the more rigorous standard of the 2002 Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, §3.05 (hereinafter, "APA Code"): this is, that the other relationship be one *which could reasonably be expected to* impair or diminish the professional judgment, objectivity or effectiveness of the counselor, or pose of risk of harm to or exploitation of the client. Like the APA Code, this chapter expressly acknowledges the converse: that dual relationships which could not reasonably be expected to cause impairment, harm or exploitation are not a violation.

What might these permissible dual relationships be? ACA Code §A.5.d gives the following examples of "potentially beneficial interactions:"

...Attending a formal ceremony (e.g., a wedding/commitment ceremony or graduation); purchasing a service or product provided by a client or former client (excepting unrestricted bartering); hospital

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<sup>1</sup> Title 32 MRSA §13853(11) states, "The board shall adopt a code of ethics generally in keeping with standards established by the national professional associations concerned with the areas of board responsibility."

visits to an ill family member; mutual membership in a professional association, organization, or community.

*Sexual activity.* “Sexual activity” is defined in Chapter 1, Section 1(19).<sup>2</sup> This chapter, in Section 5(2)–(4), describes categories of individuals with whom, and periods during which, counselors may not engage in sexual activity.

The predecessor rule contained a bright line prohibition against sexual activity with a client within two years after termination of the client relationship, and required the counselor to thoroughly examine the potential for exploitation and adverse impact before engaging in a sexual relationship with a client after expiration of the 2-year period. The prohibition covered sexual activity with a client, trainee, student, or research subject.

A disciplinary proceeding decided by the board in March 2005 revealed shortcomings in the predecessor rule. The case arose from marital counseling. After eleven sessions, counseling ended. About a month after the last session, the wife filed for divorce. About three years after the last session, the counselor and the by-then former husband engaged in sexual activity. The wife learned that her former marriage counselor was dating her former husband about three years, four months after the last counseling session.

At hearing, the counselor argued that the client was the marriage, not the two individuals within it, and that once the marriage ended, there was no longer a client. The board rejected this argument. However, the debate points out the lack of any prohibition in the predecessor rule against sexual activity between a counselor and the spouse or partner of a client.

The board disciplined the counselor for failing to thoroughly examine the impact of the counselor’s action on the client wife. Yet those members of the board today who heard the case believe that much of the pain experienced by the wife as a result of the counselor’s action would have occurred regardless of whether the wife was a client. Furthermore, the basis of the violation under the predecessor rule was not that the counselor actually caused harm to the wife – only that the counselor had not thoroughly examined the possibility of harm. In addition, the effects of the counselor’s action were so traumatizing to the wife as to call into question the effectiveness of the 2-year bright line prohibitory period, regardless of how thoroughly the counselor might have examined the impact of the romantic relationship beyond that point.

The board believes that the counselor’s duty to (a) objectively render services, (b) avoid injury to the mental health of others, and (c) promote public confidence in the bona fides of the counseling relationship, demands greater protection of the client than the current rule provides. The new rule extends the prohibition against sexual activity to the spouse, partner, child or stepchild of the client, and extends the bright-line prohibitory period to five years. After five years, the counselor bears the burden of documenting – not merely examining – that sexual activity with the client, spouse, partner, child or stepchild of the

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<sup>2</sup> See the Basis Statement and Response to Comments accompanying Chapter 1.

client will not be of an exploitive nature or have an adverse impact on the client.<sup>3</sup> If a disciplinary action is filed against the counselor arising out of such sexual activity, the counselor's determination of no exploitation and no adverse impact is reviewable by the board.

The predecessor rule subjected sexual activity between a counselor and a trainee, student or research subject to the same restrictions as sexual activity with a client (i.e., not at all through the first two years subsequent to the close of the counseling relationship, and subject to the counselor's examination for exploitation and adverse impact thereafter). With respect to trainees (supervisees), students and research subjects, the potential harm is exploitation by a counselor of the junior partner in a controlling relationship: supervisor-supervisee, student-teacher, researcher-subject. This potential for harm vanishes once the supervision, academic course or research project ends. The new rule accordingly prohibits sexual activity between a counselor and a supervisee, student or research subject only during the time the controlling relationship exists.

*Records.* The predecessor rule required counselors to store and dispose of client records in a way that maintains security and confidentiality, but did not specify a retention period. Section 5 of this chapter requires records to be kept for at least five years after the last counselor/client contact. This chapter also requires counselors to maintain client records that completely and accurately document: (a) counseling provided by the counselor to the client, (b) client progress, (c) contacts and communications between counselor and client that relate to the provision of counseling to the client, and (d) communications between the counselor and persons other than the client that relate to the counselor's provision of counseling to the client. Finally, this chapter references statutory obligations relating to client access to client health care records that are often overlooked.

*Confidentiality.* Chapter 8, §3(D) of the predecessor rule contained a general principle of confidentiality, described the general need for client consent to release of confidential information to others, and described situations when the counselor could release confidential information without client consent.

The confidentiality of health care information and the disclosure of confidential health care information are comprehensively addressed in 22 MRSA §1711-C and 32 MRSA §13862. Section 6 of this chapter frames the counselor's responsibility to protect confidential client information in terms of this statutory obligation. Section 6 also

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<sup>3</sup> The 1994 Code of Ethics of the American Association of Pastoral Counselors prohibits all sexual behavior with former clients. (§III(H) In the ACA Code, the bright line prohibitory period for "sexual or romantic counselor-client relationships with former clients, their romantic partners, or their family members" is five years. (§A.5.b) In the APA Code (§10.08(a)), the 2001 Code of Ethics of the American Association for Marriage and Family Therapy (§1.5), the 2000 Code of Ethics of the American Mental Health Counselors Association (§1(H)), and the 2005 National Board for Certified Counselors Code of Ethics (§A(10)), the bright line prohibitory period for sexual intimacies with former clients is two years. There is no bright line prohibitory period in the 1999 Code of Ethics of the National Association of Social Workers (see §1.090).

provides that violation of specific confidentiality obligations relating to substance abuse services and HIV infection status may subject a counselor to discipline by the board.

Couples and family counseling presents unique challenges to maintenance of client confidentiality. There may be multiple recipients of services; the counselor may call on other family or household members for information; and there may be objection to the counselor's sharing of confidential information of any one recipient with the others. To deal with this situation, Section 6 of this chapter requires the counselor to discuss, determine and document who the clients are, and to then discuss and reach agreement with the clients as to how information may be shared among them and with others.

To address the potential for conflict that may arise in a multiple client situation, the last sentence of Section 2 of this chapter adapts the following sentence from ACA Code §A.7:

In couples and family counseling, if it becomes apparent that the counselor maybe called upon to perform potentially conflicting roles, the counselor must clarify, adjust or withdraw from roles appropriately.

### **Response to Comments**

Sally Bowden-Schaible

- ◆ Section 4 imposes an absolute ban on sexual activity between a counselor and the counselor's client or spouse or partner of a client for the five years following the last professional contact. There is no absolute 5-year prohibition against sexual activity between a counselor and an adult child or stepchild of the client and nothing for other immediate family members. These could be equally troubling.

Jennifer Waterman, Peter Comstock, Jeri Stevens,  
Susan Bakaley Marshall, Anita Letendre, Tori Kugel  
on behalf of Maine Clinical Counselors Association

- ◆ The board's rules should reiterate that "client" also means families and friends of the client.
  - Board Response to the preceding two comments: The board agrees that sexual activity between a counselor and a child of the counselor, regardless of the age of the child, can pose a potential for harm to the client of similar magnitude to that posed by sexual activity between a counselor and the spouse or partner of a client.

The limitation of the prohibition in the proposed rule to adult children or stepchildren of the client was based, in part, on the belief that sexual activity between a counselor and a minor child or stepchild of the client would likely be handled through the criminal justice system. However, this

is not entirely accurate as sexual activity with a 16- or 17-year-old minor is a crime only in certain situations. For this reason as well the adopted rule discards the distinction between minor and adult children and stepchildren of the client.

The board has accordingly revised Chapter 8-A, Sections 2, 3 and 4 of the proposed rule as follows:

2. Engaging in sexual activity as defined in Chapter 1, Section 1(19) of the board's rules with a:

- Client;
- Spouse or partner of a client; or
- Child or stepchild of a client

during the counseling relationship or within five years following the last professional contact with the client. Counselors who engage in such activity after five years following the last professional contact must thoroughly document before commencing the activity that the activity is not of an exploitive nature and will not have an adverse impact on the client. The counselor shall base this determination on factors such as the—

- Nature, duration and intensity of counseling;
- Amount of time since counseling;
- Circumstances of termination; and
- Personal history and mental status of the client.

The counselor's determination of no exploitation and no adverse impact is reviewable by the board in the event that disciplinary action is brought against the counselor arising out of the activity.

3. Engaging in sexual activity as defined in Chapter 1, Section 1(19) of the board's rules with a person who is a—

- Supervisee,
- Student; or
- Research subject

of the counselor at the time the sexual activity takes place;

This revision prohibits sexual activity between a counselor and a client or the nuclear family of a client. This will capture in many cases the concept advanced by commenter Bowden-Schaible of prohibiting sexual activity between a counselor and a client or immediate family member of a client. The board is unwilling to extend the prohibition to other family members or friends of the client, as suggested by MCCA. Although generalizations are difficult, the potential impact of sexual activity between a counselor and, for example, a cousin of the client is unlikely to be of the same magnitude as sexual activity between a counselor and a child of the client. Including friends of the client within the prohibition would unduly restrict counselors' choice of sexual partners.

Carol Mitchell-Cusick

- ◆ In Section 4(1), the phrase “sexual preference” should be replaced with the phrase “sexual orientation,” to wit:

Misconduct includes, but is not limited to, the following:

1. Practicing inhumane or discriminatory treatment toward any person or group of persons that would result in unjustifiable discrimination on the basis of age, race, gender, religion, ~~sexual preference~~ sexual orientation, national origin or disability;
- Board Response: Comment accepted. The terminology suggested by the commenter is more appropriate than the terminology of the proposed rule.

Jennifer Waterman, Peter Comstock, Jeri Stevens,  
Susan Bakaley Marshall, Anita Letendre, Tori Kugel  
on behalf of Maine Clinical Counselors Association

Jeri Stevens

- ◆ The requirement in Section 5 to keep complete and accurate client records ignores the reality that counselors’ records are frequently subpoenaed on a regular basis and obtained by disgruntled people for improper purposes. Commenter Stevens cited “lawyer witch hunts” and noted that clients aren’t aware that they can refuse their own lawyers’ request for their counseling records. “Consumers are encouraged to sign releases of information for these records to become part of ongoing court proceedings. They do not realize the profound adverse impact this can have nor do they realize the loss of control over this information it represents.” (MCCA) Although agencies may require complete and accurate records for the purpose of financial payment, this requirement is not about consumer protection or best counseling practices. Requiring counselors to maintain emails and other correspondence leaves the client vulnerable in the event of subpoena. Some clients are aware of this possibility, especially cash clients, and request that minimal notes or no notes be recorded. The board should adopt the approach of the American Psychological Association and the Maine Psychological Association, which permit the client to request that only limited treatment records be kept. In addition, the board should remove the word “complete” from Section 5. “The word ‘complete’ does not accurately describe what is necessary for a file and opens the counselor for unintended violations.” (MCCA)
- Board Response: Comment not accepted. The board sympathizes with the commenter Stevens’ experiences. However, the possibility of subpoena is insufficient reason to relax the recordkeeping requirements in the proposed rules. A subpoena of client records is not a court order. A client can object to the subpoena in the appropriate case.

A complete treatment record benefits the client in the event that the client changes counselors, or it becomes necessary to share the information with another professional who also provides services to the client. In addition, many social service agencies have recordkeeping requirements that are inconsistent with the limited recordkeeping option recommended by the commenter. The board is unwilling to encourage a two-track system under which the detail of a client's record depends on the practice setting of the counselor or the payor status of the client.

Complete and accurate records are vitally important in complaint investigations. The board cannot fairly resolve allegations of incompetent, negligent or unprofessional practice unless all aspects of the counseling relationship have been preserved for review. Conversely, counselors cannot be permitted to hide questionable or unethical practices with clients by not recording them in the client record.

The board read the APA article cited by the commenter.<sup>4</sup> The APA notes that "some clients may express a desire for the psychologist to keep a minimal record in order to provide maximum protection and privacy." (p. 995) This may be so, but the board is unwilling to offer this option. Although some clients may request minimal recordkeeping of their own volition, the more likely scenario is that counselors who favor minimal recordkeeping will either encourage their clients to elect this option or make it the de facto standard in their informed consents and disclosure statements. A full treatment record is a therapeutic tool, helps ensure continuity of care, and plays an important part in any complaint investigation. These benefits outweigh the impositions on client privacy posed by the legal process.

The board disagrees with the assertion, "The word 'complete' does not accurately describe what is necessary for a file and opens the counselor for unintended violations." Section 5(a) – (d) of this chapter identifies the information that must be documented in the client record. Other than specific mention of email, there is presently no need in the board's rules for a laundry list of the types of documents or documentation to be maintained in a file. This is a practice decision for the counselor or the counselor's employer.

Jeri Stevens

Ann Carr

- ◆ When the board proposes to change its rules, it should update its web site and send a postcard to all licensed counselors instructing them to go to the web. This would save the board the expense of "interested parties" mailings.

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<sup>4</sup> American Psychological Association (2007). Record Keeping Guidelines. *American Psychologist*, 62, 993-1004.

Jennifer Waterman, Peter Comstock, Jeri Stevens,  
Susan Bakaley Marshall, Anita Letendre, Tori Kugel  
on behalf of Maine Clinical Counselors Association

- ◆ The board should develop an email distribution list and send out monthly or quarterly information and maybe agenda and minutes to meetings.
  - Board Response to the preceding two comments: Title 5 MRSA §8053 requires the board to maintain a list of persons who have requested notices of rulemaking and proposed rules during the past year and to send those persons copies of notices and proposed rules. Any person who wants to be on the interested parties list may be added simply by contacting the board clerk. The cost to mail a postcard is far less than the cost of mailing a bulky rulemaking package. However, a postcard mailing is far less targeted than a mailing restricted to persons who have expressed interest in the subject matter. Section 8053 does contain an option for electronic notice that the board may explore.

The board's financial resources are limited. Notices of rulemaking, meeting agendas and meeting minutes are posted and updated on OLR's web site. As an alternative to mailings, the board encourages licensees to frequently check the web site for new information. The board will add information about the rulemaking process to its list of frequently asked questions on the web site.

Two boards within OLR recently created listservs to disseminate board-related information electronically. It is too early to assess the effectiveness of these projects. This board cannot make any commitment relating to establishment of a listserv for counseling professionals, but will explore this option in the future.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**  
**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 8-B**  
**CLIENT BILL OF RIGHTS; DISCLOSURE STATEMENTS**  
**ADOPTED OCTOBER 26, 2009**

**Basis Statement**

This chapter replaces the disclosure statement and client bill of rights formerly contained in Chapter 8, Sections 1 and 2, respectively, of the board's predecessor rules.

The client bill of rights is substantively unchanged except for the addition of contact information for the OLR complaint office. This addition is an outgrowth of 32 MRSA §13863(3)(C), which requires registered counselors to sign, post and make available to each client... "the name and address of the board's complaint officer and a description of the complaint process."<sup>1</sup> The board has integrated this information into the client bill of rights which must be provided by licensed as well as registered counselors. This chapter also restates the signature requirement for registered counselors stated in 32 MRSA §13863(3)(A).

Title 32 MRSA §13853(13) provides in relevant part:

**13. Disclosure statements.** Under this chapter all licensees and registrants are required to provide disclosure statements prior to treatments. The board may adopt, by rule, a standard disclosure statement. This disclosure statement must include, but not be limited to, the name and address of the licensee or registrant, the original date and the expiration date of the license, the proposed course of treatment and financial arrangements for clients.

This chapter contains three variations of a standard disclosure statement: one for licensed professional counselors, one for LCPCs, LMFTs and pastoral counselors, and one for registered counselors. The only difference between the disclosure statement for licensed professional counselors and the disclosure statement for LCPCs, LMFTs and pastoral counselors is the following:

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<sup>1</sup> The OLR complaint coordinator, not the board's complaint officer, is the intake person for complaints against licensed or registered counselors.

**Licensed Professional Counselor**

G. A general statement outlining a proposed course of counseling, including process of intake, assessment and goal-setting;

**LCPC/LMFT/Pastoral Counselor**

G. A general statement outlining a proposed course of treatment, including process of intake, assessment, goal-setting and treatment plan;

For licensed professional counselors, “proposed course of counseling” has been substituted for the statutory phrase, “proposed course of treatment.” The reason for the substitution is to emphasize, in the wake of *Cobb v. Board of Counseling Professionals Licensure*, 2006 ME 48, that only LCPCs, LMFTs and pastoral counselors may “diagnose and *treat* mental health disorders.” 32 MRSA §13858.

The disclosure statement for registered counselors includes the information required by 32 MRSA §13863(2) and also includes the notice “that unlike licensing, there are no educational or training requirements for registration.”

All three variations of the disclosure statement require the counselor to include information about each postsecondary degree held by the counselor, and a statement indicating the limits and scope of confidentiality.

**Response to Comments**

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**  
**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

**BASIS STATEMENT AND RESPONSE TO COMMENTS**

**CHAPTER 9**  
**FEEES**  
**ADOPTED OCTOBER 26, 2009**

**Basis Statement**

This chapter is repealed in its entirety. Fees for licensees of the board are now set by the Director of the Office of Licensing and Registration pursuant to 10 MRSA §8003(2-A)(D) and 32 MRSA §13859. Applicable fees appear in Chapter 10, Section 5(13) of the rules of the Office of Licensing and Registration.

**Response to Comments**

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**514 BOARD OF COUNSELING PROFESSIONALS LICENSURE**

## **BASIS STATEMENT AND RESPONSE TO COMMENTS**

### **CHAPTER 10 ENFORCEMENT AND DISCIPLINARY PROCEDURES ADOPTED OCTOBER 26, 2009**

#### **Basis Statement**

This chapter is repealed in its entirety. Investigation and processing of complaints filed by licensees is handled in accordance with the Administrative Complaint Procedures followed by the Office of Licensing and Registration. The balance of the material formerly set forth in this chapter is all fully covered by statute.

#### **Response to Comments**

No comments were received on the proposed rule.