



November 1, 2022

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**Re: In The Matter of the Proposed Amendments to Rules Governing the Licensure, Supervision, and Practice of Professional Counselors and Professional Clinical Counselors, *Minnesota Rules*, Chapter 2150; Revisor's ID Number 4697**

Dear Librarian:

The Minnesota Board of Behavioral Health and Therapy ("Board") intends to adopt rule amendments related to the licensure, supervision and practice of professional counselors and professional clinical counselors. The Board plans to publish a Notice of Intent to Adopt Rules without a Public Hearing in the November 7, 2022, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651.201.2758 or [samantha.strehlo@state.mn.us](mailto:samantha.strehlo@state.mn.us).

Yours very truly,

*Samantha Strehlo*

Samantha Strehlo  
Executive Director

Enclosure: Statement of Need and Reasonableness

Minnesota Board of Behavioral Health and Therapy

**STATEMENT OF NEED AND REASONABLENESS**

In the Matter of Proposed Amendments to  
Minnesota Rules Chapter 2150; Revisor ID No. 4697

OAH Docket No. 22-9056-38069

August 2022

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <https://mn.gov/boards/behavioral-health/>
- 2) View older rule records at: [Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/](https://www.revisor.mn.gov/rules/status/)
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Samantha Strehlo, Executive Director, Minnesota Board of Behavioral Health and Therapy, 335 Randolph Avenue, Suite 290, Saint Paul, Minnesota 55102; telephone 651.201.2756; email [Samantha.strehlo@state.mn.us](mailto:Samantha.strehlo@state.mn.us).
- 4) How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
- 5) How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

## Acronyms

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
Minn. R. pt	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
MORS	MN Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness

## **INTRODUCTION**

The Minnesota Board of Behavioral Health and Therapy (“Board”) was created during the 2003 legislative session. The mission of the Board is to protect the public through effective licensure and enforcement of the statutes and rules governing its licensees to ensure a standard of competent and ethical practice. The Board has licensed and regulated the practice of professional counselors (“LPCs”) since the Board’s inception in 2003. In 2007, the Board was granted statutory authority to license and regulate the practice of professional clinical counselors (“LPCCs”). On July 1, 2005, the Board began regulating the practice of licensed alcohol and drug counselors (“LADCs”) pursuant to authority granted by the Minnesota Legislature in 2003.

In July 2005, the Board promulgated rules governing the licensure and practice of LPCs. When the Board began licensing LPCCs in 2007, the Board interpreted the rules in compliance with Minn. Stat. §148B.5301, subd. 6, which stated that LPCCs “are subject to the board’s statutes and rules to the same extent” as LPCs.

During the 2022 legislative session, the Minnesota legislature amended Minn. Stat. §§ 148B.33 and 148B.5301, subd. 2(c) to allow for supervision hours for LPCs and LPCCs to be completed “through real-time, two-way interactive audio and visual communication.” 2022 Session Laws, Ch. 98, Art. 3, Sec. 2. The legislature specifically provided that the board “must allow an applicant to satisfy this supervision requirement with all required hours of supervision received through real-time, two-way interactive audio and visual communication,” thereby equating this method with “in-person” supervision. *Id.*

The Board now seeks to revise its rules to expressly incorporate LPCCs, to expressly incorporate the 2022 statutory changes, to make technical changes that reflect the Board processes and procedures and that incorporate language amendments suggested by the Minnesota Office of the Revisor of Statutes, and to expand opportunities for coursework and continuing education credit for licensees.

## **SCOPE OF THE PROPOSED AMENDMENTS**

The following rules are affected by the proposed amendments:

- Minn. R. 2150.0060 Notice of License Renewal
- Minn. R. 2150.0070 Applying for Renewal of License
- Minn. R. 2150.0110 Termination for Nonrenewal
- Minn. R. 2150.0130 Relicensure Following Termination
- Minn. R. 2150.0140 Cancellation of License
- Minn. R. 2150.0150 Jurisdiction
- Minn. R. 2150.0160 Inactive Licenses
- Minn. R. 2150.2520 Initial Requirement
- Minn. R. 2150.2540 Criteria for Approval of Continuing Education Activities
- Minn. R. 2150.2560 Individual Licensee’s Application for Approval [Repealed]
- Minn. R. 2150.2580 Additional Sources of Continuing Education Credit

- Minn. R. 2150.5000 Predegree Supervised Field Experience
- Minn. R. 2150.5010 Postdegree Supervised Professional Practice
- Minn. R. 2150.7505 Definitions<sup>1</sup>
- Minn. R. 2150.7510 Competent Provision of Services
- Minn. R. 2150.7515 Protecting the Privacy of Clients
- Minn. R. 2150.7540 Impaired Objectivity or Effectiveness
- Minn. R. 2150.7550 Client Welfare
- Minn. R. 2150.7555 Welfare of Students, Supervisees, and Research Subjects
- Minn. R. 2150.7575 Presentation to Public
- Minn. R. 2150.7585 Aiding and Abetting Unlicensed Practice
- Minn. R. 2150.7590 Violation of Law
- Minn. R. 2150.7605 Complaints to Board

## **PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT**

The Board’s Executive Director and staff have documented inquiries and comments provided by the public, licensees and Board members regarding the Board’s rules. This feedback has been shared with the Board’s Policy and Rules Committee and the Board throughout the years of collection. Rules were discussed during a properly noticed Policy and Rules Committee meeting on November 3, 2021; a special, properly noticed board meeting on November 19, 2021; and a properly noticed Policy and Rules Committee meeting on May 19, 2022. During the May 19, 2022, Policy and Rules Committee meeting, the Committee discussed the comments received during the comment period and made changes to the drafts based on public input. On July 22, 2022, the full Board approved the final draft of the rules at a regularly-scheduled and properly-noticed Board meeting.

## **STATUTORY AUTHORITY**

Minnesota Statutes section 148B.52 authorizes the Board to, *inter alia*, do the following:

- (1) establish by rule appropriate techniques, including examinations and other methods, for determining whether applicants and licensees are qualified under sections 148B.50 to 148B.593;
- (2) establish by rule standards for professional conduct, including adoption of a Code of Professional Ethics and requirements for continuing education and supervision;
- ...
- (4) establish by rule standards for initial education including coursework for licensure and content of professional education;
- ...
- (8) periodically evaluate its rules in order to refine the standards for licensing professional counselors and to improve the methods used to enforce the board’s standards.

Minn. Stat. § 148B.52(a)(1), (2), (4), and (8) (2020). Additionally, Minnesota Statutes section

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<sup>1</sup> Please note that, on recommendation of the Revisor’s Office, the Definitions rule is also being moved to the beginning of the Board’s rules and renumbered accordingly. Please see RD4697 lines 20.5-20.7.

214.12, subdivision 1, authorizes all health licensing boards to promulgate by rule continuing education requirements.

## **NECESSITY AND REASONABLENESS OF THE AMENDMENTS**

### **General Necessity and Reasonableness**

As noted above, the proposed amendments fall into the following three categories: (1) amendments that expressly incorporate LPCCs (“LPCC amendments”) and the 2022 statutory changes; (2) technical changes that reflect the Board processes and procedures and that incorporate language changes suggested by the Minnesota Office of the Revisor of Statutes (“technical amendments”); and (3) amendments that expand opportunities for coursework and continuing education credit for licensees (“education amendments”). Moreover, the legislature has determined that it is in the public’s interest that the Board re-evaluate its rules to refine the standards for licensing licensees and to improve the methods used to enforce the Board’s standards. Minn. Stat. § 148B.52(a)(8).

The LPCC amendments are necessary to expressly incorporate LPCCs, a statutorily-created license, into the rules the Board is empowered to promulgate and enforce. These amendments are reasonable because LPCCs are a highly comparable profession to LPCs and the amendments do not make any substantive changes to licensure or regulation of licensees.

The 2022 audio-visual communication amendments are necessary to reflect the legislature’s mandate that real-time, two-way audio-visual communications are equivalent to in-person communications for the purpose of satisfying supervision requirements for LPCCs and LPCs. The amendments are reasonable because they reflect technological advances that allow licensees to satisfy supervision requirements with fewer administrative burdens.

The technical changes are necessary to provide clarity and refinement to the public and licensees about the Board’s processes and procedures for licensure and regulation. The technical changes are reasonable because they all employ plain language and either incorporated recommendations from the Revisor’s Office, render rules clearer, and/or do not make substantive changes to licensee obligations.

The education amendments are necessary to reflect the Board’s intent to provide multiple opportunities and choices for completing coursework and continuing education activities across the license spectrum. This allows licensees to educate themselves on a number of topics across comparable licensure categories throughout the entire application and licensure process and, in turn, allows for a better educated licensee pool, which ultimately supports public protection. The education amendments are reasonable because they expand coursework and continuing education opportunities for licensees and applicants.

### **Rule-by-Rule Analysis**

**Minn. R. 2150.0060 Notice of License Renewal – Technical Amendment**

This amendment is necessary to reflect a technological advance, i.e. the Board's ability to provide notices via e-mail. The rule is reasonable because it allows the Board to send notices via e-mail, thereby minimizing the cost of providing renewal notices. Nevertheless, licensees may also still elect to receive renewal notices via U.S. mail. Upon receiving the renewal notification, most licensees elect to do an online renewal.

**Minn. R. 2150.0070 Applying for Renewal of License – Technical Amendment**

This amendment is necessary to expressly allow for the electronic application for license renewal. The Board has been using an electronic renewal process, but the proposed amendment will expressly notify the public and licensees of the use of electronic applications. It is reasonable because most licensees prefer the electronic renewal process and it allows the Board to minimize the costs of the application renewal process.

The other amendments in this rule were suggested by the Revisor's Office as language that is necessary to better reflect current rule and statutory language and style.

**Minn. R. 2150.0110 Termination for Nonrenewal – Technical Amendment**

The amendment in subpart 1 and 2 removing the "registered or certified" requirement is necessary to allow the Board discretion to not use registered or certified mail when a licensee fails to renew within 30 days of his or her renewal date. The Board will continue to mail the notice of overdue renewal, but this amendment allows the Board to mail the overdue notice via standard U.S. mail. This is consistent with statutory requirements for the comparable profession regulated by the Board, licensed alcohol and drug counselors. See Minn. Stat. §148F.05, subd. 2 (2020). The amendment is reasonable because it will allow the Board to use the same process for all its licensees, will allow the Board to minimize costs when appropriate, and does not prohibit the Board from registered or certified mail under appropriate circumstances.

The amendments in subpart 2 were suggested by the Revisor's Office as language that is necessary to better reflect current rule and statutory language and style.

**Minn. R. 2150.0130 Relicensure Following Termination – Technical, Statutory, and Education Amendments**

The first amendment in subpart 1A reflects language suggested by the Revisor's Office as necessary and reasonable to better reflect current rule and statutory language and style. The second amendment in subpart 1A is necessary and reasonable to expressly incorporate LPCCs into the Board's rule framework

The amendment in subpart 1B is a technical change, which is both necessary and reasonable, to reflect that current licensure fees are set in statute.

The amendments in subpart 2 are necessary to better reflect the Board's relicensure after termination process, including specifically the four-year process after initial licensure to complete graduate work. See Minn. Stat. §148B.54, subds. 2, 3. The Board's proposed amendment are necessary and reasonable to clarify the interplay between Minn. Stat. §148B.54 and the Board's



continuing education relicensure requirements. The Board currently receives and has historically received inquiries about the interplay between the statute and the rule.

**Minn. R. 2150.0140 Cancellation of License – Technical Amendments**

These amendments were suggested by the Revisor’s Office as language that is necessary to better reflect current rule and statutory language and style, including the specific incorporation of the concept of cancellation into the body of the rule itself as opposed to it appearing solely in the rule title.

**Minn. R. 2150.0150 Jurisdiction – Technical Amendments**

These amendments are necessary to correct incorrect citations to rules, to incorporate the terminology used by Minn. R. 2150.0140, and to incorporate changes suggested by the Revisor’s Office that better reflect current rule and statutory language and style. The amendments are reasonable because they do not make substantive changes to the jurisdiction, but rather, provide better notice of the process, applicable rules, and correct terminology.

**Minn. R. 2150.0160 Inactive Licenses – Technical and Education Amendment**

This amendment is necessary to remedy a prima facie conflict between subpart 3 and 4. The Board finds the amendment reasonable because public protection is better served when a licensee with an inactive license renews and reactivates after satisfying continuing education requirements. Moreover, the amendment is also reasonable because it streamlines the renewal and reactivation processes.

**Minn. R. 2150.2520 Initial Requirement – Education and Technical Amendments**

The amendments in subpart 1C are necessary to reflect the Board’s findings and intent that the method of satisfying coursework requirements for LPCs and LPCCs should be very broad. The amendment is reasonable because it encourages cross-licensure coursework to avoid duplication of topics in courses and to allow for a more broadly educated licensee base.

The amendments in subparts 1D and 4A are necessary and reasonable because they incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style.

The amendment in subpart 4B is necessary and reasonable because it incorporates statutory language from Minn. Stat. §148B.54, subd. 2. The amendment provides clarity to licensees and the public and minimizes the potential for misinterpretation of a conflict between the rule language and the statutory language.

**Minn. R. 2150.2540 Criteria for Approval of Continuing Education Activities – Education and Technical Amendments**

The amendments to the opening paragraph are necessary to streamline all continuing education approval processes and criteria into one rule. [Please see that corresponding repeal of Minn. R. 2150.2560 below.] The amendments are reasonable because they are based on the statutory framework for continuing education for a comparable profession regulated by the Board, LADCs.

See Minn. Stat. §§148F.075, .08 (2020). The remaining amendments in this section are necessary and reasonable because they incorporate changes suggested by the Revisor’s Office that better reflect current rule and statutory language and style

The amendments to subpart D are necessary to broaden the opportunity for home study continuing education activities. The Board finds that home study activities with a graded test component to be valuable and, therefore, it is reasonable to allow licensees to obtain more continuing education in this manner.

**Minn. R. 2150.2560 Individual Licensee’s Application for Approval – Repeal**

It is necessary and reasonable to repeal this rule because Minn. R. 2150.2540 is being amended to streamline the process for approval of all continuing education. [Please see corresponding discussion of amendments to Minn. R. 2150.2540 above.]

**Minn. R. 2150.2580 Additional Sources of Continuing Education Credit – Technical Amendment**

This amendment is necessary and reasonable to reflect the correct citation after the changes to 2150.2560 and 2150.2540 are made.

**Minn. R. 2150.5000 Predegree Supervised Field Experience – Statutory and Technical Amendment**

This amendment is necessary and reasonable to expressly incorporate LPCCs and the appropriate statutory citation into the rule text. This amendment is also necessary and reasonable to provide licensees with more options for documenting field experience hours, thereby streamlining the licensure process.

**Minn. R. 2150.5010 Postdegree Supervised Professional Practice – Statutory and Technical Amendments**

The amendment in subpart 1 is necessary to reflect the legislature’s 2022 statutory changes expressly requiring the Board to allow for supervision to occur via real-time, two-way interactive audio and visual communication. The amendment is reasonable to reflect technological advances that allow for fewer barriers to completing supervision requirements.

The other amendment in subpart 1 is reasonable and necessary to comply with recommended edits from the Revisor’s Office that change the terminology to “supervisee” to encompass both LPCCs and LPCs, as opposed to listing out both types of licensees. This recommended change allows for more concise rule text.

The amendment in subpart 3 is necessary and reasonable to expressly incorporate LPCCs into the rule text.

The first amendment in subpart 4A is necessary to clarify that the Board allows flexibility in the distribution of the supervised post-degree practice. It is reasonable because it expands flexibility for supervisees and supervisors and brings the rule language in line with the Board’s current practices.

The second amendment in subpart 4A is necessary and reasonable to expressly incorporate LPCCs and their statutorily required hours of professional practice into the rule text. See Minn. Stat. §148B.5301, subd. 2 (2020).

The amendments in subpart 4B are necessary and reasonable to expressly incorporate LPCCs and the appropriate statutory citations into the rule text.<sup>2</sup> [Please see discussion regarding the use of the term “supervisee” under the amendment to Minn. R. 2150.5010, subpart 1, above.]

The first amendment in subpart 4C is necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text. The remaining amendments in subpart 4C are necessary to clarify the Board’s current processes and procedures for approval of supervised post-degree practice and to reflect the 2022 statutory amendments that require the Board to allow supervision to occur via real-time, two-way interactive audio and visual communications. The amendments are reasonable because they expressly incorporate the 2022 statutory language and because they more expressly define “evenly distributed” supervision, “individual supervision,” and “group supervision.” These definitions will provide clarity to licensees and the public and reflect the Board’s responses to inquiries from licensees on how the Board interprets these concepts.

Moreover, it should be noted that the language “at a rate of at least four hours but no more than eight hours of supervision for every 160 hours of professional practice” is not intended to serve as a limit on the number of hours a supervisee may obtain. The Board intends, and has always intended, that supervision hours be evenly distributed<sup>3</sup> throughout the duration of the supervisory relationship. A supervisee always can seek more supervision than the required amount, but the hours that count toward the licensing requirement are limited to a minimum of four and a maximum of eight for every 160 hours of supervision. If the limit did not exist, then licensees could front or back-load their supervision hours, thereby negating the Board’s and the legislature’s intent. This edit was adopted by the Board because the phrase “evenly distributed” and the word “rate” have been the source of many inquiries to the Board since the inception of the original rule.

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<sup>2</sup> During the Request for Comment period, one commentor asked that the Board consider adding a provision to Minn. R. 2150.5010, subp. 4(B)(1) requiring that supervision include “consideration of clients’ race and culture, experiences, and impact of racial trauma, and related provider biases.” The Board notes that this is already required as part of the broader “content of supervision” requirements. Moreover, the Board notes that Minn. Stat. § 148B.54, subd. 2 requires LPCs and LPCCs to have at least ten percent of continuing education clock hours on topics related to those the commentor suggested.

<sup>3</sup> Minn. Stat. §148B.5301, subd. 2(c) states that supervision hours must be “evenly distributed” and provided guidance that the supervision be obtained at a “rate” of two hours for every 40 hours of practice, but the Board has discretion to define “evenly distributed” and to provide guidance on how it interprets the rate or average of hours.

The amendments in subpart 4D are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style. Moreover, the timeframes for completion of the supervision requirement for LPCCs is doubled from the existing timeframe for LPCs because the number of practice hours required to become an LPCC is doubled to 4,000 from 2,000 for an LPC. Compare Minn. Stat. § 148B.53, subd. 1(a)(4) with Minn. Stat. §148B.5301, subd. 1(a)(6).

The amendments in subpart 4E are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style. The removal of the last sentence of this subpart is necessary and reasonable to bring the rule text into compliance with Board statutes and practices. See generally Minn. Stat. §§148B.53, 148B.5301 (2020).

The removal of subpart 4F is necessary and reasonable because the Minnesota Board of Psychology no longer licenses “licensed psychological practitioners.”

The amendments in subparts 4G and H are necessary and reasonable because they incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style.

The amendments in subpart 4I are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style.

The amendments in subparts 4J, K, and L are necessary and reasonable because they incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style.<sup>4</sup>

**Minn. R. 2150.7505 Definitions – Statutory and Technical Amendments**

The amendments in this section are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style. As noted in the Rules draft, the Revisor has suggested that the definitions section be moved to the forefront of the rules.

**Minn. R. 2150.7510 Competent Provision of Services – Statutory and Technical Amendments**

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<sup>4</sup>During the Request for Comments period, one commenter stated that Minn. R. 2150.5010, subp. 4(l) was burdensome, unneeded, and needlessly punitive.” The Board notes that (1) this rule was not amended as part of this rule process except for renumbering and minor language changes suggested by the Revisor’s Office and (2) the Board has the authority to grant waivers to this provision to avoid an overly burdensome result.

The amendments in this section are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor's Office to better reflect current rule and statutory language and style. The use of the term "provider" is reasonable and necessary to comply with recommended edits from the Revisor's Office that change the terminology to "provider" to encompass both LPCCs and LPCs, as opposed to listing out both types of licensees. This recommended change allows for more concise rule text.

**Minn. R. 2150.7515 Protecting the Privacy of Clients** – Statutory and Technical Amendments

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor's Office to better reflect current rule and statutory language and style.

**Minn. R. 2150.7540 Impaired Objectivity or Effectiveness** – Statutory and Technical Amendments

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor's Office to better reflect current rule and statutory language and style. [Please see discussion of Minn. R. 2150.7510 re the use of the term "provider."]

**Minn. R. 2150.7550 Client Welfare** – Statutory and Technical Amendments

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor's Office to better reflect current rule and statutory language and style. [Please see discussion of Minn. R. 2150.7510 re the use of the term "provider."] Please note that, for the amendment set forth in subpart 2C, the bookstore no longer exists. Please note that the statutory citation set forth in subpart 6A has been changed.

**Minn. R. 2150.7555 Welfare of Students, Supervisees, and Research Subjects** – Technical Amendment

The amendments are necessary and reasonable because the statutory citation in subpart 2C has changed.

**Minn. R. 2150.7575 Presentation to Public** – Statutory and Technical Amendments

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor's Office to better reflect current rule and statutory language and style. [Please see discussion of Minn. R. 2150.7510 re the use of the term "provider."]

**Minn. R. 2150.7585 Aiding and Abetting Unlicensed Practice** – Statutory and Technical Amendments

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor's Office to better reflect current rule and statutory language and style.

**Minn. R. 2150.7590 Violation of Law – Statutory and Technical Amendments**

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style.

**Minn. R. 2150.7605 Complaints to Board – Statutory and Technical Amendments**

The amendments are necessary and reasonable to expressly incorporate LPCCs and their statutory requirements into the rule text and to incorporate changes suggested by the Revisor’s Office to better reflect current rule and statutory language and style. Please note that the statutory citation for subpart 1C has changed.

**REGULATORY ANALYSIS**

**A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The classes of persons affected by the amendments are licensees, applicants, future applicants and licensees, board approved supervisors, individuals who receive services from licensees, and the general public.

The licensees, applicants, and future applicants and licensees will bear the costs of the amendments. Nevertheless, the proposed amendments do not impose any additional costs beyond those born by all licensed health care providers in Minnesota, including licensee fees, renewal fees, and continuing education costs. Nothing in the proposed amendments imposes additional costs beyond those already imposed on the Board’s licensees by statute or rule.

Licensees and applicants, individuals who receive services from licensees, and the public in general will benefit from the amendments. The legislature has determined that it is in the public’s interest that the Board re-evaluate its rules to refine the standards for licensing licensees and to improve the methods used to enforce the Board’s standards. Minn. Stat. § 148B.52(a)(8). The proposed amendments satisfy both goals, thereby benefitting all the Board’s stakeholders by refining and clarifying standards and improving methods of enforcement.

**B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The Board anticipates no additional costs, for the Board or any other state agency, and anticipates no effect on state revenues.

**C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The Board has determined that there are no less costly or less intrusive methods of achieving the purposes of the proposed amendments. There are no alternatives to the amendments that expressly incorporate LPCCs and the 2022 statutory changes into the rules and to the technical

changes. For the education amendments, the Board is expanding opportunities for coursework and continuing education and therefore the education process may, in fact, be less intrusive and any costs are likely to remain static.

**D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.**

The Board did not identify any alternative methods for achieving the purpose of the proposed amendments.

**E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

As noted above, licensees and applicants bear the costs of education, application fees, licensing fees, renewal fees, and continuing education costs. The proposed amendments impose no additional costs beyond those already imposed on the Board's licensees by statute or rule.

**F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

The consequences of not adopting the proposed amendments would be borne by Board staff, applicants, licensees, and the public. Board staff would continue to field inquiries about rules that do not best reflect current Board processes and procedures, technological advancements in licensing and regulation, current Revisor recommend language, licensure and regulation of LPCCs, and the 2022 statutory changes. Moreover, the consequence of not adopting the proposed coursework and continuing education amendments would be that the rules would continue to provide a narrower framework for coursework and continuing education requirements than the framework the Board finds appropriate. The overarching consequence of not adopting the rules is a slowdown in overall customer service.

**G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

The Board identified no differences between the proposed rules and existing federal regulations.

**H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

The Board found no cumulative effect of the proposed amendments with other federal and state regulations.

## **NOTICE PLAN**

The Board's Notice Plan includes giving notice required by statute. The Board will e-mail notification of publication of the rules and the Notice of Intent to Adopt to applicants, licensees, approved supervisors, professional trade associations, and educational institutions. The Board will send hardcopies to any individual or entity that has requested hardcopies of all e-mailed

documents and correspondence. The Board will also give notice to the Legislature per Minnesota Statutes, section 14.116.

## **ADDITIONAL NOTICE PLAN**

The Board's Additional Notice Plan was approved in an order from ALJ Christa L. Moseng dated January 27, 2022. The Board followed the Additional Notice Plan when providing notice for the Request for Comments and the Notice of Adopting Rules Without a Hearing. The Additional Notice Plan consisted of the following:

- The Board's Policy and Rules Committee met in a properly-noticed meeting on November 3, 2021, to discuss the proposed amendments. Members of the public were invited to attend and participate.
- The full Board met in a properly noticed meeting on November 19, 2021, to discuss the proposed amendments. Members of the public were invited to attend and participate, and members of the public did attend and participate.
- The Board posted Revisor's Draft 4697 on its website on November 22, 2021. When the Office of Administrative Hearings Comments page is live, the Board will provide a direct link on its website to the comment page.
- The Board's Policy and Rules Committee met in a properly-noticed meeting on May 19, 2022, to discuss comments made by the public during the comment period. Members of the public were invited to attend and participate.
- The full Board met in a properly noticed, regularly scheduled meeting on July 22, 2022 to discuss the final draft of the rules, which included small changes that were suggested during the request for comment period. Members of the public were invited to attend and participate.
- The Board will publish on its website minutes from Board meetings where the proposed amendments are discussed, the most recent proposed rule amendments drafts, the Board's rulemaking docket, the Request for Comments, and the Statement of Need and Reasonableness and Notice, once finalized.
- The Board will send out an email blast to all applicants, licensees and approved supervisors, to all professional trade associations, and to all counselor educational institutions in Minnesota notifying them that the postings are on the Board's website.

## **PERFORMANCE-BASED RULES**

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Board's regulatory objectives while allowing maximum flexibility to regulated parties and to the Board in meeting those objectives.

The Board's regulatory objective is reflected in its mission, which is to protect the public through effective licensure and enforcement of the statutes and rules governing its licensees to ensure a



standard of competent and ethical practice. The Board’s objectives are also reflected in the duties of the Board set forth by the legislature in Minn. Stat. § 148B.52, which include establishing by rule appropriate methods for determining whether applicants and licensees are qualified, establishing by rule standards for professional conduct, establishing by rule standards for initial coursework and continuing education, and periodically evaluating the rules in order to refine the standards and improve methods used to enforce the rules. Minn. Stat. § 148B.52(a)(1), (2), (4), (8) (2020).

The three categories of proposed rule amendments, including technical changes, statutory-based changes, and expansion of educational opportunities, increase flexibility. As a result, they are less prescriptive.

## **CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Board consulted with Minnesota Management and Budget (MMB). The Board sent MMB copies of the documents that were sent to the Governor’s Office for review and approval. The documents included: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

## **IMPACT ON LOCAL GOVERNMENT ORDINANCES AND RULES**

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Board has determined that the proposed amendments will not have any effect on local ordinances or regulations.

## **COSTS OF COMPLYING FOR SMALL BUSINESS OR CITY**

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.” The Board has determined that the proposed amendments will not cause any one business or statutory or home rule charter city to incur costs in excess of \$25,000.

## **DIFFERENCES WITH FEDERAL AND OTHER STATE STANDARDS**

The Board has identified no differences between the proposed amendments and federal and other state standards.

## **AUTHORS, WITNESSES AND SONAR EXHIBITS**

- 1) Samantha Strehlo, Executive Director, Minnesota Board of Behavioral Health and Therapy
- 2) Joesha Green, Office Manager, Minnesota Board of Behavioral Health and Therapy
- 3) Marlae Cox-Kolek, MS, LADC, LPCC, Professional Board member, Policy and Rules Committee member
- 4) Rebecca Lund, MA, LPCC, Professional Board member, Policy and Rules Committee member
- 5) Marjorie Van Slyke, PsyD, LPCC, Professional Board member, Policy and Rules Committee member

## **WITNESSES AND OTHER STAFF**

- 1) The Board expects that the proposed amendments will be noncontroversial. If a hearing is necessary, the Board anticipates having the individuals listed above testify as witnesses in support of the need for and reasonableness of the rules.
- 2) Rebecca Huting, Assistant Attorney General, is the Board's attorney and will introduce the required jurisdictional documents into the record.

## **SONAR EXHIBITS**

None

## **CONCLUSION**

In this SONAR, the Board has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapters 2150. The Board has provided the necessary notice and documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

*/s/ Samantha Strehlo*

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Samantha Strehlo  
Executive Director  
Minnesota Board of Behavioral Health and Therapy

8/7/2022  
Date